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COMMITTEE ON ECONOMIC, SOCIAL AND CULTURAL RIGHTS

Fortieth session

SUMMARY RECORD OF THE ELEVENTH MEETING

Held at the Palais Wilson, Geneva, on Tuesday, 6 May 2008, at 10 a.m.

Chairperson: Mr. PILLAY (Vice-Chairperson)

later: Mr. TEXIER (Chairperson)

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The meeting was called to order at 10.05 a.m.

CONSIDERATION OF REPORTS

(a) REPORTS SUBMITTED BY STATES PARTIES IN ACCORDANCE WITH ARTICLES 16 AND 17 OF THE COVENANT (agenda item 6) (*continued*)

Second periodic report of Benin ((E/C.12/BEN/2); core document (HRI/CORE/1/Add.85); concluding observations of the Committee on the initial report of Benin (E/C.12/1/Add.78); list of issues to be taken up (E/C.12/BEN/Q/2); replies by the Government of Benin to the list of issues to be taken up (E/C.12/BEN/Q/2/Add.1)) (*continued*)

1. *At the invitation of the Chairperson, the members of the delegation of Benin resumed their places at the Committee table.*

2. The CHAIRPERSON invited the delegation to answer the questions posed at the previous meeting.

3. Mrs. FAGNISSE (Benin) said, with respect to female genital mutilation, that several awareness-raising actions had been conducted in the wake of the law of 3 March 2003, by the State and by civil society. The Government had also instituted a programme to help practitioners find new pursuits. As well, it was now implementing the repressive phase of the policy in this field. A training programme was available for officials of the judicial police and magistrates. Benin was working with bordering countries (Nigeria, Niger, Togo and Burkina Faso) to coordinate efforts to repress and eradicate the practice of female genital mutilation.

4. With respect to family violence, there were special provisions to punish violence against children. There was currently no specific legislation in the case of adults, but family violence was punished under the general laws against violence and assault, and the adoption of specific laws in this area was under consideration.

5. Under the Code of Persons and the Family, children born out of wedlock had the same rights as other children, if the child was recognized by the father. Maternal and child mortality rates had declined considerably as a result of numerous Government measures to provide essential care for pregnant women and children. The Ministry of Health had a programme for monitoring pregnancies and children from birth to five years. These children received free care. Caesarean operations were fully paid for by the State. A vaccination programme had also done much to reduce maternal and child mortality.

6. The Code of Persons and the Family set the age of marriage at 18 years for men and for women. A person under the age of 18 could contract marriage only with the consent of the person exercising parental authority.

7. Benin had a policy for raising awareness about human rights and the international instruments protecting those rights. This policy focused on specific groups such as magistrates, teachers and pupils, police officers, non-governmental organizations, elected officials, health professionals, and journalists. Radio broadcasts dealing with human rights were regularly aired. In secondary education, the notion of human rights was now included in the curriculum for history, geography and philosophy. A similar policy was being implemented for primary education. With the help of UNICEF, the Convention on the Rights of the Child had been translated into four local languages. There were plans to do the same for other languages and for

other instruments. The Government had prepared and distributed teaching kits to assist in the promotion of human rights.

8. On the topic of free education, Mrs. FAGNISSE explained that this related primarily to nursery school and public primary education. As to any possible discrimination on ethnic grounds, she said that Benin did not have any ethnic problems and that there were no disparities.

9. On the question of refugees, she said that most refugees in Benin came from Togo. A few also arrived from Chad, Liberia, Nigeria and Congo. The country had some 20,000 refugees in 2007. The number of refugees had declined substantially following a programme of voluntary repatriation undertaken in cooperation with the United Nations High Commissioner for Refugees and the Togolese authorities, and their numbers now stood at around 5,000.

10. In order to combat HIV/AIDS effectively, programmes had been introduced and committees had been created within ministries, institutions and certain private structures. A law was adopted on 5 April 2006 covering prevention and care and the integration of persons living with HIV/AIDS. These efforts had brought the rate of prevalence of the disease from its previous level of 4.1 per cent down to 2 per cent in 2006.

