



## Economic and Social Council

Distr.: General  
16 November 2010  
English  
Original: French

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### Committee on Economic, Social and Cultural Rights

#### Forty-fourth session

#### Summary record of the second part (public)\* of the 2nd meeting

Held at the Palais Wilson, Geneva, on Monday, 3 May 2010, 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 meeting was called to order at 4 p.m.*

**Substantive issues arising in the implementation of the International Covenant on Economic, Social and Cultural Rights (agenda item 3)**

**NGO submissions**

1. **Mr. Barrett** (International Harm Reduction Association) drew attention to the drug control measures applied in the four States parties the reports of which would be examined by the Committee at its forty-fourth session, namely: Afghanistan, Colombia, Kazakhstan and Mauritius, and to the related human rights and health issues.
2. Although often mistakenly considered to be a purely domestic problem, drug control was in fact related to the work of the Committee on Economic, Social and Cultural Rights since drug control measures impacted the exercise of human rights. Drug control policies had spawned a veritable parallel market of macroeconomic proportions which encouraged corruption among law enforcement and other State officials. Resources were diverted away from public health (HIV/AIDS, risk reduction) and towards the fight against crime (in Kazakhstan and Mauritius, for instance). Drug control measures had also led to geographical displacement — the so-called “displacement effect” — particularly in Colombia, where some 4 million people had been displaced. It would be helpful if the Colombian delegation could tell the Committee how many people had been displaced as a result of the fumigation of coca plantations. In addition, the measures taken had resulted in the stigmatization and social ostracism of drug users, thereby exposing them to further violations of their human rights.
3. Then there was the Alternative Development Programme in Afghanistan and Colombia, the purpose of which was to replace the cultivation of illegal drugs (opium poppy and coca respectively) with legal crops. The decline brought on by those measures in both countries demonstrated that it was imperative that they should be undertaken in tandem with development activities and that attention should be paid to the necessary resources, in particular the infrastructure that would enable people to have access to markets and to sell legally cultivated produce.
4. **Mr. Ferkal** (Tamazgha) noted the contradictions in the actions of the Algerian State which, on the one hand, had declared the Tamazight language to be a national language in an amendment to the Constitution while, on the other, it continued to exclude the language from the country’s administrative and judicial systems. Although the Government had announced measures to encourage different forms of expression in Tamazight (in theatre, song, film, literature and the press), there had been no progress, and no information was available on the amounts allocated to associations responsible for promoting such initiatives.
5. Furthermore, Tamazight speakers were taught to read and write in Arabic, which pointed to a policy of Arabization in respect of the Amazighs: only 2.5 per cent of children at school in Algeria benefited from teaching in the Amazigh language and in Algiers, where more than 50 per cent of the population were Amazigh-speakers, only 63 pupils were taught in that language. Enforcement of the Arabization Act should therefore be frozen throughout the country until such time as it was abolished, and the Constitution of Algeria should be amended to recognize Tamazight as an official language.
6. **Mr. Tirado Mejía** asked whether it was true that Kabylie documents in the Amazigh language were not recognized as official documents. He also wished to know whether the inclusion of Tamazight in the Constitution had made any perceptible difference.

7. **Mr. Ferkal** (Tamazgha) said that, although recognition of Tamazight as a national language had been a genuine step forward, the figures cited demonstrated that the Algerian State had not been sufficiently active regarding the language. In reality, Arabic was the only language used in the country's official documents, and the Arabization Act promoted the linguistic imperialism of Arabic.

8. **Ms. Aura Rodriguez** (Colombian Platform for Human Rights, Democracy and Development) said that in Colombia various indicators — on malnutrition and food insecurity, the proportion of young people not in full-time education, the uncertain position of workers and especially women, institutional inequalities in respect of health, and discriminatory practices towards different sections of the population — had revealed a significant setback in the exercise of economic, social and cultural rights for the population as a whole. The record number of internally displaced persons demonstrated that there was a serious humanitarian crisis and the adoption of retrogressive measures had further concentrated wealth and, as a consequence, stifled investment in health, education and drinking water.

9. The health situation was deteriorating, as shown by the weakened hospital network, the increase in diseases such as tuberculosis, in maternal mortality and low-birth-weight babies. The absence of public policies on employment and food demonstrated that the obligations set out in the International Covenant on Economic, Social and Cultural Rights were not respected. The Colombian Government continued, unjustifiably, to delay the introduction of free school education and the only progress made in that area had been at the regional level. In addition to the absence of legal guarantees of occupation, housing was in short supply and was often built with poor quality materials and without the provision of basic services. Although prohibited under international law, forced expulsion was still practised by Colombia.

