

AFGHANISTAN

CESCR E/1992/23

(arts. 1-15)

55. The Committee considered the initial report of Afghanistan concerning the rights covered by articles 1 to 15 of the Covenant (E/1990/5/Add.8) at its 2nd, 4th to 6th and 8th meetings, held from 25 to 28 November 1991 (E/C.12/1991/SR.2, 4-6, and 8).

56. The representative of the State party introduced the report and explained that the Constitution of Afghanistan reflected his country's determination to apply the Covenant and to ensure the protection of the citizen and his property, while according priority to the rule of law. Laws and decrees enacted in accordance with the Constitution covered the right to recourse, appeal and compensation, freedom of expression and the right to strike, without distinction on any grounds. Those laws also provided for action against discrimination, ill-treatment and violations of rights by others. The Government had taken steps to ensure adequate housing and living standards and promoted public cultural activities and facilities. Emphasis was placed on social benefits, the right motherhood and the development of culturally underprivileged areas.

57. The Government also had taken measures aimed at eliminating unemployment and securing working conditions in accordance with international standards. Health care was free of charge for all citizens; the Government had introduced a free health programme for disease prevention and treatment, including vaccination in vulnerable and remote areas. Education was free and compulsory for all citizens. The Government's programme covered all levels of education including literacy courses, adult education, vocational training, teacher training and research. The representative stressed that his country had been torn by civil strife for 14 years, which had taken a terrible toll in human lives and economic resources and which had obviously inhibited the full exercise of economic, social and cultural rights. Furthermore, the Government could not guarantee the application of international norms and conventions in areas that were under the control of opposition forces.

General matters

58. As regards the general framework in which the Covenant was being implemented, members of the Committee requested information on the social and economic characteristics of the country; the demographic composition of its population; the main types of economic activity; and political and cultural aspects, including the type of government and organization of the executive, legislative and judicial bodies. They also wished to receive information on the general legal framework within which economic, social and cultural rights were protected; the process of preparation of the report under consideration; the extent to which non-nationals in the country benefited from the principles embodied in articles 6 to 15 of the Covenant; on the vulnerable groups in the population and the number of persons living below the poverty line; and about measures adopted and resources intended to improve their situation. In addition, members of the Committee wished to know how the Covenant and other international treaties were incorporated into national legislation; whether any provisions had been enacted which required significant derogations or amendments; what were

the main obstacles currently facing the Government of Afghanistan in its attempts to improve fulfilment of its obligations under the Covenant; and the degree to which constitutional freedoms could be limited.

59. In addition, members of the Committee wished to know what the relative size was of the private and the public sectors; the extent to which tripartism, as defined by the ILO, worked in practice in Afghanistan; what the situation of agriculture was in Afghanistan, particularly in the light of allegations that the guerilla movements derived much of their financing from profits from drug production and trafficking; what the legal situation was of the ex-King of Afghanistan; whether the course taken by the war had led to greater Islamization of social groups; and whether the coexistence of Sunni and Shiite Muslims had led to sectarian conflict.

60. Members of the Committee also wished to know what the view of the Government was regarding the extent to which the presence of more than 5 million refugees outside the country prevented the exercise of the right to self-determination and indicated that they could not enjoy economic, social, and cultural rights in their home country; what the level of effectiveness and the extent of implementation had been of the decrees and resolutions passed to secure the return of refugees; and whether the Government was in a position to ensure the effective application of the law throughout the territory of Afghanistan. Finally, they asked what the reasons were for the absence of petitions or claims submitted to the courts in accordance with article 51 of the Constitution.

61. The representative of the ILO referred to articles 6 and 9 of the Covenant and informed the Committee of the ratification and implementation by Afghanistan of ILO Conventions and the relevant conclusions and recommendations of the ILO Committee of Experts of the Application of Conventions and Recommendations.