11. The State party had taken steps since 2000 to reduce informal work. A national forum on youth employment and a national forum on women's employment had been held in late 2007. A monitoring Committee had been set up and an implementation plan was under way. Poverty, still persistent, was more pronounced in the countryside than in the cities. Malnutrition was in decline, including among children under five years. The State party was considering measures to improve access to credit for rural families, to diversify agricultural production, to develop infrastructure, and to improve capacities to manage and absorb public resources.

12. With respect to ILO Convention No. 119, Benin was planning to ratify it shortly.

13. On nutrition in the prisons, Mrs. FAGNISSE said that catering companies were now providing meal services, under strict control by the penitentiary authorities. The Government and NGOs were also making unannounced visits to inspect those services. One caterer that offered substandard meals had seen its licence withdrawn.

14. With respect to social housing, Benin had a policy to provide access to decent housing for all citizens. The National Assembly was now in the process of adopting a law on this matter.

15. *Mr. Texier assumed the Chair.*

16. Mrs. BARAHONA RIERA asked for further details on the privatization of certain public services such as water and electricity, from the viewpoint of effective access for individuals to these services, and any problems posed by privatization.

17. Mr. SADI asked about the impact of privatization, and whether there was any link between the perpetuation of poverty in the country and privatization. He also asked about the results of campaigns to put an end to polygamy, and wondered whether there were criteria or indicators for assessing policies in this area, and those concerning female genital mutilation.

18. Mr. ATANGANA noted that public education was free at the nursery and primary school level. He wondered if this were the case for the private sector, and

whether the State was assisting that sector, with a view to achieving balance and guaranteeing equality of opportunities for all.

19. Mrs. WILSON asked for more detail on quality control and the pricing of basic foodstuffs. She noted that, according to the report under consideration, the price of foodstuffs was out of reach for many households. She also asked about measures taken to reduce malnutrition, which was at a relatively high level in Benin.

20. Mr. KERDOUN, noting that Benin was still requesting international aid, wondered whether this came from multilateral institutions such as the IMF and World Bank, and whether those institutions had required Benin to take structural adjustment measures. He also asked whether there was bilateral assistance and, if so, which were the main donor countries, and to what extent their aid was subject to conditions.

21. Mr. PILLAY noted that, according to the report under examination, very little public housing had been allocated, and that the poorest people had almost no access to such housing. It was stated that there was a national housing policy, but it was not clear whether that policy was being applied. The fact that 29.6 per cent of the population was living below the poverty line was cited as important, but these persons were living on less than a dollar a day, and 73.7 per cent of the population was living on less than two dollars a day.

22. Mr. AKIBOU (Benin) said that Benin was receiving international aid from both bilateral and multilateral partners. Benin was one of the least developed countries and its budget, which relied on a very limited tax base, was quickly exhausted after paying public service salaries. Aid from multilateral institutions was subject to the adoption of a structural adjustment programme. Some measures, painful as they were, had been successfully implemented. It was now clear, however, that there had been some mistakes in certain areas. For example, these institutions had asked Benin to eliminate the system of rural extension workers who were helping farmers, on the grounds that this constituted a form of agricultural subsidy. Recognizing that production had fallen in the wake of this measure, the IMF now recognized that rural extension workers would have to be recruited once again.

23. In terms of bilateral aid some countries, such as Japan, Germany, the United States and China, were particularly generous. Yet this was not philanthropic aid. The aid was partially tied, meaning that these countries gave money which the beneficiary was expected to spend in the donor country. Benin was also receiving budgetary assistance, and had recently benefited from debt relief under the Highly Indebted Poor Countries Initiative (HIPC).

24. Mrs. AKPOVO (Benin) said that privatization was causing serious problems in Benin. The Government wanted to pursue structural reforms, but without resorting to the type of privatization used in the past, in which the Government did not intervene. Henceforth, the private sector would be a partner of the State, which retained the role of protecting workers. Privatization was now working well in the cotton, communications and energy sectors.

25. Drinking water supplies were also a priority for the Government, which was repairing and developing water treatment plants in the countryside and in the cities.

26. Mrs. ZINKPE (Benin) said that the campaigns against polygamy and female genital mutilation were continuing, but that there were no accurate indications available as to their results. With respect to the price of foodstuffs, she said the

Government was pursuing a policy to harmonize prices through the commerce department, which was sending out agents to inspect prices in markets.

