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COMMITTEE ON ECONOMIC, SOCIAL AND CULTURAL RIGHTS

Forty-first session

SUMMARY RECORD OF THE 48th MEETING

Held at the Palais Wilson, Geneva, on Monday, 17 November 2008, at 3 p.m.

Chairperson: Mr. TEXIER

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

SUBSTANTIVE ISSUES ARISING IN THE IMPLEMENTATION OF THE INTERNATIONAL COVENANT ON ECONOMIC, SOCIAL AND CULTURAL RIGHTS (agenda item 3) (*continued*)

Draft General Comment No. 20 on the right to non-discrimination and economic, social and cultural rights (E/C.12/GC/20/CRP.2): *consultations*

1. The CHAIRPERSON said that General Comment No. 20 on non-discrimination and economic, social and cultural rights was important in its own right, but also because the principles of non-discrimination and equality set out in article 2, paragraph 2, of the Covenant were fundamental to all the other articles.

2. Mr. RIEDEL (Co-Rapporteur for the draft General Comment) said that the Co-Rapporteurs for the draft General Comment had been assisted by Mr. Langford, appointed by the Office of the United Nations High Commissioner for Human Rights. One of their tasks had been to cut the text proposed by the previous Rapporteur for the draft, Mr. Malinverni, to about eight pages. That had only been possible by considering that article 2, paragraph 2, of the Covenant should be read with the rights and obligations in Part III of the Covenant as a whole, rather than with each of them individually, to avoid repetition of the Committee's previous general comments.

3. After consideration by the Committee, the draft had been sent to all the specialized agencies and non-governmental organizations (NGOs) in June 2008 and a half day of discussion on some of the more important issues of article 2, paragraph 2, of the Covenant had been agreed, particularly on prohibited grounds of discrimination in section B of the draft, under the heading "Other status". Amendments suggested by Committee members had been noted, and a workshop held in Berlin in September 2008 had thoroughly discussed the issues of equality and non-discrimination, prohibited grounds of discrimination, national policies and remedies and systemic discrimination. All comments received by 15 December 2008, including those made during the current debate, would be examined by a small drafting committee, which would make the necessary amendments and present a new draft to the Committee for adoption in May 2009.

4. Mr. PORTER (Social Rights Advocacy Centre) said that the violations of economic, social and cultural rights and discrimination endured by certain people were due not only to structural disadvantages and direct discrimination but also to the difficulties involved in gaining access to effective remedies. It was up to the Committee to identify systemic barriers and to give clear direction on how they should be overcome. Draft General Comment No. 20 had to respond to that challenge and contribute directly to the Optional Protocol to the International Covenant on Economic, Social and Cultural Rights, which was soon to be adopted by the General Assembly of the United Nations.

5. A comprehensive approach should be adopted to non-discrimination, reaffirming the principles of true equality. It should be based on positive, pragmatic, fundamental and permanent obligations, interpreting marginalization within a society as a phenomenon in its own right, not merely as discrete comparable situations. It should encompass general solutions to the problem, based on legislation, adapted programmes and allocation of necessary resources. Positive measures to promote non-discrimination and equality should not be considered temporary measures, but rather long-term provisions and obligations, as were, for example, maternity leave and disabled accommodations. It should be recognized

that being homeless, illiterate or poor was a source of discrimination, and therefore constituted prohibited grounds of discrimination. States parties should appreciate how difficult it was for victims of discrimination on those grounds to obtain access to effective remedies. Similarly, the General Comment should emphasize that the role of courts and institutions for the protection of human rights was especially important to vulnerable groups which depended on positive Government measures. It should also stress that justice systems should not be given a margin of discretion or manoeuvre that could enable them to withhold effective remedies which members of those groups would rightly expect, given their egregious disadvantages and deprivation. The General Comment would, by adopting a more comprehensive approach to non-discrimination and equality, correct the bias of approaches applied to date.