62. In reply to the questions asked, the representative of the State party provided information on the ethnic composition and character of the Afghan people, their sense of equality, their history and cultural heritage and the structure and independence of the judiciary and the tribal assembly or “Jirgah”, which was traditionally called upon to maintain order and justice in the event of failure of the central Government. International treaties to which Afghanistan was a party prevailed over domestic law and Afghan legislation guaranteed the rights and freedoms of foreign citizens as well as stateless residents. The representative gave as an example of a threat to the public interest an action which would be contrary to the unity of the country. Article 2 of the Constitution stated that Islam was the religion of the country and that no law should run counter to it. Over 99 per cent of the population were followers of Islam, with Sunnis constituting 80 per cent of the population, Shiites 18 per cent and Ismaili Muslims and other sects 2 per cent. Several institutions were working to develop and enrich Islamic culture and science.

63. Turning to the question of refugees, the representative explained that this was a very complex issue which could not be discussed in simple terms. The Government had established reception centres in the towns near the borders of Pakistan and Iran and had issued decrees guaranteeing returnees all their rights. However, every time there was an influx of refugees, the Afghan opposition made difficulties and rockets were aimed at the towns where the centres for returnees were located. The King would always be welcomed back to help in the peace process.

Articles 1 to 5

64. Members of the Committee requested information on the situation of women in Afghan society and, in particular, their participation in political, social and trade union activity, and their position in the field of work and professional activities, both in the private economy and in public service, particularly at the senior level. They asked whether full equality of rights under the law had been achieved and, if not, what discrepancies remained and what measures were being planned to eliminate them.

65. Members of the Committee also wished to know with reference to article 64 of the Constitution, under which no person had the rights and liberties enshrined in the law against the public interest, which authority decided what was the “Public interest”, what effective remedies there were in cases of alleged abuses, and what the impact of Islamic law had been on the practical application of written laws relating to the status of women.

66. In his reply, the representative stressed that Afghan tradition treated marriage as a sacrament for life. The wife was the mistress of the household and wielded a great influence over her husband and children. Under Islamic law women had the right to own, acquire and inherit property of their own. Article 38 of the Constitution stated that men and women had equal rights and duties in the light of the law, irrespective of their national, racial, linguistic, tribal, educational or social status, religious belief, political conviction, occupation, kinship, wealth or residence. There were two women cabinet ministers, several women deputies, and a majority of women judges in the family courts and children’s courts.

Article 6: Right to work

67. Members of the Committee asked what measures had been taken to give effect to the provisions of the Labour Code which was adopted in June 1987; whether the ILO Committee of Experts or the Committee on the Elimination of Racial Discrimination had made any observation in response to the report submitted by the Government of Afghanistan and, if so, what were those observations; and what the most serious obstacles and difficulties were to achieving the realization of the right to work.

68. In addition, members of the Committee wished to know whether the commissions on the settlement of disputes mentioned in paragraph 14 of the report had actually been established; what the procedure was for submitting complaints to those bodies or to the courts; and whether recourse to a commission could be followed by recourse to a court if the claimant was not satisfied with the commission’s verdict. They also asked whether activities in agriculture and animal husbandry were based on an employer/employee relationship or on the family unit; what the ratio was of wage-earners to non-wage earners within that sector and also to wage-earners in other sectors of society; and how valid actually were the constitutional safeguards against discrimination in employment on grounds of political affiliation or opinion, in the light of allegations that people had been detained on political grounds.

69. The representative replied that in Afghanistan work was both a right and a duty toward the

State. The Labour Code provided that the right to work for citizens was guaranteed without any discrimination as to race, colour, sex, language, religion, or political or other opinions. Women had the same status as men in that respect and the rule of equal pay for equal work had been established. Unemployment was a concern of the Ministry of Labour and Social Affairs; according to extrapolations from the 1979 census, there were about 206,000 job seekers out of a work force of 6.1 million in 1990.

