



## Economic and Social Council

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### Committee on Economic, Social and Cultural Rights

#### Forty-third session

#### Summary record of the second part (public)\* of the 30th meeting

Held at the Palais Wilson, Geneva, on Monday, 2 November 2009, at 3 p.m.

*Chairperson:* Mr. Marchán Romero

### Contents

Substantive issues arising in the implementation of the International Covenant on Economic, Social and Cultural Rights

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\* No summary record was prepared for the first part (closed) of the meeting.

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*The second part (public) of the meeting was called to order at 4.25 p.m.*

1. **The Chairperson** welcomed the massive support expressed in New York in September 2009 for the Optional Protocol to the International Covenant on Economic, Social and Cultural Rights, an instrument that placed the Committee on an equal footing with the other treaty bodies. Recalling that civil society had played an active part in drawing up that instrument, he emphasized the great importance attached by the Committee to associating non-governmental organizations (NGOs) in its work and said that he was counting on them to advocate the ratification of the Optional Protocol.

**Substantive issues arising in the implementation of the International Covenant on Economic, Social and Cultural Rights: documents submitted by non-governmental organizations** (agenda item 3)

*Democratic Republic of the Congo*

2. **Mr. Nsapu** (Ligue des électeurs) denounced the numerous instances of harassment that defenders of economic, social and cultural rights had been subjected to in 2008 and 2009 in the Democratic Republic of the Congo. Such harassment was related to the sensitive nature of the issues raised by such persons in monitoring and reporting violations. For example, in October 2008, demonstrations by teachers and students had been dispersed, and in August 2009 several members of NGOs who had protested against the conditions of employment of workers had been arrested.

3. Those who combated corruption too had been victims of harassment. For instance, a trade union official of the Ministry of National Economy and Trade had been arrested in January 2009 for attempting to report embezzlement of public funds by his administration. Similarly, defenders who protested against the environmental repercussions of mining and forestry activities and the complicity of local authorities with the companies operating in those fields had been the targets of threats (arrest in March 2008 of the author of a brochure denouncing inequitable contracts signed by the Government and multinational corporations in the mining sector and embezzlement of public funds by the authorities, prosecution of 27 human rights defenders who had written a petition against abusive forestry exploitation, arrest in 2009 of the author of a report on illegal small-scale exploitation of a uranium mine in Shinkolobwe).

4. As such repression was becoming more common, the Ligue des électeurs (League of Voters) suggested that the Committee members recommend that the Government guarantee in all circumstances the physical and mental integrity of human rights defenders in the country, end the impunity of those who committed such violations, halt all actions aimed at denigrating or harassing human rights defenders, ensure their protection and publically state the importance of the role they played.

5. **Ms. Gromellon** (International Federation for Human Rights), speaking on behalf of the Association africaine des droits de l'homme (African Human Rights Association), said the Association had written a report, published in July 2009, on the illegal exploitation of the Shinkolobwe uranium mine. The exploitation was continuing through an organized crime network and with the complicity of some State authorities, in particular the Mura military training centre, despite Presidential Decree No. 04/17 of 27 January 2004, which prohibited any mining activity at that location because of the danger it posed to public health and international security. The fact that the United Nations and the International Atomic Energy Agency had neglected that case had made it possible in March 2009 for the Democratic Republic of the Congo to conclude an agreement with AREVA, a company whose practices had previously been criticized, in particular in Niger. The agreement gave the company exclusive rights to explore and exploit all uranium in the Democratic Republic

of the Congo, thus exposing the population to extremely serious health and environmental risks.

6. The Committee could recommend that the authorities publish all mining contracts, including those concluded with AREVA, and submit such contracts to the parliament to ensure that they observed the principles of respect for local communities and corporate social responsibility. The Government could also be invited to make more transparent its calls for tenders for investment in natural resource exploitation, to carry out serious medical surveys in Shinkolobwe, Likasi, Kolwezi, Lubumbashi and Kambove in order to measure radiation levels among the population, to dissolve the Mines and Hydrocarbons Police, which was an autonomous force with a poorly defined mandate and which furthermore had allowed the illegal exploitation of mining resources, and to carry out a survey to determine the extent of involvement of the various local authorities in the continuing illegal exploitation of the Shinkolobwe mine.