27. Mrs. AKPOVO (Benin), in response to the question about State aid to private education, said that the Government was currently negotiating with representatives of private institutions to grant subsidies to private schools, including secondary schools.

28. Mr. AKPOMEY (Benin) reported that a study was under way to measure the results of the policy for eradicating female genital mutilation. There were a number of specialized NGOs active in combating female genital mutilation, and they were participating in this evaluation.

29. On the matter of housing policy, Mr. Akpomey noted that there was a law in Benin on rural land use. A similar law was being prepared with respect to urban property. The policy in this area was not being applied as it should because of a lack of means, which made it impossible to provide social housing to the most vulnerable population groups.

30. Mr. AMOUSSOU (Benin) said that, once the recently adopted housing policy was implemented, rural and urban dwellers alike would be able to benefit from social housing. On the matter of free education, the recently appointed advisor on private education had launched a study to evaluate needs and key areas where the Government would offer subsidies to the private sector. With respect to price control, the competition and prices office was using its regular inspection visits to remind dishonest merchants of their obligation to apply the prices set by the Government for basic foodstuffs. As to the quality of foodstuffs, the sanitary police were inspecting products and would withdraw any non-compliant product from circulation.

31. Mr. AKPOMEY (Benin), noting that poverty was a fact of life in Benin despite the Government's fierce determination to eradicate it and to fulfil all its obligations under the Covenant, indicated that an objective examination of the evolving situation and the progress achieved would require up-to-date statistics, which were currently lacking in Benin. He gave a formal and personal commitment to pass on to the Benin authorities the observations and solutions offered by Committee members, and he said he understood that the Committee was interested not only in the law itself but in the use made of it.

32. The CHAIRPERSON thanked the delegation of Benin and declared that consideration of the second periodic report of the State party was concluded.

33. *The delegation of Benin withdrew.*

The meeting rose at 10.55 a.m. and resumed at 11.05 a.m.

Second periodic report of Bolivia ((E/C.12/BOL/2); core document (HRI/CORE/1/Add.54/Rev.2); concluding observations of the Committee on the initial report of Bolivia (E/C.12/1/Add.60); list of issues to be taken up (E/C.12/BOL/Q/2); replies by the Government of Bolivia to the list of issues to be taken up (E/C.12/BOL/Q/2/Add.1))

34. *At the invitation of the Chairperson, the delegation of Bolivia took its place at the Committee table.*

35. The CHAIRPERSON welcomed the Bolivian delegation and invited it to present the second periodic report of the State party.

36. Mr. CHAVEZ (Bolivia), presenting the second periodic report of the State party, placed his introduction in the perspective of the historic transition that Bolivia had

experienced since the arrival in power, in January 2006, of President Evo Morales Ayma, and he cited the primordial interest of the State party in giving full application to the International Covenant on Economic, Social and Cultural Rights and the Protocol of San Salvador, minimum standards that it intended to surpass in the higher interest of peoples and populations. The change of regime in Bolivia had been accompanied by a reorientation of Government policies towards building a new, plurinational State and pursuing the process of decolonization based on the notion of “living well”. This concept, common to all Government policies, was targeted at the shared satisfaction of essential needs and coexistence on a footing of equality, and with full respect for cultural diversity, with no imbalance of powers, and in harmony with nature: it was a concept that went beyond the Western notion of “well-being” or the aspiration to “live better”, which were essentially materialistic.

37. After referring to the new political constitution of Bolivia, the delegation addressed a number of elements communicated in paragraphs 4, 7, 11, 13 and 23 of the written responses of the Bolivian Government to the list of points to be raised, which it then supplemented with new information that had recently become available: in particular, a project for constructing 300,155 dwellings by 2011, together with the creation of around 70,000 jobs, a 10 per cent increase in the minimum wage by means of Decree 29473 of 5 March 2008, and the presentation on 1 May 2008 of the draft of the new labour code.

Articles 1 to 5 of the Covenant

38. Mrs. BARAHONA RIERA (Rapporteur for Bolivia), citing the changes now underway in the State party, said that a number of clarifications were needed, particularly with respect to the new features introduced in the constitution relating to economic, social and cultural rights. Considering the series of laws, programmes and policies mentioned in the report under consideration, it would also be useful to know which of these belonged to the past, and simply appeared under a different name, and which were new.