Article 7: Right to just and favourable conditions of work

70. Members of the Committee wished to know whether the ILO Committee of Experts had made any observations in response to the reports submitted under the ILO Weekly Rest (Industry) Convention, 1921 (Convention No. 14) and the Weekly Rest (Commerce and Offices) Convention, 1957 (Convention No. 106). Members requested more information on the system adopted for setting wage levels, particularly with regard to the participation of workers and on measures and procedures (including inspection of work places) to ensure the occupational health of workers in all sectors of economic activity. They wished to be provided with statistics on the number, nature and frequency of work-related accidents, by branch of activity, and information on the factors and difficulties which affected the extent to which these rights had been realized as well as on progress made.

71. They also wished to know whether a minimum working age had been established, in accordance with ILO Conventions and whether the fixing of wages was determined by a legal regime or also a measure of collective bargaining.

72. In his reply, the representative stated that the provisions of international labour conventions were applied in Afghanistan to the fullest extent possible. The Labour Code provided that wages and salaries must be paid according to the quantity and quality of the work performed, taking into account degree, rank, post, profession and other factors; that there could be no discrimination on the basis of ethnic or national origin, language, property, sex or religion; and that salaries and wages paid must never be less than the minimum amounts specified by law and covering the basic needs of the family. The salaries of the public and semi-public sector were fixed according to a scale which had either been elaborated in cooperation with the Central Federation of Afghan Unions, or, for social organizations, had been agreed upon internally. Salaries in the private sector were based on a scale agreed upon by the Consultative Council for Economic Affairs, the Federation of Afghan Unions and the National Commission for Labour and Social Security.

73. With regard to the issue of safety at work, the representative said that the shortage of safety equipment and trained personnel constituted a drawback. The National Commission for Labour and Social Security as well as the Central Federation of Afghan Unions exercised permanent control over the conditions of work in enterprises and public organs and watched over the application of the relevant legislation. Women were entitled to 90 days maternity leave. The employment of women in physically heavy and unhealthy labour and the assignment of pregnant women and mothers with children of up to one year to work overtime was not permissible. Adolescents under the age of 18 also enjoyed certain work privileges. The Ministry of Labour and Social Affairs had taken additional measures to guarantee adequate working conditions for women, especially war widows, and young people. With regard to work in prisons, the representative stated

that political prisoners were exempt from work; and that common law prisoners were offered the possibility of engaging in activities and work aimed at their re-integration into society.

Article 8: Trade union rights

74. Members of the Committee asked whether workers could set up and join trade unions other than the national union of Afghan workers; whether Afghan trade unions could maintain relations with international trade union organizations and, if so, to which international organization they belonged and whether within the current political and socio-economic structure of Afghanistan the right to strike is applied and, if so, whether there were any restrictions on the exercise of that right.

75. In addition, members of the Committee wished to know what the legal framework was for the right to freedom of association; what the rate of unionization of workers was and what the role and function of unions were, particularly in the situation currently obtaining in Afghanistan. They also asked whether any strikes had occurred recently and, if so, for what reasons.

76. In his reply, the representative stated that the Constitution guaranteed the freedom for workers and employees to form trade unions; and that such unions had been formed in the sectors of trade and transport, mines, building, industry, public health and public services. Afghan trade unions had the right to affiliate with the international and regional federations and had thus far established relations with 15 international organizations - including the World Federation of Trade Unions - and 165 national and regional organizations. Citizens had the right of assembly and peaceful demonstration as well as the right to strike, in accordance with the provisions of the law. The last strike was held in September 1991, by doctors, in Kabul,

Article 9: Right to social security

77. Members of the Committee wished to be provided with detailed information on the progress achieved in the field of social security and health care. They also wished to know what percentage of the general State budget was allocated to social expenditure and whether there were in fact some basic contributory schemes to provide for unemployment, for old age and for disabilities.

78. In reply, the representative explained that social security was financed jointly by the State, the enterprises and the workers. The system provided for benefits in case of retirement, industrial disablement, maternity leave and in case of the worker's death. The age of retirement normally stood at 60 years for men and 55 for women. The State endeavoured to achieve the greatest welfare of all citizens by organizing, promoting and distributing wealth appropriately, by fixing a minimum wage, and by providing technical and cultural education. Other social security measures included the distribution of staple items free of charge through a coupon system and provision of State subsidies and fuel to all State employees.