7. **Ms. Ratjen** (FIAN International) addressed the issue of the right to adequate food in the Democratic Republic of the Congo. It was the rural population and peasant farmers who suffered the most in respect of that right and the right to access to water, in particular because of insecurity of land tenure, competition between mining and other extractive activities and food production and a lack of support for small-scale food producers. While agriculture was officially a priority in terms of public policy, the programmes that had been implemented had failed to improve the right to adequate food for all vulnerable peasants in the country; they were victims not only of negligence by the public authorities, but also of violence. In North Kivu, for example, those who decided to return to their land to grow basic foodstuffs had had their tools confiscated to ensure that they would not be used as weapons. To establish a dialogue between the population and the authorities, the Confédération paysanne du Congo (Peasant Confederation of the Congo, COPACO) had launched a national campaign on the right to adequate food, which should make it possible to find sustainable solutions to land conflicts and, in the longer term, to improve enjoyment by rural communities of their right to adequate food.

8. The poor situation reported in the Democratic Republic of the Congo was illustrative of the problems encountered in general by the world's peasant farmers, who were the most affected by hunger and malnutrition. FIAN International, which closely monitored the response of the international community to the world food security crisis, drew the Committee's attention to three initiatives related to its work: a study by the Advisory Committee of the Human Rights Council on discrimination in the realization of the right to food, the restructuring of the Committee on World Food Security of the Food and Agriculture Organization of the United Nations, and the World Summit on Food Security, to be held in Rome in November 2009.

9. **Mr. Agbetse** (Franciscans International) said that in the light of articles 444 and 448 to 450 of the Family Code of the Democratic Republic of the Congo, which contained provisions that discriminated against women, and the way in which the country's society was evolving, with women replacing men in their traditional role, the Committee could recommend that the Government establish a calendar for legal reform aimed at eliminating provisions discriminatory against women, and establish a national plan to raise awareness and mobilize the country's forces, with quantifiable objectives to combat prejudice, stereotypes and discriminatory practices. In respect of the right to housing, the authorities had failed to carry out their duties when they had ordered the expulsion of a large number of families from their homes in Kinshasa, in March 2009. The Committee could recommend that the Government relocate those families without delay and compensate them as soon as possible.

10. Regarding the right to an adequate standard of living, while the country had abundant water resources, in rural areas the coverage rates for the provision of water and

water treatment was just 26 per cent and 6 per cent, respectively. The electrical supply too was extremely insufficient; unsafe, pirated electrical hook-ups were responsible for a large number of deaths among children. Similarly, while the country had abundant mineral and forestry resources, shady and corrupt contracting in the mining sector had resulted in a depletion of resources that should have been earmarked for social projects. It was therefore important to recommend to the authorities to maintain the Inga dams in order to ensure the best possible provision of electricity for the population, and to implement the recommendations made in the reports issued by seven mandate holders under the special procedures of the Human Rights Council.

11. In respect of health, with over 18 million citizens having no form of health care, life expectancy had declined. Self-medication had increased throughout the country, leading to a risk of intoxication. Delays in the payment of the salaries of health staff had bred corruption and the emergence of a parallel system in which medicines were resold and poorer patients were neglected in favour of those who were better off. The Committee should recommend to the authorities to combat the poor management of the health system and corruption, to collect statistics on the population's state of health with a view to making better use of resources, to undertake a national programme for the training of health staff, with a section devoted to fighting corruption, to carry out an extensive agricultural reform to meet the population's nutritional needs and to take all the steps necessary to achieve the objectives of the International Decade for Action, "Water for Life", 2005–2015 and the Africa Water Vision 2025.

12. Lastly, in respect of education and training, since the National Strategy to Accelerate the Education of Girls (2003–2007) had not had its planned effect, above all in the eastern part of the country, and since over 4.5 million children, including 2.5 million girls, had no access to basic education, the Committee could recommend that the Government make primary education free and compulsory. Accompanying measures too should be used, with the aims of narrowing the gap in education between girls and boys and between rural and urban areas, reducing the number of dropouts by improving school infrastructures, and putting in place a national restructuring and education revival plan that would call for vocational training of teachers and an improvement in their living and working conditions in order to meet needs in the field of education.

