



**Economic and Social
Council**

Distr.
GENERAL

E/C.12/2005/SR.3
29 April 2005

Original: ENGLISH

COMMITTEE ON ECONOMIC, SOCIAL AND CULTURAL RIGHTS

Thirty-fourth session

SUMMARY RECORD OF THE 3rd MEETING*

Held at the Palais des Nations, Geneva,
on Tuesday, 26 April 2005, at 10 a.m.

Chairperson: Ms. BONOAN-DANDAN

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The meeting was called to order at 10.55 a.m.

CONSIDERATION OF REPORTS:

- (a) REPORTS SUBMITTED BY STATES PARTIES IN ACCORDANCE WITH ARTICLES 16 AND 17 OF THE COVENANT:

Initial report of Zambia (E/1990/5/Add.60; E/C.12/Q/ZMB/1; HR/CESCR/NONE/2004/8; HRI/CORE/1/Add.22/Rev.1)

1. At the invitation of the Chairperson, Ms. Imbwae, Ms. Kawimbe and Mr. Mulembe (Zambia) took places at the Committee table.
2. Ms. IMBWAE (Zambia), introducing her country's initial report (E/1990/5/Add.60), said that a committee of representatives from government and civil society had been established to prepare the report. While economic, social and cultural rights were not legally enforceable in Zambia, the Government was committed to implementing those rights, which formed the basis of policy, legislation and judicial decisions.
3. The economic situation had improved in 2004, as indicated by growth in the gross domestic product, as well as by other indicators. Reforms in fiscal policy had been made to improve public expenditure and financial management.
4. Poverty reduction programmes, focusing on infrastructure development, land resettlement and industrial development, had been implemented throughout the country, as had social security measures such as the food-for-assets programme and earlier food-for-work programme. The intent was to encourage individuals to participate in developing the infrastructure in rural areas by giving them basic foodstuffs as income. About 70 per cent of beneficiaries were women. A food security pack aimed to increase food productivity and food security in households headed by women, children or the terminally ill. Further measures had been taken to tackle poverty among women by promoting their access to land and to information and economic resources, eliminating gender imbalances in access to financial resources, enhancing their participation in decision-making processes, and providing subsidies for small-scale farmers, most of whom were women.
5. Zambia had the status of a Highly Indebted Poor Country (HIPC), which would enable allocation of increased resources to implement economic, social and cultural rights.
6. The CHAIRPERSON invited Committee members to put questions to the delegation.
 - I. General legal framework within which the Covenant is implemented
 - II. Issues relating to the general provisions of the Covenant
 - Articles 1-5 of the Covenant
7. Mr. SADI asked why the State party had not submitted its initial report earlier, and whether it had requested assistance from the Office of the United Nations High Commissioner for Human Rights in preparing the report.

8. He wished to know when and how the reporting State would make the rights under the Covenant justiciable. It would be useful to have examples of cases in which Zambian courts had made reference to the provisions of the Covenant.

9. The State party should explain to what extent the Zambian Human Rights Commission observed the Principles relating to the status of national institutions for the promotion and protection of human rights (the Paris Principles). It would also be useful to know whether that body was accredited by the International Coordinating Committee of National Institutions for the Promotion and Protection of Human Rights (ICC). Additional information on cases in which the Human Rights Commission had considered rights enshrined in the Covenant would be welcome.

10. Mr. ATANGANA asked why the rights enshrined in the Covenant were not directly applicable by the courts. The reporting State should clarify whether all the provisions of the Covenant had been incorporated into domestic legislation.

11. He wished to know what measures the State party would take to ensure that customary law did not result in a denial of people's rights, particularly among the rural population.

12. It would be useful to know why the State party had not replied to questions 2, 3 and 4 in the list of issues (E/C.12/Q/ZMB/1).

13. Mr. MALINVERNI said that it was difficult to understand how the economic situation of the State party had deteriorated to such an extent over the previous 20 years. He asked what measures were being taken to combat poverty and to ensure that the rights under the Covenant were upheld.

14. Further information, including statistical data, should be provided on measures to combat discrimination against persons with disabilities. The State party should clarify what steps were being taken to ensure that customary law did not result in discrimination, particularly as it affected women's ownership of land and their position in the family.

15. Mr. SHEN Yongxiang said that it was plain from the initial report (E/1990/5/Add.60) that, although Zambia was committed to promoting and protecting the rights enshrined in the Covenant, its ability to realize those rights was being hampered by its straitened economic circumstances and lack of resources. What plans did the Government have in that respect? How could the international community help the country to solve that problem?