6. Mr. LANGFORD (Norwegian Centre for Human Rights, University of Oslo) said that unequal treatment and discrimination had not been inversely proportional to economic growth and development in recent years. Unfortunately, systemic discrimination was still widely prevalent in Member States who were parties to the Covenant; women, for example, were often victims, in particular due to ethnic origin. Discrimination could be present not only in official structures, such as legislation or policy, but also in broader aspects of culture, which affected how individuals were perceived. The Committee had focused on the fate of the most vulnerable and marginalized groups affected by discrimination but its position in that respect had not always been consistent, and the draft under consideration could help to remedy the matter.

7. As regards cases where differential treatment was permissible, it was important to be precise and to add, as the Committee and other treaty bodies had done before, that certain restrictions in the exercise of Covenant rights could be justified on condition that the effects as well as the aim of that treatment were legitimate. Specific information should be provided on the way States parties could apply lawful restrictions mentioned in article 8, paragraph 2, of the Covenant at the national level. States parties should also be advised to take steps against discrimination in the private sphere, namely, within families or communities.

8. The draft under consideration does not mention extraterritorial obligations regarding discrimination. It should be borne in mind that States parties participating in international institutions and cooperation had an obligation not to practise discrimination in the same way as did non-State actors. On the issue of national implementation, the Committee should emphasize that there was a duty to disaggregate data on economic, social and cultural rights by prohibited grounds of discrimination and to collect data on vulnerable groups with respect for the wishes of those groups. It was also necessary to consider starting group proceedings in cases of discrimination and of reversing the onus of proof, which would then be on the perpetrators of discrimination rather on its victims, whose resources were often limited.

9. Mr. COURTIS (Office of the United Nations High Commissioner for Human Rights) said it was clear that non-discrimination was an obligation in many sectors; the specific application to economic, social and cultural rights was less clear. Examples of current court cases worldwide should therefore be cited in paragraph 33. The Committee should indicate that discrimination constituted a serious violation of the principle of equality. The immediate obligation defined in article 2, paragraph 2, of the Covenant was divided into three categories in paragraph 11 of the draft under consideration, which was somewhat confusing; it would be better to stress that non-discrimination involved both negative obligations (proscription of discrimination

on prohibited grounds) and positive obligations (temporary and permanent measures, for example, in favour of certain groups of individuals). It was good that the existence of express grounds and implicit grounds of discrimination had been recognized, however it would be better to tackle that issue from the broader perspective of the link between non-discrimination and differential treatment of certain groups. It was also regrettable that discrimination based on people's economic and social situation had not been considered as such, and that it appeared only by implication in the treatment of other prohibited grounds.

10. Finally, he said that the word "sex" referred too specifically to physiological differences and that it was time to adapt the terminology to modern times by using the concept of gender specificity. He recalled that ethnic origin could include nationality and welcomed the mention of health, sexual orientation and disability as prohibited grounds of discrimination, but regretted that those were not illustrated with examples from case law.

11. Mr. TARAN (International Labour Organization (ILO)) cited several international instruments which clearly prohibited discrimination and prescribed equal treatment and equal opportunity but said that in practice those provisions were not easily applied and respected in the case of non-nationals. New forms of differential treatment of non-nationals, in particular migrant workers, were evolving. One of the few national instruments to include nationality as a prohibited ground of discrimination was the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families. Those provisions had been adopted in national legislation in some countries but without explicitly mentioning their applicability to non-nationals. In practice, many countries continued to make a distinction regarding the application of rights to persons of irregular status in the territory of a State. Questions of whether human rights protections applied to migrants and whether equality of treatment was a norm were still being debated, while some argued on the basis of security, economic and social considerations in favour of discriminatory treatment of non-nationals, particularly in irregular situations. It was even argued that migrant workers should have wider access to temporary employment only if their rights, protections and pay were lower than those prevailing in the destination country.