#### *Poland*

13. **Ms. Dabkowska** (Polish Drug Policy Network) said that the question of the rights of drug addicts to the highest attainable standard of health had largely been omitted from the State party's report, according to which "Using psychoactive substances other than alcohol or tobacco is a very rare phenomenon" (E/C.12/POL/5, para. 595). On the contrary, according to estimates, problematic drug users in the country numbered between 100,000 and 120,000, including 25,000 to 27,000 users of opiates, who required treatment. Of those, only about 1,500, or between 4 and 6 per cent, were receiving opioid substitution treatments (OSTs), while the European average was 20 per cent. OSTs were an integral part of a harm reduction approach for addicts and played an important role in reducing exposure to HIV and hepatitis C. Furthermore, the two main drugs used in such an approach, methadone and buprenorphine, were both included on the Model List of Essential Medicines of the World Health Organization.

14. In Poland, OSTs were made available only to people who could prove that they were addicts for three years. That excessively strict condition exposed vulnerable people, in particular injecting drug users, to serious health risks while they awaited treatment. There were only 13 needle exchange programmes in the entire country. For those people who were approved, the average waiting time to receive OST was 62 weeks, owing in particular to the lack of funding allocated for such treatment. Thus, over four years could pass

between the time when it was first ascertained that a person was addicted and the moment when treatment was given. By law, persons under 18 years of age were excluded from such treatment. According to a recent study, 8.3 per cent of persons awaiting OST contracted HIV before receiving treatment.

15. Polish drug laws were among the most restrictive in Europe; some 30,000 arrests were carried out each year. OST programmes were in place in just five prisons. Often, addicted prisoners had to go through withdrawal without appropriate medical assistance. While drug addiction was recognized as a chronic, relapsing medical condition, in many countries, including Poland, the fact that persons suffering from addiction were considered criminals kept them from seeking help from the health services.

16. The Special Rapporteur on the right to health, following a visit he carried out to Gdansk, Poland in May 2009, had expressed concern at the lack of access to OST and about drug policies in general in the country. He recommended that targets be set so that people requiring substitution therapy could have access to it as soon as possible. Since his visit, the Gdansk local authorities had expressed a desire to improve access to OST, but no concrete steps had yet been taken. Hopefully, the Committee in its dialogue with the State party would make good use of the results of the Special Rapporteur's visit. The Committee should emphasize that OST was indispensable for the realization of the right to health of opiate-dependent people in the State party. It was essential that the Committee address the impact of criminal law and enforcement practices on the right to health of drug addicts in Poland.

#### *Republic of Korea*

17. **Ms. Moon**, speaking on behalf of a group of 56 human rights organizations of the Republic of Korea, said that the general situation of economic, social and cultural rights in the country had drastically regressed owing to the neoliberal economic policies adopted by the Government, combined with the intensification of the global financial crisis in the middle of 2008. So far, no trials had been initiated on the basis of the Covenant, and according to a statement to the country's Supreme Court, the Government denied the legally binding power of the Covenant at the domestic level. The Government, acting against the advice of human rights organizations, had reduced the work force of the National Human Rights Commission of Korea by over 20 per cent, thus impairing that body's independence and functioning. The national plan of action for the promotion and protection of human rights had been revised in such a way that it neglected the most vulnerable groups. The seventeenth session of the National Assembly had failed to adopt anti-discrimination legislation, and such legislation had not been resubmitted to the eighteenth session. Lastly, the Government had not followed up on the 33 recommendations made in June 2008 as part of the universal periodic review.

18. As for the right to work, the Government's policies were aimed at weakening worker protection laws, thus leading to job insecurity and instability and jeopardizing the minimum wage and workers' rights. A 77-day strike at Ssangyong Motors had been declared illegal, and no measures had been taken against human rights abuses perpetrated by the management, for example the cutting off of water and electricity and the mobilization of violent strike-breakers. The police had used excessive force and violence. After an agreement had been reached between the union and management, the Government had arrested and prosecuted 67 workers. The authorities had furthermore obstructed a rapprochement between the Unified Government Employees Union and the Korean Confederation of Trade Unions, a union critical of the Government.

19. Regarding the right to housing, the rehabilitation projects undertaken by the Government, while officially aimed at promoting that right, threatened the rights of residents. As part of the planning project aimed at balancing development between

Kangnam and Kangbook, numerous housing units that had been inexpensively occupied by poor people had been demolished without being replaced by a sufficient number of low-income housing units, and less than 20 per cent of the persons in question had been resettled. The protest movement by inhabitants of Yongsan (Seoul), who had demanded resettlement, had been crushed by the Government in one day, with 1,600 police officers mobilized. Six people, including a policeman, had been killed, but the Government had issued no official apology. The trial of several participants was under way.