39. Mrs. Barahona Riera also asked for further information on the powers and actions of the recently appointed Ombudsman. She wondered as well whether Bolivian officials had been affected by the constitutional process. Finally, with respect to article 3 of the Covenant, she asked whether legislative amendments had been introduced in the constitution, and requested information on the sources of financing and the objectives of the new programmes and projects relating to gender equality, and the results achieved to date.

40. Mr. TIRADO MEJIA noted that the Bolivian Government, in paragraph 10 of its responses to the list of points to be raised, indicated that the new text of the constitution would be submitted to the Bolivian people for adoption by referendum. He wanted to know whether this referendum had taken place as planned on 4 May 2000. While the constitution and the laws that Bolivia intended to adopt incorporated welcome provisions on economic, social and cultural rights, it would be desirable to have further information on the concrete mechanisms, in particular the financing mechanisms, that would be implemented to give effect to these provisions.

41. Concerning the right to health, and more particularly the problem of coca, Mr. TIRADO MEJIA noted that the Bolivian Government was proposing to legalize the growing of coca, given the country’s long-standing tradition of using this plant. He wanted to know what the effects of such a decision would be in terms of public health,

and its legal implications. The fact was that several United Nations instruments explicitly banned the legalization of coca growing.

42. Mr. PILLAY said that the Committee, in its final observations on the initial report of Bolivia, had urged it to ensure that the economic, social and cultural rights enshrined in the Covenant were directly incorporated into its domestic legal system. In the report under examination, Bolivia confined itself to indicating that some of these rights, for example the right to work, were guaranteed by the constitution, but it did not respond precisely to the question as to whether these rights could be enforced through the courts. The draft of the new constitution enshrined these rights and expanded their scope, but it would be useful if the Bolivian delegation could specify whether those rights fell within the competence of a jurisdictional or judicial body, for example a tribunal. If the rights enshrined in the Covenant were to be protected by the justice system, there would have to be a system of effective recourse, and the independence of the judiciary would have to be assured. Political cronyism and corruption had apparently been reduced but not eliminated, and the judiciary, which had long been the weak link in the three branches of State, still appeared susceptible to manipulation by the executive branch. Mr. Pillay wanted to know whether the situation had improved, and he stressed that, beyond adopting a new constitution, Bolivia would need to endow itself with an independent justice system, free of corruption. If the draft constitution were adopted, he wondered, how would the citizens, in particular those living in rural areas and disadvantaged and marginalized persons, be able to enforce their economic, social and cultural rights through the courts?

43. Mr. ATANGANA cited the slowness of judicial procedures as a problem in Bolivia, and in particular the fact that persons were held too long before trial. The resources allocated to the functioning of the judicial system were inadequate. In its second periodic report, Bolivia indicated that most of the rights covered by the Covenant would be guaranteed in the constitution. On this point, he wanted to know what measures the Bolivian State planned to take so that all the rights in the Covenant would be protected by law.

44. Mrs. BRAS GOMES said that the report under consideration contained a list of legislative instruments, but it did not really allow the Committee to evaluate how the rights guaranteed by the Covenant were applied in practice. For example, beyond references to the constitution and other rules governing indigenous and campesino communities, the information supplied on the question of discrimination against indigenous peoples was very limited. Although Bolivia was endowed with great natural resources, it seems that there was still inequality in the distribution of those resources, and that this had even worsened. Indigenous peoples, who were in the majority, were the most seriously affected by this phenomenon. On this point, Mrs. Bras Gomes wanted to know what concrete measures Bolivia was planning to improve access for rural indigenous peoples to basic education, to decent housing, and to health services, as well as to impartial justice. In addition, while welcoming the fact that international financial institutions had cancelled a portion of Bolivia's external debt in 2006, she thought it essential to increase the resources allocated to social programmes for the most disadvantaged and to promote access to land for indigenous peoples.

45. Mrs. WILSON noted that the majority of rights guaranteed by the Covenant had been incorporated into the new Bolivian constitution. However, she wondered whether those rights had been incorporated only as goals to be achieved, in which case new legislative provisions would be needed, or whether they were spelled out in detail.

With respect to the right of non-discrimination, enshrined in the new constitution, Mrs. Wilson wanted to know, on one hand, whether that right was directly enforceable and, on the other hand, whether it was a full right, i.e. a right that could be invoked directly without reference to another right.

