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CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES UNDER ARTICLES 16 AND 17 OF THE COVENANT

Concluding observations of the Committee on Economic, Social and Cultural Rights

ISRAEL

1. The Committee on Economic, Social and Cultural Rights considered the second periodic report of Israel on the implementation of the International Covenant on Economic, Social and Cultural Rights (E/1990/6/Add.32) at its 17th, 18th and 19th meetings, held on 15 and 16 May 2003 (E/C.12/2003/SR.17, 18 and 19) and adopted, at its 29th meeting held on 23 May 2003, the following concluding observations.

A. INTRODUCTION

2. The Committee welcomes the submission of the second periodic report of the State party, which was prepared in general conformity with the Committee's guidelines. The Committee appreciates the extensive written replies to the list of issues, as well as the readiness of and efforts made by the high-level delegation to respond to the oral questions. The members of the delegation were knowledgeable with respect to most of the Covenant rights, but the Committee regrets that a number of the questions it posed during the dialogue remained unanswered.

3. The Committee notes with appreciation the large amount of information received from non-governmental organizations concerning the implementation of the Covenant in the State party.

B. POSITIVE ASPECTS

4. The Committee welcomes the steps undertaken by the State party to implement the Multiyear Plan for the Development of Arab Sector Communities (2000), aimed at closing the gap between Jews and Arabs by promoting equality in the enjoyment of economic, social and cultural rights.

5. The Committee notes with appreciation the various affirmative action measures taken, as mentioned in the State party's replies to the list of issues, with respect to various disadvantaged sectors such as the Arab Druze, Circassian and Bedouin communities, despite the decline in economic growth in the State party in recent years.

6. The Committee further notes with appreciation that the Supreme Court's rules of standing have been relaxed allowing any person, regardless of citizenship, residency or other status, who contends that his or her rights were unlawfully denied or infringed, formal access to the Court, and allowing even for an *actio popularis*. In particular, the Committee particularly appreciates that in the State party, plaintiffs seeking remedy for alleged violations of economic, social and cultural rights have access to and can make use of the judiciary system, which provides opportunities for the justiciability of the rights enshrined in the Covenant. In this regard, the Committee welcomes the information given on cases before the courts, in which reference has been made to Covenant provisions.

7. The Committee further notes the amendment of the Women Equal Rights Act in April 2000.

8. The Committee welcomes the improvements in the conditions for foreign workers, allowing them to change employers for the legal duration of their stay, prohibiting against employers withholding workers' passports, as well as the regulations regarding the system of compulsory health insurance for these foreign

workers.

9. The Committee notes that, while gaps still remain, the State party has achieved some positive results towards expanding basic education and special education for non-Jewish sectors.

10. The Committee notes with appreciation the efforts undertaken by the State party to address the problem of trafficking and exploitation of persons, such as the criminalization of trafficking, increased penalties for trafficking of minors, and the enhanced cooperation between government agencies to combat trafficking with a victim-sensitive approach.

C. FACTORS AND DIFFICULTIES IMPEDING THE IMPLEMENTATION OF THE COVENANT

11. The Committee reiterates its statement in previous concluding observations that Israel's continuing emphasis on its security concerns, which have even increased in recent years, has impeded the realization of economic, social and cultural rights within Israel and the occupied territories.

D. PRINCIPAL SUBJECTS OF CONCERN

12. The Committee notes with regret that a number of the issues raised in its concluding observations of 1998 (E/C.12/1/Add.27, hereinafter: 1998 concluding observations) and 2001 (E/C.12/1/Add.69, hereinafter: 2001 concluding observations) remain outstanding issues of concern. In this regard, the Committee reiterates its concerns contained in paragraphs 11, 25, 26 and 28 of its 1998 concluding observations, and paragraph 14 of the 2001 concluding observations.

13. Despite the positive measures mentioned in paragraph 6 of the present concluding observations, the Committee reiterates its concern that the Covenant has not been incorporated in the domestic legal order, and can therefore not be directly invoked before the courts.

14. The Committee regrets that the judgment of the Qa'dan case has still not been implemented.

15. The Committee also reiterates its concern about the State party's position that the Covenant does not apply to areas that are not subject to its sovereign territory and jurisdiction, and that the Covenant is not applicable to populations other than the Israelis in the occupied territories. The Committee further reiterates its regret at the State party's refusal to report on the occupied territories (1998 concluding observations, para. 11). In addition, the Committee is deeply concerned at the insistence of the State party that, given the circumstances in the occupied territories, the law of armed conflict and humanitarian law are considered as the only mode whereby protection may be ensured for all involved, and that this matter is considered to fall outside the sphere of the Committee's responsibility.