16. Ms. BARAHONA RIERA noted the excellent gender balance of the delegation, a fact which was of great importance when discussing the implementation of the Covenant by Zambia, since documentation available to the Committee clearly indicated that discrimination against women, which was rooted in the country's customary law, was so serious that it amounted to a breach of both their human rights and their natural rights. She asked the delegation to explain the barriers formed by traditions and customs to the elimination of such discrimination. What action was the Government taking to tackle domestic violence and the obstacles to women's ownership of land at a time when the AIDS pandemic was leaving many women and children in a vulnerable situation?

17. Given that article 23, paragraph 4, of the Constitution entrenched discrimination against women, she thought that the Government should contemplate constitutional reform and that civil society ought not only to encourage amendment of that provision but also to promote national legislation that would improve implementation of the Covenant. Why had the situation been allowed to go on for so long?

18. Was the privatization of the country's main resources, especially its mines, one of the principal reasons for the impoverishment of a large percentage of the population? What measures were being adopted to assist the needy and those bereft of social protection?

19. Ms. BRAS GOMES wished to know whether the national body which was supposed to deal with issues relating to ageing was already functioning. She asked the delegation to give examples of measures designed to combat discrimination against the elderly. In what fields had discrimination against persons with disabilities lessened?

20. As the Constitution did not explicitly guarantee economic, social and cultural rights and as women suffered most from that state of affairs, did the delegation agree with the numerous women's organizations which had recommended that State policy should be changed and that economic, social and cultural rights should be incorporated in the Bill of Rights which, to date, encompassed only civil and political rights.

21. She welcomed the fact that the Government considered that it was its role to promote shared responsibilities among women and men and that it regarded equitable access to decision-making positions and processes as crucial to the enjoyment of economic, social and cultural rights by women. What measures had been taken to promote that shared responsibility and how successful had they been?

22. Mr. TEXIER asked how the Government intended to involve the poorest sections of the population in the structural adjustment programmes implemented in the country and in poverty alleviation schemes. As those programmes had been devised without the participation of ordinary people, the process had lacked legitimacy. Did the Government not feel that a change of attitude was necessary and that the very poor, who made up a huge percentage of the population, ought to take part in negotiations with international financial institutions in an effort to reduce the harmful impact of the structural adjustment programmes?

23. Ms. IMBWAE (Zambia), regarding the late submission of the report, explained that her country had not previously had the capacity to submit a report in accordance with the Committee's new reporting procedure.

24. Ms. KAWIMBE (Zambia) said that, although the Covenant had not been incorporated in the Constitution or in other national legislation owing to a lack of resources for the implementation of economic, social and cultural rights, some of the Government's policies on health and education reflected the provisions of the Covenant and were designed to improve people's living standards.

25. During the constitutional reform process, petitions submitted to the Mwanakatwe Constitutional Review Commission had called for the inclusion of economic, social and cultural rights in the Bill of Rights, but that could be done only when the process was completed.

Notwithstanding the ostensibly discriminatory provisions of article 23, paragraph 4, of the Constitution, attempts had been made to incorporate the rights covered by the Covenant in Zambian legislation. Although there was no statutory right to education, one of the aims of the Basic Education Subsector Investment Programme was to achieve universal primary education by 2015. To that end, the Government had already abolished tuition fees and school uniforms.

26. Ms. IMBWAE (Zambia), with regard to the legal system, acknowledged that statutory law and customary law existed side by side. There was now a realization that many unwritten customary rules were incompatible with natural justice and the Government was seeking to codify customary law. Once customary law had been codified, judges in local courts, who dealt with most of the cases involving dispossession of land, would have to be given appropriate training. Local court judges already received training in such subjects as inheritance, violence against women and girls and early marriages, as part of a project financed by the Danish International Development Agency. Appeals against the decisions of local courts could be filed with magistrates' courts, which did not apply customary law.

27. As to the concern expressed about discrimination against women in matters of land ownership, a new land policy was being formulated. Stakeholders were being widely consulted. Under the new policy, 30 per cent of land would be immediately allocated to women and vulnerable groups. That would not, however, bar them from trying to buy part of the remaining 70 per cent.