46. Mrs. Wilson asked what would be the precise scope of the right of indigenous peoples to self-determination, which the new constitution was to protect, and in particular whether this was an individual or a collective right, and who could invoke it. She also asked the Bolivian delegation to indicate whether the agrarian reform was linked to the protection that indigenous peoples were to enjoy under the constitution, what were the objectives of that reform, and if there were plans to recognize traditional forms of landholding and to restore lands to indigenous communities. Finally, she wanted to know whether the new constitution contained specific provisions on gender equality, and whether there was a general law on this question. According to some sources, there were still considerable inequalities between men and women in Bolivia. It was shocking to read, in paragraph 72 of the report under consideration, that the General Labour Act gave women the same status as minors. It would be desirable, on this point, for the Bolivian delegation to indicate to the Committee whether this provision also appeared in the new labour code.

47. Mr. SADI was happy to see that, under the new political order in Bolivia, the future appeared promising. However, Bolivia was the poorest country in South America, according to a classification by the European Commission. The fact that 7 per cent of landowners held 85 per cent of the land explained why poverty was so widespread. Mr. Sadi, noting the fact that 60 per cent of Bolivians were living in poverty versus more than 88 per cent at the beginning of the decade, wanted the Bolivian delegation to confirm that this situation was improving.

48. The magistrates played a very important role in implementing the rights protected by the Covenant, and in particular those rights that could be enforced through the courts. It was to be hoped that, under the new Bolivian constitution, the rights guaranteed by the Covenant could be enforced in this way, and that allegations of corruption would be pursued. In reference to the Ombudsman, Mr. Sadi was concerned as to whether Bolivia had a national human rights institutions consistent with the Paris Principles and he asked whether the Ombudsman would play a role in that institution. He also asked the Bolivian delegation to cite some examples of the Ombudsman's work. Finally, he asked for further information on the human rights education campaigns targeted at primary and secondary school students.

49. Mr. KOLOSOV said that, in 2001 during its examination of the initial report of the State party, the Committee had welcomed the plan to adopt a new code of criminal procedure under which, in addition to Spanish, the three principal indigenous languages could be used in criminal and administrative proceedings. On this point, he wanted to know how that provision was being applied in practice: for example, whether the police and Government officials had a command of the four languages.

50. Mr. ZHAN Daode noted, as did other Committee members, that the second periodic report of the State party devoted only a few paragraphs to the various legislative provisions in place for resolving the problem of discrimination against indigenous people, and he asked the Bolivian delegation to explain in greater detail the progress that had been made in this area. As well, the most recent statistics supplied in the report under examination dated from 2003, and could not accurately

reflect the current situation. On this point, he wondered why more recent statistics had not been used.

51. Mr. CHAVEZ (Bolivia), referring to the possibility that the draft constitution might be rejected, in which case the provisions relating to economic, social and cultural rights could not be incorporated into domestic law, stressed that a significant number of those rights were already protected by the current Constitution and by the laws of the Republic. It must also be remembered, as reported earlier, that even before the drafting of the new constitution the Ministry of Justice had published a human rights action plan: thus, even if the draft constitution were rejected, that plan would still be adopted. It also represented a guarantee that the rights now in the process of being recognized would be gradually incorporated into domestic law. As to the date of the referendum on the draft constitution, Mr. Chavez explained that, while a law of the Republic had approved the holding of that referendum on 4 May 2007, the national elections tribunal had considered that the time interval was too short to allow for adequate dissemination of the text to be voted, and the referendum had consequently been postponed.

52. As to the question of legality of the process for preparing the draft constitution, Mr. Chavez declared that legality had been respected on all points throughout the process. Thus, the principle of a two-thirds majority had been applied for adopting the draft text, which had been the subject of broad national debate, and due account had been taken of the concerns expressed by certain sectors, for the most part conservative. It was now up to the people to rule on the legitimacy of the process.

53. The Ombudsman's Office was a constitutional body fully consistent with the Paris Principles, and its complete independence was guaranteed. It was conducting awareness campaigns on the theme of human rights and was preparing reports on the human rights situation in Bolivia. With respect to gender equality, it must be recognized that until recently women had been treated as second-class citizens. That was why the Government had adopted an action plan to promote the status of women and increase their participation in society. Women were duly represented in Government and in the judiciary, where more than 50 per cent of magistrates were female. Experience in this area showed in fact that women were less prone to corruption than men.