Article 10: Protection of the family, mothers and children

79. Members of the Committee asked to be provided with information on the family structure and on laws and regulations governing the family, in particular the main laws, administrative regulations and collective agreements to promote the protection of the family; court decisions, if

any; guarantees of the right of men and women to enter into marriage with their full and free consent and to establish a family; measure taken to abolish obsolete customs, laws and practices that may adversely affect the freedom of choice of the spouses; and the economic organization of marriage.

80. Furthermore, members of the Committee inquired whether equality of the sexes was guaranteed from birth, in particular with regard to the rights of inheritance; whether children born out of wedlock had the same rights as other children; what provisions existed to assist handicapped children; and how society faced the problem of juvenile delinquency and what practical solutions were applied.

81. Regarding the extended family system, the representative explained that married sons lived under parental authority, with the patriarch in control of the finances of the group while the matriarch was the autocrat of the home to whom daughters-in-law and grandchildren owed obedience. This system provided economic security to all family members. Property was held in common by the members of the family, the head of which decided on the distribution of goods and income. The State ensured the necessary opportunities for the education, employment, recreation, rest and spiritual and physical development of all family members. The representative provided information on the relevant articles of the Civil Code, particularly with regard to marriage. On the matter of inheritance, he explained that under Islamic law the estate of a deceased person was shared by the sons and daughters, the share of each daughter being equal to half the share inherited by each son.

Article 11: Right to an adequate standard of living

82. Members of the Committee asked what measures had been taken to ensure an adequate standard of living and to gradually improve the living conditions of the population, in particular with regard to food and housing. They also wished to know what difficulties and problems faced the Government of Afghanistan in the fulfilment of the rights embodied in article 11 of the Covenant; whether there had been any achievements in this regard; and what the role of international cooperation was in this regard. In addition, members of the Committee asked whether the extent of homelessness was due to the absence of accommodations rather than the ravages of war; whether there were schemes to provide affordable accommodations for low income groups; and whether there were provisions for rent control.

83. In his reply, the representative stated that the Government operated a housing programme through the Ministry of Housing. Every Ministry had a commission to allocate blocks of housing to their employees. The law protected the rights of tenants.

Article 12: Right to physical and mental health

84. Members of the Committee wished to receive information on the main laws, administrative regulations, collective agreements and other measures to promote and protect the right of everyone to the highest attainable standard of physical and mental health, in particular to reduce the infant mortality rate and to ensure the healthy development of the child. They also wished to know what measures had been taken to protect the occupational health of workers; what vaccination

programmes had been put into operation to control endemic diseases; and what the features were of existing health care programmes for the population in both rural and urban areas. They also wished to be informed about difficulties and achievements in the fulfilment of the right to health and about the role of international cooperation in this regard.

85. Members of the Committee wished to receive more information on the obstacles to the enjoyment of economic, social and cultural rights of women; the protection of their physical and mental health and, particularly, if the practice of genital mutilation of women still existed in Afghanistan and, if so, what were the measures being taken by the Government towards the elimination of that practice. They also asked what the incidence of AIDS was and if any programmes existed to combat that disease.

86. In his reply, the representative said that measures to ensure the healthy growth of children included vaccination against the six fatal childhood diseases, day-care facilities in the workplace, the distribution of food to children and periodic medical checkups. However, the present situation prevented medical assistance and equipment from reaching some areas, where the mortality rate might be high. No cases of AIDS had been reported in Afghanistan, but a group of experts was looking into the problem..

Articles 13 and 14: Right to education

87. Members of the Committee requested detailed information on the educational system and on any difficulties encountered by the Government of Afghanistan regarding the fulfilment of the right to education, as well as on any achievements in this regard. They also wished to know what the role was of international cooperation in the realization of the right to education; and what were the past and present rates of literacy broken down according to gender.