28. The Government provided non-governmental organizations dealing with the human rights of the elderly with premises and other forms of assistance. Persons over the age of 60 received free medical services. The Government was likewise doing its utmost, within the constraints imposed by its restricted resources, to reduce discrimination against persons with disabilities as far as health and education provision was concerned. A certain number of places in schools were reserved for children with disabilities. She would provide statistics on assistance for the disabled in the health and education fields later.

29. The Mwanakatwe Constitutional Review Commission was examining various human rights issues; it had engaged in wide grassroots consultation and had received numerous submissions. The Commission's findings were eagerly awaited in the context of the drafting of a new Constitution.

30. Mr. MULEMBE (Zambia) said that the Human Rights Commission had been established in 1996 with a view to promoting and protecting all human rights, including economic, social and cultural. Its functions and powers were set out in the Human Rights Commission Act No. 39. Although, the Act was largely in conformity with the Paris Principles, the Government was making efforts to further improve the legislation with a view to increasing the efficiency of the Commission. To that end, a special committee had been established to assess the powers of the Commission and ensure that it was able to meet the needs of the population.

31. The CHAIRPERSON said that the delegation had not answered the Committee's questions but had given general answers which were already contained in the written replies. The delegation should be able to answer the questions since many of them were on the list of issues.

III. Issues relating to specific provisions of the Covenant

Articles 6-9 of the Covenant

32. Mr. TEXIER asked the delegation to reply to question 10 in the list of issues. According to one source of information, on 31 December 1999, over four million people, or around 50 per cent of the population, had been unemployed. He wished to have further information on unemployment in the country.
33. Referring to written reply 11, he expressed surprise that table 1.0, on current unemployment rates, included age groups 12-14, 60-69, 70-74, and 75+. The fact that children were allowed to work was of great concern. It would also be useful to know whether there was a compulsory retirement age.
34. He expressed concern that the minimum wage did not allow workers to ensure a decent living for themselves and their families. More information should be provided on occupational accidents and illness.
35. There were too many limitations on the right to form trade unions and the right to strike. According to the International Confederation of Free Trade Unions (ICFTU), no more than one trade union could be formed for each industry and the requirements imposed on workers wishing to organize a strike made legal strikes almost impossible. As a result, there had been no legal strikes in Zambia since 1994. Trade unionists continued to be discriminated against, especially in the public sector. There were no efficient legal instruments for combating such discrimination. According to the Zambia Congress of Trade Unions, the situation with regard to the rights of workers in the private sector was deteriorating, in particular in multinational companies.
36. Mr. MALINVERNI said that the reply to question 20 in the list of issues was incomplete. He was concerned that, in practice, workers could not exercise their right to strike. According to ICFTU, essential workers, whose right to strike was strictly regulated, could be punished for organizing a strike by a fine or a term of imprisonment of up to six months. He wished to know whether the delegation did not consider those sanctions excessive.
37. Mr. RZEPLINSKI asked the delegation to provide concrete examples of programmes designed to eliminate child labour, in particular in the capital city and in rural areas. He asked whether all the children in the family were expected to work and what measures the local authorities were taking to deal with the situation. He would also be interested to know how children working in cities were paid.
38. Referring to paragraph 139 of the report, he asked whether the word “restricts” meant “prohibits” and wished to know what other categories of workers were restricted in terms of forming trade unions. The delegation should provide more detailed information on the Government’s plan to offer land to women. Would the land be offered as private property? Who would resolve disputes? What would happen to the land in case of the woman’s death? Why would land be offered to women and not families?