16. The Committee is deeply concerned about the continuing difference in treatment between Jews and non-Jews, in particular Arab and Bedouin communities, with regard to their enjoyment of economic, social and cultural rights in the State party's territory. The Committee reiterates its concern that the "excessive emphasis upon the State as a 'Jewish State' encourages discrimination and accords a second-class status to its non-Jewish citizens" (1998 concluding observations, para. 10). This discriminatory attitude is apparent in the continuing lower standard of living of Israeli Arabs as a result, inter alia, of higher unemployment rates, restricted access to and participation in trade unions, lack of access to housing, water, electricity, health care and a lower level of education, despite the State party's efforts to close the gap. In this regard, the Committee expresses its concern that the State party's domestic legal order does not enshrine the general principles of equality and non-discrimination.

17. The Committee is concerned that in spite of the enactment of the law on Equal Rights for People with Disabilities in 2000, the majority of its provisions have not been implemented. The situation is aggravated for persons with disabilities from the Arab sector.

18. The Committee is particularly concerned about the status of "Jewish nationality", which is a ground for exclusive preferential treatment for persons of Jewish nationality under the Israeli Law of Return, granting them automatic citizenship and financial government benefits, thus resulting in practice in discriminatory treatment against non-Jews, in particular Palestinian refugees. The Committee is also concerned about the practice of restrictive family reunification with regard to Palestinians, which has been adopted for reasons of national security. In this regard, the Committee reiterates its concern contained in paragraph 13 of its 1998 concluding observations, and paragraph 14 of its 2001 concluding observations.

19. The Committee deeply regrets the refusal of the State party to provide additional information on the living conditions of population groups other than Israeli settlers in the occupied territories in its second periodic report, as requested in its 2001 concluding observations. The Committee continues to be gravely concerned about the deplorable living conditions of the Palestinians in the occupied territories, who – as a result of the continuing occupation and subsequent measures of closures, extended curfews, road blocks and security checkpoints – suffer from impingement of their enjoyment of economic, social and cultural rights enshrined in the Covenant, in particular access to work, land, water, health care, education and food.

20. The Committee expresses its concern about the general increase in unemployment in the State party, which rose from 6.7% in 1996 to 10.5% in 2002, as well as about the significant increase in unemployment of the non-Jewish sectors: 13.5% for the Arab sector, and more than 15% for the Bedouin sector. The Committee also expresses concern about the rate of unemployment in the occupied territories, which is over 50% as a result of the closures which have prevented Palestinians from working in Israel.

21. The Committee is concerned about the persisting inequality in wages of Jews and Arabs in Israel, as well as the severe under-representation of the Arab sector in civil service and universities.

22. The Committee is concerned about the fact that it is extremely difficult for Palestinians living in the occupied territories and working in Israel to join Israeli trade unions or to establish their own trade unions in Israel.

23. The Committee expresses concern about the fact that the Jewish religious courts' interpretation of personal status law with respect to divorce is discriminatory to women, especially the regulation that allows the husband to re-marry even when the wife is opposed to the divorce, whilst the same rules do not apply to the wife.

24. The Committee is particularly concerned by information received concerning the construction of a "security fence" around the occupied territories, which allegedly would infringe upon the surface area of the occupied territories, and which would limit or even impede access by Palestinian individuals and communities to land and water resources. The Committee regrets the fact that the delegation did not respond to questions by the Committee concerning the security fence or wall during the dialogue.

25. The Committee is particularly concerned about limited access to, distribution and availability of water for Palestinians in the occupied territories, as a result of inequitable management, extraction and distribution of shared water resources, which are predominantly under Israeli control.

26. The Committee reiterates its grave concern about the continuing practices by the State party of home demolitions, land confiscations and restrictions on residency rights, and its adoption of policies resulting in substandard housing and living conditions, including extreme overcrowding and lack of services, of Palestinians in East Jerusalem, in particular in the old city (1998 concluding observations, para. 22). Furthermore, the Committee is gravely concerned about the continuing practice of expropriation of Palestinian properties and resources for the expansion of Israeli settlements in the occupied territories (1998 concluding observations, para. 24).

27. The Committee continues to be concerned about the situation of Bedouins residing in Israel, and in particular those living in villages that are still unrecognized (1998 concluding observations, para. 28). Despite measures by the State party to close the gap between the living conditions of Jews and Bedouins in the Negev, the quality of living and housing conditions of the Bedouins continue to be significantly lower, with limited or no access to water, electricity and sanitation. Moreover, they continue to be subjected on a regular basis to land confiscations, house demolitions, fines for building “illegally”, destruction of agricultural crops, fields and trees, and systematic harassment and persecution by the Green Patrol, in order to force Bedouins to resettle in “townships”. The Committee is also concerned that the present compensation scheme for Bedouins who agree to resettle in “townships” is inadequate.

E. SUGGESTIONS AND RECOMMENDATIONS

28. The Committee urges the State party to take into consideration the subjects of concern and give effect to the recommendations raised in its 1998 and 2001 concluding observations.

29. The Committee urges the State party to undertake steps towards the incorporation of the Covenant and its provisions in the domestic legal order. The Committee refers the State party to its General Comment No. 9 on the domestic application of the Covenant.