20. In 2003, national expenditure on social security amounted to just 5.7 per cent of gross domestic product (GDP), the lowest level among the 24 countries of the Organization for Economic Cooperation and Development (OECD). Despite growing inequality, the number of beneficiaries of the National Basic Livelihood Security System remained limited. Furthermore, apart from the risks that it could involve for access to water, the environment, the rights of residents and the right to food, the general water management plan for four major waterways, with a considerable budget, was already draining public expenditure, as reflected in the reduction in the social security budget.

21. While State expenditure on education was less than the OECD average, private expenditure on education was three times higher than the corresponding average, and was increasing by 25 per cent a year. Such expenditure was five to eight times higher among the high-income categories, which reflected serious disparities related to economic status.

#### *General matters*

22. **Mr. Porter** (International NGO Coalition for an Optional Protocol to the International Covenant on Economic, Social and Cultural Rights) thanked the Chairperson for his comments about the need for an active campaign to promote the signing and ratification of the Optional Protocol. The Coalition intended to contribute by emphasizing the importance of the Optional Protocol as an element in the fundamental United Nations human rights structure and its potential as a means of providing effective recourse to people who had previously had no such possibilities. He drew the attention of the Committee members to a contribution by the Coalition (document without a symbol, distributed in the meeting room) to the work the Committee would now undertake to draw up rules of procedure and working methods, and he summed up the document's main points.

23. The interpretation of article 2 of the Optional Protocol raised the question of the competence of third parties to submit communications on behalf of groups of individuals. The main task of the Committee in that respect would be to verify that any author representing individuals was doing so with their consent, or if not, could justify the lack of consent.

24. Regarding article 3, which specified that the Committee would not consider a communication unless it ascertained that all domestic remedies had been exhausted, he said that one of the merits of the Optional Protocol was that it drew greater attention to the existence of effective domestic remedies. That aspect did not necessarily need to be formalized in the rules of procedure; it could be gradually developed as part of the Committee's case law.

25. The intention behind article 4, addressing communications not revealing a clear disadvantage, was interpreted by the Coalition, in the light of its participation in the working group to draw up the Optional Protocol, as allowing the Committee to manage its workload so as to concentrate on the most important aspects, where it could be most effective. The rules of procedure could specify that the article should not be invoked unless it was necessary to do so owing to the workload.

26. As for article 6 on the transmission of the communication, the secretariat's role would be very important in that respect, and it should establish a constructive relationship

with the authors, to provide them with support concerning procedures and the elements required to draw up their communications. The Committee should allow the secretariat to perform that support role both upstream and downstream, in particular by requesting follow-up information from the authors and by drawing up a questionnaire clearly indicating the elements that they must provide in their communications.

27. Article 7 on friendly settlement was an important innovation of the Optional Protocol. The idea behind the article was that friendly settlement, as seen in the experience of regional mechanisms, could be an effective means of dealing with aspects of violations of economic, social and cultural rights. Article 7 assigned an important role to the Committee, tasking it with ensuring that the friendly settlement respected the obligations set out in the Covenant. Furthermore, it was very important that the authors should know that the friendly settlement process would not be used to delay their action or to deny them the right to an effective remedy. The Committee should ensure that a friendly settlement covered all aspects of the communication in question, and it should promote such means of settlement. Article 8 was exceptional for two reasons. First, it established a standard for the examination of communications and for the obligations stemming from article 2, paragraph 1, of the Covenant, addressing the progressive implementation of rights by the State party. Secondly, it allowed the Committee to have access to information submitted by third parties, and not just to that submitted by States parties. The Committee could thus consult relevant documentation from experts, national human rights institutions and other United Nations bodies or specialized agencies. The Committee should consider new types of procedures to allow it to effectively receive all the information required to deal with communications relating to violations of the Covenant in a way that could serve as a model for national courts.