12. Migrants were an essential component of the labour market and ILO had estimated that approximately one half of the 200 million people living outside their countries of birth or citizenship were engaged in migrant labour. However, highly competitive and globalized market pressures promoted abuse and exploitation of migrant workers, discrimination and social exclusion of workers of foreign origin, fear of unemployment caused by immigration, growing anti-immigrant sentiment, and inter-ethnic violence. Migrants accordingly looked exploitable and expendable to employers and their characteristic differences, including status, could become a source of discrimination, which had a double impact on women. Discrimination prevented integration and could lead to ethnic ghettos, high unemployment, low school attendance and increased violence and crime rates. In that context it was vital to obtain more detailed data on discrimination that could be used in the policy debate. A methodology for describing and measuring discriminatory behaviour in the labour market had been developed and widely applied by ILO. Work in this field in Belgium had had a major influence on the content of legislation adopted in 2003: three trade union federations had campaigned against discrimination and a code of practice had been adopted by the national federation of employers.

13. The current situation, characterized by increased labour mobility and the use of foreign labour, had led to denial of identity, which explained the relegation of migrant labour to insecure, badly paid and marginal jobs. Three instruments which defined the application of human and labour rights to migrants constituted a kind of international charter on migration. These were: ILO Convention 97 on Migration for Employment (Revised); ILO Convention 143 on Migrant Workers (Supplementary Provisions); and the 1990 International Convention on the Protection of All Migrant Workers and Members of Their Families. It was appropriate to strengthen the rights-based approach in migration policy by achieving wider ratification of the relevant instruments; stressing the universality of human and labour rights in all policies and practices concerning migrants; emphasizing equality of treatment and non-discrimination in all aspects of work and social spheres, and linking anti-discrimination and integration policy. The elements on nationality should be strengthened in the draft General Comment, the need to apply principles of non-discrimination to all persons wherever they were and regardless of their status, should be stressed, as well as the principle that equality of treatment in employment and society applied to all persons whose presence and status were legally recognized.

14. Mr. BURGER (Office of the United Nations High Commissioner for Human Rights) said that indigenous people and minorities suffered disproportionate discrimination in economic, social and cultural rights in terms of life expectancy and access to education, housing or social security. It was often an inherited situation, which was subtly maintained in the relationship between those groups and the dominant sectors of society. It could only be changed by proactive measures: legislation alone was not enough and adequate resources were required to produce real change. Legislation could not be effective unless public officials were closely involved in its implementation and trained for the purpose. At the same time, inherited prejudices had to be fought with a genuinely multicultural educational policy and minority groups had to be more involved in democratic processes and decision-making. He also stressed the close link between economic, social and cultural rights and land rights. According to numerous statements from indigenous peoples, simply having access to land considerably reduced the sense of poverty and alienation. Another area of importance to indigenous peoples was intellectual property rights, and the need to ensure that cultural heritage was respected and protected.

15. Ms. WILSON (Co-Rapporteur for the draft General Comment) said that the principle of non-discrimination was to be applied immediately by States parties, which meant amending or abolishing discriminatory laws, programmes, strategies and practices as soon as possible. Unlike other elements of the Covenant, the prohibition of discrimination in all its forms left States parties no room for manoeuvre. The measures they were required to adopt without delay to put an end to all forms of discrimination related to both de jure and de facto discrimination by public authorities or by private or non-State actors, such as employers. While the adoption of a general law against discrimination was always desirable, specific provisions and laws relating to particularly vulnerable, disadvantaged or marginalized groups were often necessary. Measures aimed at prohibiting and abolishing de facto discrimination could include education and training in human rights, for example programmes for judges, police or other officials. Public awareness campaigns could remedy the problem of socially and culturally entrenched discrimination. Special temporary measures could be adopted to improve the position of groups which had been marginalized for a long time, such as ethnic, religious or linguistic minorities, in order to place them on an equal footing with the rest of the population. However, as such measures were themselves potentially

discriminatory, they had to be justified by objective criteria in order to be lawful, and they should not be kept in place after their goals had been achieved.