10. Legal and illegal mechanisms had led to a concentration of landownership to the detriment of indigenous communities, those of African descent, and peasant families. As a result of the failure to consult the populations concerned, the new agricultural policy had been declared unconstitutional by the Constitutional Court, but the national authorities continued to apply it in different forms. Recently adopted legislation restricted the access of indigenous peoples to landownership by requiring them to settle in one place.

11. In addition, the persistence of sexual violence against women as an act of war and the impunity of those perpetrating such acts was a matter of great concern. At the same time, women were becoming poorer. Also, individuals continued to be the targets of violence because of their sexual orientation.

12. **Ms. Ana María Rodríguez** (Colombian Commission of Jurists) said that, in ratifying the International Covenant on Economic, Social and Cultural Rights, Colombia had undertaken not to take regressive measures, an obligation it had subsequently failed to fulfil. Act No. 789 of 2002 revoked certain guarantees that had been granted to workers under the Labour Code by reducing their salaries and altering their working hours. Similarly, in 2002 and 2007, constitutional reforms transferring resources from the federal budget to regional governments had led to severe funding cuts and hence to restricted access to education, health, sanitation and safe drinking water. Furthermore, the United States-Colombia Trade Promotion Agreement had reinforced certain intellectual property rights, thereby making it harder to access medicines, resulting as it had in price increases of some 40 per cent.

13. The Colombian Commission of Jurists requested that Colombia should respect its obligations under article 2, paragraph 1, of the International Covenant and comply with general comment No. 3 of the Committee on Economic, Social and Cultural Rights on the obligations of States parties; to fulfil its constitutional obligation to give priority to public

spending on social welfare and to adopt measures to protect the vulnerable. To that end, Colombia should amend its Labour Code in consultation with the relevant stakeholders, especially workers and trade unions; change the present system of transfer of budgetary resources; and return to the provisions set out in the Constitution of 1991 so that the decentralization of the Administration was accompanied by a permanent increase in the resources allocated to the regions; and request that the Committee send a mission to assess implementation of the recommendations and concluding observations it would be formulating after examination of the fifth periodic report of Colombia.

14. **Mr. Rosado** (Colombian Commission of Jurists) said that despite the Colombian State's ratification of the major international instruments relating to labour rights, and the provisions of the 1991 Constitution, Colombia had the worst employment statistics on the American continent: official figures cited an unemployment rate of 12 per cent in 2009.

15. In order to circumvent labour rights, legislation had been passed authorizing the creation of labour cooperatives. They were employment agencies that supplied private companies and the State with workers, who enjoyed neither rights nor the protection of the authorities. The number of cooperatives had tripled since 2002 and the number of workers thus employed had increased fivefold to 540,000.

16. Women were the prime victims of the unemployment crisis, with their salaries remaining below those of men. "Community mothers" were still not recognized as workers. Half of those unemployed were young people and the situation was worse for young women, with 28 per cent of them unemployed.

17. Trade unionists continued to be victims of persecution and violence, and the perpetrators of such acts went unpunished. The right to collective bargaining no longer existed: in 2008 and 2009 there had been a 30 per cent annual drop in the number of collective agreements negotiated. The number of people belonging to trade unions in Colombia was the lowest in Latin America.

18. **Ms. Suárez Franco** (FIAN International) said that her organization undertook the preparation of reports monitoring food insecurity in many countries. In Colombia, 41 per cent of households were food insecure, a figure that soared to 58.3 per cent in rural areas. Anaemia afflicted 45 per cent of women of childbearing age and 33 per cent of children under 5. The nutritional situation had structural causes, among them was unequal access to productive resources. The State had not taken effective measures to remedy the lack of access to resources by the most marginalized. On the contrary, its export-led agricultural policy benefited those who were politically and economically strongest.

19. Peasants were defenceless against landowners, transnational corporations and organized crime. Some of them were forced to form associations with large companies, and run with all the risks that entailed for the production or acquisition of food, and trade or labour relations. Land was being very slowly restored to the victims of armed conflict, sometimes with conditions attached so that there was no guarantee that they would have any control over their resources. In parallel, under the guise of public health measures, the State had prohibited the sale of certain basic foods in Colombia, such as milk and chicken, pushing up prices and making it impossible for certain sectors of the population to buy those products.