88. In addition, members of the Committee asked what the size was of public spending in the education sector in comparison with private spending; what the number was of public sector and private sector schools; what the reasons were for the differences between rural and urban schools and between girls' and boys' schools and what steps were being taken to eliminate those differences.

89. In his answer, the representative said that primary education was compulsory and that there were 14,380 centres of alphabetization open to adults. The Government planned to achieve literacy for all school-age children and compulsory primary education by the year 2000. The present primary school enrolment rate stood at 40 per cent but 15 per cent of pupils dropped out before completing their basic education. Sixty-five per cent of the Afghan people were still deprived of education. Educational policy was based on the principles of Islam, on the people's approved traditions and national reconciliation, and on granting equal educational rights to all citizens without distinction as to nationality, race, sex, religion and social and economic status. Private schools existed side by side with the public education system and religious mullahs were engaged in educating the people and in setting up centres where people could learn to read and write. Regarding higher education, the basic problem was the lack of funds. International organizations could provide vitally needed help and assistance for the improvement of research laboratories and reconstruction of institutions destroyed in the war. Afghanistan's educational needs in general had

been exacerbated by the damage inflicted by the war: 2,100 schools and their equipment had been destroyed, over 2,000 schoolteachers had been killed, over 15,000 had abandoned their jobs and over 70 per cent of school-age children and young people were denied literacy and education. The return of refugees made the situation even more acute. Most schools were co-educational. In some remote areas there were separate schools for boys and girls but there was no difference in the curriculum.

Article 15: Right to take part in cultural life and to enjoy the benefits of scientific progress and to benefit from the protection of the interests of authors

90. Members of the Committee asked for additional information concerning relevant laws and administrative regulations; the most serious obstacles encountered and achievements attained; and the role of international cooperation in this regard.

91. In replying to the questions posed, the representative stated that all citizens had the right to take part in cultural life. Article 14 of the Constitution required the State to adopt the necessary measures for the development of culture, language and literature and to preserve the cultural legacy of all nationalities, clans and tribes. Scientific, technical and artistic activities were also encouraged and protected under the Constitution. Every author, inventor and producer enjoyed exclusive ownership of his work in accordance with the relevant statutory provisions. Authors received financial and moral support from the State, provided their works were not contrary to the laws and interests of the country. Problems in the cultural sphere included the diversion of budget expenditures from culture to defense; illegal excavations by foreigners in Bamyan and Nangarhar Provinces; and the obsolescence of radio and television equipment and printing facilities. The representative called upon international organizations to provide multilateral financial and technical assistance to help the country solve its cultural and scientific problems.

Concluding observations

92. The Committee expressed its satisfaction at the initiation of a dialogue with the State party. However, the report was considered to be unduly legalistic since it did not provide data on the practical implementation of the provisions of the Covenant or on the true situation of Afghanistan with regard to the enjoyment of economic, social and cultural rights. Furthermore, the Committee expressed its concern at the situation regarding guarantees of respect for fundamental freedoms and at the treatment of political prisoners. The Committee had been especially concerned about the problem of the 5 million Afghan refugees, accounting for one third of all refugees in the world, and, in particular, at the state of implementation of the decrees to facilitate their return. The Committee also expressed concern regarding the victims of the war, especially children.

93. The Committee gave special consideration to the situation of women. Article 3 of the Covenant was fully applicable in the absence of a reservation at the time of ratification. The Committee noted that the interpretation of the Islamic law made by the representative of Afghanistan in relation to inheritance might impede full application of that article and prevent full respect for the principle of equality of treatment between the sexes. The Committee also noted with concern the situation regarding the principles of freedom to form and join trade unions, tripartism, collective bargaining and the right to strike, set forth in article 8 of the Covenant.

94. In the light of the foregoing, the Committee requested the Government of Afghanistan to submit additional information in writing before its next session on the various issues of concern, and, particularly with regard to the situation of women in Afghan society and the equality of treatment between men and women in all areas of law, with an indication of any discrepancies that still existed and of the measures planned to eliminate them.