16. States parties had an immediate obligation to provide practical help to victims of discrimination, and adequate reparation where necessary. Where mechanisms and institutions did not exist, they had to be created. They had to be empowered to investigate complaints of discrimination, including those made against private or non-State actors, and be competent to grant compensation, reparation, restitution or other measure to victims to the extent of damages suffered. Lack of access to practical help by members of marginalized groups was a symptom of discrimination. All policies, programmes and legislation had to be carefully monitored. States parties had an obligation to collect precise, up-to-date data, disaggregated by grounds of discrimination, on the implementation of all economic, social and cultural rights, and to include the data in reports submitted to the Committee on Economic, Social and Cultural Rights. Indicators and benchmarks should make it possible to assess whether a State party was meeting its required obligations on the prohibition of discrimination. Those elements were often omitted from reports by States parties, which prevented the Committee from assessing progress achieved.

17. Mr. SADI, responding to Mr. Taran, said that the Covenant allowed differential treatment of natives and non-natives in developing countries, in the conditions stipulated in article 2, paragraph 3. A degree of caution was appropriate regarding de facto discrimination and what could be required from States in that respect.

18. Mr. RZEPLINSKI said that the draft General Comment seemed to have been written from a Western standpoint. It was likely that Governments would not know where to start or what means to use to put an immediate end to discrimination regarding certain populations, like the large peasant populations in India or China, which had been the object of discriminatory practices for generations. He also thought that the wording “non-discrimination and equality” in paragraph 1 of the draft General Comment should be clarified, as it was vague and could be confusing for legal practitioners.

19. Ms. BONOAN-DANDAN asked Ms. Wilson for more information about the immediate obligation of States parties to ensure effective remedy in case of discrimination. It was an unusual term for the Committee, which had addressed that question only rarely. She thought that a short paragraph about equality and non-discrimination could explain the distinction between the two concepts.

20. Ms. BARAHONA-RIERA said that the draft General Comment should explore the links between equality and non-discrimination in greater depth and the question of discrimination against non-natives, immigrants and indigenous peoples, as well as the question of sexual identity and gender.

21. Mr. BRAS GOMES said the draft General Comment should state more explicitly that, once discriminatory legislation had been abolished, resources still had to be provided to finance the necessary corrective measures which would eliminate its effects.

22. Mr. ATANGANA asked why the draft General Comment did not contain a section on international obligations, as did the previous General Comment (No. 19) adopted by the Committee.

23. The CHAIRPERSON, speaking in his capacity as a member of the Committee, said it was important that the text should recommend reversing the onus of proof in discrimination cases, as it was difficult for victims to provide proof. A number of

countries had adopted legal measures which stipulated that when a worker made an allegation of discrimination, it was up to the employer to disprove it.

24. Mr. ABDEL-MONEIM said that in order to assess the efforts made by a State party to the Covenant to combat discrimination, the Committee used factual data provided both by the State party and by various non-governmental organizations. However, the Committee had only an overview of the situation and could be unaware of a number of forms of discriminatory behaviour towards groups of individuals, including insults addressed to members of a group or contempt expressed towards members. It was therefore important that, during consideration of periodic reports, the Committee assess whether a State party was really acting "to the maximum of its available resources" to achieve full exercise of the rights recognized by the Covenant.

25. Mr. MARCHAN ROMERO was pleased that the prohibited grounds of discrimination set out in article 2, paragraph 2, of the Covenant were listed again in paragraph 13 of the draft General Comment. However, he thought it essential to leave the list open, as suggested by the term "other status", in order to extend protection against discrimination to new examples that could occur in future.

26. Ms. ABRAHAM (Amnesty International) said that a number of amendments to the draft under consideration were desirable. In particular, paragraph 5 should specify that the right to non-discrimination allowed no derogation; paragraph 7 should list State actions that amounted to direct discrimination; paragraph 6 should emphasize positive and negative obligations of States to prohibit and eliminate direct and indirect discrimination in fact and in law; paragraph 9 should highlight the obligation of States to take temporary special measures in certain circumstances; and paragraph 16 should record general obligation linked to the duty to eliminate discrimination.