39. Ms. BRAS GOMES said that the State's failure to recognize the right to social security was probably the reason why comprehensive social protection was not available to the vast majority of the population. She asked the delegation to provide data on the percentage of the population covered by social security benefits.
40. Social security schemes in Zambia covered only retirement, and survivor's pensions and applied only to formal sector workers and their dependants. There were no public sickness or unemployment benefits, which meant that many people were left unprotected.
41. According to the initial report, the amount of money spent on social security was minimal and had declined over the years owing to debt servicing. She asked whether the situation had been reversed and, if not, how the Government intended to provide a minimum level of protection in order to comply with the Covenant. The National Pensions Scheme Authority (NAPSA) did not cover low income workers or workers over 55 years of age. She asked how those workers were protected against poverty. Although NAPSA had been intended to include the informal sector, according to the list of issues, only about 10 per cent of informal workers were covered. What measures was the Government taking to increase the percentage, especially with regard to agricultural workers?
42. Women suffered the most under structural adjustment programmes and privatization. They represented a smaller percentage of the formal labour force and were therefore excluded from public social security. Even under the public welfare assistance programme most beneficiaries were men. What measures could be taken to improve social security for women? For example, according to the written replies, women were encouraged to form cooperatives, sell their products and share the profits. She enquired whether those women were considered formal workers and were covered by NAPSA?
43. Privatized schemes had also left people without adequate protection. For example, Zambia Airways had failed to pay benefits to retrenched workers. Did the State envisage any measures to prevent such situations in future?
44. Mr. RIEDEL, referring to question 21 in the list of issues, asked the delegation to provide information about the steps being taken to combat inefficiencies in the processing and payment of pension benefits, the difficulties encountered and the results achieved. For example, how did the district level operate and what specific measures had been taken to enhance customer care?
45. In order for the Committee to assess whether or not the State party had fulfilled its obligations under article 9 of the Covenant, the delegation should provide information on the results of the Government's food-for-work programme and on the effectiveness of NAPSA.
46. Generally speaking, it was important for the Government to set benchmarks for all measures intended to give effect to the articles of the Covenant. Descriptions of the evolution of the situation, difficulties encountered and statistics disaggregated on a yearly basis for the most vulnerable groups would make for a more focused discussion of the State party report and enable the Committee to assess progress made between reporting periods.

Articles 10-12 of the Covenant

47. Mr. ATANGANA asked what measures the State party had taken to address the problem of sexually exploited children in Zambia.

48. Ms. BARAHONA RIERA wished to know what specific changes were expected to result from the project to reform the Zambian Constitution, particularly with respect to laws governing the family, inheritance and marriage.

49. Mr. MALINVERNI said that the delegation should describe what steps the Government had taken to deal with the large numbers of street children, child prostitutes and child workers in Zambia.

50. Mr. SADI said that the growing number of HIV/AIDS orphans, which stood at more than 5 per cent of the total population, had reached crisis proportions. He wished to know the reasons for the even greater percentage of orphans whose situation was not attributable to HIV/AIDS. Numerous problems had also been reported by NGOs concerning the plight of widows in Zambia. He asked whether the Government had taken stock of those two sets of issues and was addressing them.

51. Ms. BRAS GOMES said she would welcome information on measures taken to support children who had become heads of household and to provide street children with basic services and educational opportunities. She enquired whether the lack of a minimum age for marriage would be addressed in the constitutional reform. She wished to know whether the pilot project under way to provide cash transfers to poor households would be continued beyond 2009, when the resources provided through international assistance would end. It would be interesting to learn whether the Government had considered using that project to begin implementing the voluntary guidelines to support the progressive realization of the right to adequate food in the context of national food security, which had been established by the Food and Agriculture Organization of the United Nations (FAO) in 2003.

52. Mr. RZEPLINSKI asked what the extent was of school-related costs for primary school pupils. It would be useful to have a comparison of the average salary of a teacher and that of a police officer or middle-ranking official in the Ministry of Justice. He asked what types of school could be set up by private individuals under the Government's new education policy and how many schools had already been established. He was concerned that the opportunities for education at all levels were very limited. He enquired whether in Zambia there were any constraints placed on the freedom to conduct scientific research, particularly in the social sciences.

53. Mr. RIEDEL asked for information on the results achieved by the Public Welfare Assistance Scheme. In particular, he wondered what its impact had been on the health status of the population concerned. He welcomed the importance attached by the Government to providing safe drinking water and proper sanitation. In that connection, he directed the delegation's attention to the Committee's general comment No. 15 on the right to water, which provided suggestions on what kinds of steps might be taken to improve access to water. It would be useful for the Government to establish benchmarks to determine the extent of progress made.

54. He requested more detailed statistics on efforts to deal with the HIV/AIDS crisis. Families affected by HIV/AIDS were subject to severe financial constraints resulting from the death of the breadwinners and the need to care for orphans. He would welcome comments on any developments in the situation since 2002.

55. Ms. BARAHONA RIERA said she wished to know what steps had been taken to supply the population with clean drinking water. She wondered whether programmes to provide contraceptives had run counter to popular traditions. She asked what steps the Government had taken to deal with environmental pollution, which had become a major problem following the rapid privatization of industry in recent years.

56. Ms. IMBWAE (Zambia) said that the delegation would provide the additional information requested by the Committee.

The meeting rose at 1 p.m.