54. With respect to the financing of programmes relating to economic, social and cultural rights, the resources came essentially from the taxation of foreign businesses, but also from the hydrocarbons tax. The funds thus collected were redistributed primarily to the municipalities and the departments.

55. The economic situation had improved noticeably in Bolivia, thanks in particular to the boost in exports, but poverty remained a matter of concern. Poverty was linked essentially to inequalities of access to land. The agrarian reform launched in 1952 had not produced the expected results, land ownership problems remained significant, and large property owners often worked only a tiny portion of their lands. In 2006, Bolivia had adopted a new Agrarian Reform Law and had created an institute with the primary function of verifying land titles and conducting a reassessment of lands. The objective was to ensure that lands were used in a rational way, and to redistribute them more equitably. Rather than impose a new property law in an authoritarian way, Bolivia had chosen to consult all stakeholders. In the Altiplano, a heavily populated region characterized by tiny plots of land, the State had proceeded to consolidate those plots by creating community parcels farmed by several families. In the rich and fertile valleys and middle-altitude lands, there were few ownership problems. The situation was much more complex in the lowlands, which covered almost 70 per cent of the

territory and much of the Amazonian basin. These lands were often the property of rich landowners and the State was encountering many obstacles in redistributing them. In any case, Mr. Chavez stressed that, in just two years, the current Government had made more progress than all the preceding Governments, and he expected that the process of redistribution would be completed in 2011. Nevertheless, the cost of reassessing and redistributing lands was enormous. In the context of redistribution, the Government also intended to pay greater attention to the Guarani people who were spread across a third of the country and to whom Bolivia had a historic debt.

56. Bolivia had signed the United Nations Declaration on the Rights of Indigenous Peoples, recognizing the right to self-determination, and it planned therefore to promote departmental and indigenous autonomy. Meanwhile, all decisions concerning the economic exploitation of indigenous lands and resources were being taken in consultation with the indigenous peoples. The 1992 law on the environment had already provided for such consultations, although that requirement was not always observed in practice.

57. Mr. Chavez recognized that the practice of servitude still existed, and that it affected the Guarani people above all. The Bolivian Government had introduced an interagency plan to assist the Guarani people and had created an official commission to study the situation of Guarani communities; however, several of those communities had refused to receive members of the commission. In any case, Bolivia would spare no effort to put an end to servitude.

58. With respect to indigenous peoples' access to justice, Mr. Chavez noted that Bolivia was a multiethnic and pluricultural country, and that it had at least 36 indigenous peoples of different languages. While the judicial institutions used Spanish, non-Spanish-speaking indigenous people seeking access to the courts could be assisted by a translator. Unfortunately there have been some isolated cases where the assistance of a translator was not possible. Generally speaking, indigenous peoples rarely resorted to the national courts, preferring to use traditional dispute settlement mechanisms. This so-called community justice, prevalent in particular among the Quechua, the Guarani and the Aymara, often had the advantage of producing prompt and practical solutions. It should also be noted that traditional indigenous jurisdictions did not apply the death penalty.

59. With respect to the appointment of magistrates, Bolivia had abolished the system whereby political parties were represented in the judiciary. Henceforth, nominations would be made transparent and publicly. In wrapping up, Mr. Chavez said that Bolivia had no official statistics other than those dating from 2003.

60. Mrs. URENA (Bolivia) said that coca growing had always been legal in Bolivia and in several other countries of the region, and that this plant had been used for more than 3000 years for its medicinal virtues, without ever posing the slightest public health problem. Coca leaf, regarded as "sacred" by many indigenous peoples, was an important cultural asset. The Bolivian Government had adopted a new strategy to improve the growing of this crop and to combat its use for other than medicinal purposes. In the past, coca eradication programmes had often been conducted to the detriment of indigenous peoples and had led to numerous violations of their fundamental rights. More generally, Bolivia regretted that international institutions did not sufficiently recognize the importance of indigenous peoples' traditional practices and ways of life.

The meeting rose at 1 p.m.