27. It would also be useful to establish a distinction, in paragraphs 8 and 10 of the draft, between discrimination and the obligation to treat individuals differently whose situations were significantly different and to clarify the meaning of the obligation to provide housing in order to realize economic, social and cultural rights. It was also important to link article 2, paragraph 2, and article 4 of the Covenant.

28. She welcomed the fact that the Committee had stressed the obligation of States to address discrimination in the private sphere but said they also had a duty to address domestic violence.

29. It would be useful to list possible violations of article 2 in paragraph 12, in order to make States aware of acts or omissions which they should avoid at all costs.

30. Paragraph 14, concerning membership of a group, should address the question of discrimination based on perceived membership of a specific group.

31. The Committee should build on the work of other committees that had dealt with discrimination, such as the Committee for the Elimination of Racial Discrimination or the Committee on the Rights of the Child, when amending paragraphs on express grounds of discrimination, including race, colour, sex, age and nationality.

32. She welcomed the role the Committee had played in the recognition of sexual orientation as a prohibited ground of discrimination and said it should stress that States had an obligation to combat the stigmatization of women who had suffered obstetric fistula, and persons living with HIV/AIDS or suffering from mental illnesses or other diseases which seriously affected their ability to enjoy their

economic, social and cultural rights. Her organization particularly welcomed the mention of place of residence among grounds of discrimination in the draft, for that was all too often overlooked.

33. The Committee should clarify, in draft paragraph 31 on "civil, cultural, economic, political or social status", which was currently too general, that States should take steps to eliminate unjustifiable disparities in the enjoyment of human rights faced by people living in poverty.

34. Turning to "national implementation", which was the subject of paragraphs 32 to 37 of the draft, she said that, contrary to paragraph 32, States should not have a margin of discretion in their duty to prohibit and eliminate all forms of discrimination. The Committee should recommend that persons whose exercise of economic, social and cultural rights had been affected by discrimination should participate in the development of strategies to eliminate it. Reference should also be made to States' obligation to collect accurate and up-to-the-minute data on the realization of those rights, disaggregated by prohibited grounds of discrimination.

35. Finally, she regretted that the draft did not address the question of non-discrimination in international assistance and cooperation, or the obligations of non-State actors, like international financial institutions or private companies.

36. Mr. SINGH (United Nations Educational, Scientific and Cultural Organization (UNESCO)) drew the Committee's attention to the Convention against Discrimination in Education adopted by UNESCO in 1960, which listed the different grounds of discrimination as well as the basic principles of non-discrimination and of equality of educational opportunity. He stressed the importance of paragraph 22 of the draft under consideration on "property" and said that poverty was one of the main grounds of discrimination in education. He was concerned by the fate of several groups who were partly or completely deprived of their right to education, such as linguistic and cultural minorities, indigenous peoples, the disabled, migrants and displaced persons.

37. It was desirable that the draft under consideration mention General Comment No. 13 on the Right to Education (art. 13 of the Covenant); include a list of laws recently adopted in different countries on equality of opportunity in education (like the law on equal rights and opportunities, participation and citizenship for people with disabilities, adopted by France on 11 February 2005); and refer to international jurisprudence on the equality of opportunity and access to education.

38. Finally, it was desirable that the draft address the rights covered in the articles of the Covenant individually, specifying in each case problems encountered in their implementation, as well as the role of United Nations agencies, especially in monitoring.

39. Mr. SIGURDSON (Joint United Nations Programme on HIV/AIDS (UNAIDS)), referring to paragraph 29 of the draft under consideration, said his organization recommended that, in order to avoid confusion, the Committee provide a precise definition of the "reasonable objectives and criteria" which justified "differential treatment in the exercise of Covenant rights". Public health was one of the criteria States most often cited as the basis for restricting human rights, which was contrary to the principle of non-discrimination. HIV-positive status, for example, was often cited to justify differential treatment in access to education, employment, health care, travel, social security, housing and asylum. Over 60 countries continued to impose restrictions on the entry, stay and residence of people living with HIV, whereas infectious disease and public health experts guaranteed that the virus could not be transmitted by casual contact.