28. **Ms. Rakotondrainibe** (Collectif pour la Défense des Terres Malgaches) said that she would address an agricultural project of the Daewoo company in Madagascar, which had extremely important consequences, as it would lead to the monopolization of an enormous area of land without any financial compensation. The project was characterized by a lack of transparency. In an article published in the *Financial Times* in 2008, the financing director of Daewoo Logistics, a company from the Republic of Korea, had indicated that that company intended to produce maize and palm oil so as to “strengthen food security” in the Republic of Korea. Until then, precise data on the areas in question, the type of contract and the length of tenure of Malagasy land had not been divulged. It had later been revealed that the lease was to be for 99 years, covered 1.3 million hectares and involved no payment of rent for the land. The announcement of those details had set off a wave of indignation among Malagasies and in international public opinion. That had resulted in the establishment of the Collectif pour la Défense des Terres Malgaches (Malagasy Lands Defence Collective), and in January 2009 a manifesto had been sent to the authorities and to the press, calling for greater transparency and the halting of the procedures currently under way in the Daewoo affair. A petition had later been signed by 1,800 people calling in essence for the contract to be cancelled and for a national debate to be held on the granting of lands to foreign companies, and NGOs had launched awareness campaigns on the subject. At the same time, in Madagascar, domestic organizations too had reacted, and opposition politicians had used the Daewoo case to channel popular anger to condemn the bad governance of those currently in the executive branch.

29. The case still had contradictions. Specifically, when the Collectif pour la Défense des Terres Malgaches had asked the Minister of Decentralization and Land Management for proof that the procedures under way had been cancelled, the Minister had reported that only a single contract had been signed, for the prospecting of lands conducive to the project, and that there was now nothing to cancel. However, agriculture was still on the list of activities of Daewoo Logistics in Madagascar. At a time when the World Food Programme was heavily involved in work in Madagascar to combat malnutrition, the right to food of

Malagasy citizens and farmers would be seriously undermined by the contract if it entered into force.

30. In conclusion, the Committee should recommend that Madagascar's leaders officially confirm the cancellation of the lease and of any contract, abandon the project with Daewoo, stop all procedures currently under way, cancel all prospecting or land tenure authorizations already issued and amend the 2007 law that facilitated the transfer of land to wealthy investors, particularly the transfer of agricultural land. The Committee should recommend that the leaders of the Republic of Korea adopt appropriate laws on agricultural investments by their country's companies abroad so as to avoid compromising the food security of inhabitants of other countries.

31. **Mr. Kerdoun** expressed surprise at the highly critical nature of the contributions concerning the Democratic Republic of the Congo. To hear them, it would seem the country had no laws, no courts and no parliament. He said he would like to know what the actual situation was there.

32. **Mr. Schrijver** asked Mr. Porter what kind of activities the Coalition planned to carry out in its campaign for ratification of the Optional Protocol, and whether it had any related proposals to make to the Committee members.

33. **Mr. Agbetse** (Franciscans International), responding to Mr. Kerdoun, said that the situation of economic, social and cultural rights in the Democratic Republic of the Congo was tragic, and that it had become even worse because of the conflicts in the country, in particular the conflict in the east, in Kivu. Regarding the right to housing referred to previously, the parliament had called for the Ministry of Decentralization and Land Management to show restraint, but its appeal had not been heard, and the Ministry had in March 2009 proceeded with the expulsion of the inhabitants of Kasa Vubu (Kinshasa).

34. Regarding human rights defenders, he cited the case of a defender of economic, social and cultural rights in the context of the awarding of mining contracts. Of course, there was a Mining Code, but it was not observed in practice. The Government had set up an infrastructure construction project, but it was able to award contracts for a single mine to two different companies, which obviously was a source of problems. When human rights defenders denounced that situation they were accused of treason. While it was recognized that the country's financial resources could help improve the population's standard of living, corruption and the sell-off of resources had led to a collapse in the mining sector.

35. **Mr. Porter** (International NGO Coalition for an Optional Protocol to the International Covenant on Economic, Social and Cultural Rights) said that the Coalition had planned a number of strategies to promote ratification of the Optional Protocol. The first consisted in giving priority to addressing those countries which had strongly supported the draft protocol as it was being drawn up. Later, the Coalition would rely on a network of national organizations advocating economic, social and cultural rights in most States. The question of the ratification of the Optional Protocol should also be raised more regularly during the universal periodic review. Regional representations too could play a useful role in promoting ratification. The Coalition intended to make countries aware of the fact that ratification of the Optional Protocol did not make it necessary to immediately adopt its provisions in a country's Constitution and domestic law. Lastly, the Committee, during consideration of periodic reports, should encourage all States parties to give serious consideration to signing and ratifying the Optional Protocol.

*The meeting rose at 6 p.m.*