30. The Committee urges the State party to undertake steps to facilitate the implementation of the Qa’dan case judgment.

31. The Committee recognizes that the State party has serious security concerns, which must be balanced with its efforts to comply with its obligations under international human rights law. However, the Committee reaffirms its view that the State party’s obligations under the Covenant apply to all territories and populations under its effective control. The Committee repeats its position that even in a situation of armed conflict, fundamental human rights must be respected and that basic economic, social and cultural rights as part of the minimum standards of human rights are guaranteed under customary international law and are also prescribed by international humanitarian law. Moreover, the applicability of rules of humanitarian law does not by itself impede the application of the Covenant or the accountability of the State under Article 2(1), for the actions of its authorities. The Committee therefore requests that the State party provide more extensive information on the enjoyment of economic, social and cultural rights enshrined in the Covenant by those living in the occupied territories in its next periodic report.

32. The Committee reiterates its recommendation that the State party undertake steps to ensure equality of treatment for all Israeli citizens in relation to all Covenant rights (1998 concluding observations, para. 34).

33. The Committee urges the State party to undertake effective measures to combat discrimination against persons with disabilities, especially in providing access to public facilities, promoting access to basic services and to employment, with particular attention for persons with disabilities from the Arab sector.

34. The Committee reiterates its recommendation contained in paragraph 36 of its 1998 concluding observations that, in order to ensure equality of treatment and non-discrimination, the State party undertake a review of its re-entry and family reunification policies for Palestinians.

35. The Committee reiterates its request that the State party provide detailed information on the enjoyment of economic, social and cultural rights of all population groups living in the occupied territories in its next periodic report (1998 concluding observations, para. 46, and 2001 concluding observations). The Committee also calls upon the State party to give full effect to its Covenant obligations and, as a matter of the highest priority, to undertake to ensure safe passage at checkpoints for Palestinian medical staff and people seeking treatment, the unhampered flow of essential foodstuffs and supplies, free movement to go to their place of employment, and the safe conduct of students and teachers to and from schools (1998 concluding observations, para. 39).

36. The Committee recommends that the State party take effective measures to reduce the rate of unemployment, and to pay particular attention to reducing the inequalities between the Jewish and non-Jewish sectors with respect to employment. The Committee further recommends that the State party ensure that workers living in the occupied territories be permitted to continue to work in Israel.

37. The Committee strongly recommends that the State party undertake measures to reduce the inequalities in wages between Jews and Arabs, in conformity with the principle of equal pay for work of equal value, as enshrined in Article 7 of the Covenant.

38. The Committee recommends that the State party undertake steps to ensure that all workers working in Israel can exercise their trade union rights, in accordance with Article 8 of the Covenant.

39. The Committee recommends that the State party undertake steps to modify the Jewish religious courts’ interpretation of the law concerning divorce to ensure equality between men and women, as provided for in Article 3 of the Covenant.

40. The Committee urges the State party to ensure that any security measure it adopts does not disproportionately limit or impede the enjoyment of economic, social and cultural rights enshrined in the Covenant, and in particular access to land and water resources by Palestinians, and that adequate restitution and compensation be provided to those who have incurred damages to and loss of property and lands as a result of these security measures.

41. The Committee strongly urges the State party to take immediate steps to ensure equitable access to and distribution of water to all populations living in the occupied territories, and in particular to ensure that all parties concerned participate fully and equally in the process of water management, extraction and distribution. In that connection, the Committee refers the State party to its General Comment No. 15 on the right to water (E/C.12/2002/11).

42. Reiterating its recommendation of 1998 (para. 41), the Committee urges the State party to cease the practice of facilitating the building of Israeli settlements, expropriating land, water and resources, demolishing houses and arbitrary evictions. The Committee also urges the State party to take immediate steps to respect and implement the right to an adequate standard of living, including housing, of the Palestinian residents of East Jerusalem and the Palestinian Arabs in cities with mixed population. The Committee recalls in this connection its General Comments No. 4 (the right to adequate housing) and No. 7 (forced evictions). The Committee

requests the State party to provide detailed information on this issue in its next periodic report.

43. The Committee further urges the State party to recognize all existing Bedouin villages, their property rights and their right to basic services, in particular water, and to desist from the destruction and damaging of agricultural crops and fields, including in unrecognized villages. The Committee further encourages the State party to adopt an adequate compensation scheme that is open to redress for Bedouins who have agreed to resettle in “townships”.

44. The Committee encourages the State party to continue to provide human rights education in schools at all levels and to raise awareness about human rights, in particular economic, social and cultural rights, among state officials and the judiciary.

45. The Committee also encourages the State party to develop the system of mixed schools for Jewish and Arab pupils, in order to promote understanding, tolerance and friendship among the citizens of the country.

46. The Committee requests the State party to disseminate its concluding observations widely among all levels of society and to inform the Committee on all steps taken to implement them in its next periodic report. It also encourages the State party to continue to consult with non-governmental organizations and other members of civil society when preparing its third periodic report.

47. The Committee requests the State party to submit its third periodic report by 30 June 2008.