40. UNAIDS suggested that the Committee draw on General Comment No. 14 on the Right to the Highest Attainable Standard of Health (art. 12) in composing the section of the draft devoted to "Health status", in which they should indicate that the issue of HIV was also covered in paragraph 29 of the draft. It would then be easier for UNAIDS teams to make States more aware of the issue.

41. He suggested improving the definition of civil, cultural, economic, political and social status in paragraph 31 of the draft General Comment by adding a reference to four groups whose human rights were threatened, namely, sex workers, men who had sex with men, injecting drug users, and prisoners, who were the most exposed to HIV.

42. Mr. LOPEZ (International Commission of Jurists) said he regretted that, unlike other General Comments of the Committee, the draft under consideration did not refer to international obligations, and in particular to the prohibition of discrimination in international trade agreements. It was imperative for the draft General Comment to emphasize that international trade agreements should systematically include a clause on non-discrimination. Arbitration courts and other bodies for the settlement of international disputes often had to deal with cases where national measures in favour of given groups were challenged on the grounds that they were contrary to the principle of non-discrimination and the right to fair and equitable treatment.

43. Mr. OELZ (International Labour Organization (ILO)) said that the draft General Comment should stress that to ensure the continued existence of certain measures, it was necessary to define them not as temporary but as permanent. That applied, for example, to measures intended to protect minorities and indigenous and tribal peoples, especially to preserve their territory or language. In some cases it was necessary to grant differential treatment to certain groups to prevent them being victims of indirect discrimination. ILO Convention No. 111 on Discrimination (Employment and Occupation) offered States a wide choice of measures. There was an increasing worldwide trend for States to include the obligation of non-discrimination in their labour codes. He warmly welcomed the idea of reversing the onus of proof in discrimination cases, and of wording the relevant provision in such a way that it was understood and applied in all existing legal systems. He invited the Committee to seek inspiration from the two ILO instruments that dealt with that question, namely Convention No. 158 on termination of employment on the initiative of the employer, and Convention No. 183 on maternity protection.

44. Finally, he said that although ILO Convention No. 111 listed seven grounds of discrimination, Member States should include in their legislation any other grounds that seemed appropriate in the national context. It had been known for certain countries to be held responsible for discrimination they had themselves added to the list of prohibited grounds of discrimination. In the framework of consideration of periodic reports by the Committee, States parties could make it aware of grounds of discrimination specific to their national context and report to it regularly on those grounds.

45. Mr. ABRAMSON (Human Rights Consulting Attorney) regretted that the draft General Comment did not apply the terminology usually used in the area of human rights, in particular, that of article 2, paragraph 2, of the Covenant, whereby States parties committed themselves to "guarantee that the rights enunciated in the present Covenant will be exercised without discrimination of any kind as to race, colour, sex, language, religion, political or other opinion, national or social origin, property,

birth or other status". He wondered whether that reflected a new political orientation of the Committee.

46. He thought it unfortunate that in paragraph 10 of the draft General Comment the Committee had included "reasonable criteria" to justify differential treatment, which in his view rendered the right to non-discrimination meaningless. Stating that a State could not adopt a discriminatory policy "unless the criteria for such differentiation are reasonable and objective" was tantamount to saying that "a State is entitled to pursue a discriminatory policy on condition that the discrimination is reasonable". By sanctioning the concept of "reasonable discrimination", the Committee was adopting the same position as South Africa had for so long used to justify apartheid and racial discrimination. Paragraph 10 was contrary to the provisions of the Charter of the United Nations and the International Convention on the Elimination of all Forms of Racial Discrimination, according to which "there is no justification for racial discrimination, in theory or in practice, anywhere".

47. The CHAIRPERSON, speaking as a member of the Committee, said that he did not share Mr. Abramson's view and considered, like the authors of the draft, that differential treatment could be based on reasonable and objective criteria.

48. Mr. KERDOUN said there were numerous States where anti-discrimination legislation had gone unheeded, and asked the representative of UNESCO how his organization motivated Member States to eliminate inequalities and discrimination in education.

49. Mr. COURTIS (Office of the United Nations High Commissioner for Human Rights) said that positive obligations were not limited to special temporary measures. In its draft, the Committee should emphasize that there should be no restriction of anti-discrimination laws to economic, social and cultural rights. Furthermore, reversing the onus of proof in favour of victims of discrimination should become the norm.

50. Mr. TARAN (International Labour Organization (ILO)) said that, by definition, discrimination was unjustified differential treatment. As non-discrimination admitted no exception, it was legitimate to have doubts about the differential treatment envisioned in article 2, paragraph 3, of the Covenant, for developing countries, which "with due regard to human rights and their national economy, may determine to what extent they would guarantee the economic rights recognized in the Covenant to non-nationals". He thought that the Committee should devote more attention to non-natives in the General Comment. The question of indicators (para. 37 of the draft) was also important, as they could make discrimination on the labour market visible.

51. Mr. LANGFORD (Norwegian Centre for Human Rights, University of Oslo) said that the question of positive discrimination in general and special temporary measures in particular was not relevant only to Western countries but also to countries like Pakistan, India and even China, which had adopted legislation to improve women's access to property, and to redress inequalities between the sexes. He invited Mr. Taran to note that article 2, paragraph 3, of the Covenant related only to economic rights and the economic situation in developing countries, not to social and cultural rights.

52. Mr. PORTER (Social Rights Advocacy Centre) said that the fundamental question was not whether a State had adopted special temporary measures or provided effective remedies to victims of discrimination, but the rationale involved.

53. Mr. SINGH (United Nations Educational, Scientific and Cultural Organization (UNESCO)), replying to Mr. Kerdoun, said that UNESCO was working on many fronts to achieve recognition of the fundamental right to education, the justiciability of that right and the principle of non-discrimination in access to education. For example, it was examining national constitutions to ensure that they enshrined the principle of free, compulsory education effectively. It was also assisting countries to develop legislation that would help to recognize and promote the principles of equality and non-discrimination.

54. Mr. RIEDEL (Co-Rapporteur for the draft General Comment) thanked the speakers for their contributions and said he would take them into account when reworking the draft. He shared the view that special temporary measures were only one aspect of positive obligations. More attention should be paid to questions of non-natives, social exclusion and discriminatory practices in the unofficial economy. The idea that discrimination prevented integration should be considered more carefully. In accordance with speakers' recommendations, the authors of the draft would study the following questions more closely: the rights of indigenous peoples, universally available multicultural education, democratization and participation, links between equality and discrimination, discrimination in the private sphere and the right to education. He also noted the view of the UNAIDS representative that public health might be used to restrict the exercise of rights. Finally, he considered that non-discrimination was not a right but a principle.

55. Ms. WILSON (Co-Rapporteur for the draft General Comment) said that the question of remedies was fundamental and States parties had an immediate obligation to provide effective remedies to victims of discrimination. It was also a basic principle that any judgement should be reviewed by an administrative body. As regards special temporary measures, because the word "temporary" could lead to confusion, she would prefer the expression "positive measures". She noted with interest the suggestion of highlighting the differences between the principles of non-discrimination and equality. Finally, she said that she entirely agreed with Mr. Riedel that there was no right to non-discrimination but she could not accept Mr. Abramson's statement that the Committee could help to promote racial discrimination by recognizing as lawful differential treatment based upon reasonable and objective criteria.

56. The CHAIRPERSON concluded by reminding all speakers that amendments to the draft General Comment should be submitted, in writing, to the Co-Rapporteurs by 15 December 2008.

The meeting rose at 6.05 p.m.