20. **Mr. Obregón** (Coordinación Regional del Pacífico Colombiano) said that large-scale projects that changed communities' use of land, customs and the way of life continued to be carried out in the Pacific region. State policies gave priority to infrastructure projects, which jeopardized the economic, social and cultural life of the population. Natural resource exploitation in the energy, mining and lumber industries, and biofuel production were particularly worrying. Of forced displacements of the population 18 per cent had occurred in the region, people of African descent being those most affected. The problem had been

compounded by the introduction of a palm oil monoculture production which had led to the illegal appropriation of collective lands; it had been promoted by the State in the interests of development, although the local people had not been consulted.

21. In addition, following the construction of the Naranjo Canal in 1973, the river level had risen significantly, damaging homes and infrastructure. Since February 2009, the population no longer had access to drinking water. With that in mind, Coordinación Regional del Pacífico Colombiano requested the Committee to monitor the situation of people of African descent and that of the indigenous population in Colombia and to support the civilian population's actions to ensure that they were consulted before international standards affecting them were enforced.

22. **Ms. Ojeda Jayariyu** (Wayúu de Wepiapaa Indigenous Community) explained that she was a member of the indigenous Wayúu community that had been forced to leave Alto San Jorge, in the Sierra Nevada de Santa Maria, in November 2005 when her uncle, Oleotero Jayariyu had been "disappeared" by paramilitary troops. Thirty-six families displaced at that time had settled in Dibulla, in the north of the country and did not enjoy their rights to food, health, education and dignity. Children and pregnant and breastfeeding women, were suffering from malnutrition. The Wayúu of Wepiapaa Community was grateful for the support of the World Food Programme and Action Against Hunger but deplored the fact that the national authorities had not fulfilled their responsibilities. The Colombian Family Welfare Institute (ICBF) no longer provided breakfast for the children. A midday meal was provided for children on school days only.

23. The Wepiapaa Community was basically requesting that it should be resettled and granted territory so that it could engage in economic and productive activities that would make it self-sufficient. The Community also wanted its children to have the right to education so that they did not have to receive a western education, as was currently the case. The school set up for the children in their community was not recognized by the State. Paramilitary groups continued to observe the Community, a fact that the Office of the Ombudsman had recognized in 2009. The Wayúu community requested the Committee to recommend to the Government of Colombia that it should improve the community's living conditions, in particular by paying reparations to the 36 families concerned, by granting them land on which to resettle and by guaranteeing their right to food, health and education.

24. **Ms. Ortegón** (Lawyers' Collective – International Federation for Human Rights) said that the enjoyment of economic, social and cultural rights in Colombia was far from guaranteed and that even official figures on the subject had changed little since 2002. Clearly, the Committee's recommendations had not been put into effect and, in particular, substantive agricultural reform, the rights of displaced persons, lower unemployment, a decrease in the gender wage gap, reduction of inequalities in the health system, and access to free primary health care were not yet a reality.

25. The Colombian Government had adopted measures that were clearly regressive and therefore contrary to article 2 of the Covenant. The non-governmental organizations requested the Colombian State to implement the recommendations contained in the Committee's concluding observations on the fourth periodic report (E/C.12/Add.74) and ratify the Optional Protocol to the Covenant. They had submitted a number of recommendations to the Committee in writing which they hoped the Colombian Government would address.

26. **Mr. Alonso Vélez** (Seeds Group) said that Colombia was a biologically diverse country in which numerous varieties of traditional crops — in particular maize — had been cultivated and conserved by indigenous peoples and other farmers for centuries. The introduction of genetically modified organisms (GMOs) on Colombian soil posed proven risks for traditional crops which could be irreversibly contaminated, for animal health and

hence potentially for human health, as well as for the environment and the food chain, principally through soil and water. It had been scientifically proven that transgenic crops developed resistance to some insect pests and to some herbicides which made the use of more toxic products necessary.

27. The Colombian Government had taken decisions concerning GMOs on the basis of incomplete and inadequate studies carried out by the Colombian Institute of Agriculture (ICA) and by companies with a vested interest. The decisions did not take into account any of the expert advice from the Ministry of Environment, Housing and Territorial Development and had been taken unilaterally, without reference to the provisions of the Cartagena Protocol on Biosafety relating to public awareness and participation in the decision-making process and socio-economic considerations.

28. The Colombian Government's policies and decisions concerning GMOs violated the rights of the country's indigenous peoples, in particular their right to self-determination, their right to participate in decisions in order to protect their cultures, their property and their environment (ILO Convention 169 on Indigenous and Tribal Peoples), their right to food and their right to health.

29. In conclusion, he requested the Committee to draw up a number of recommendations to the Colombian Government. Firstly, the Colombian Government should recognize scientific proof concerning contamination threats to traditional seeds and the negative effects on health and the environment and declare a complete moratorium on new GMO plantations until the security and safety of those organisms had been scientifically established. Second, the public should be given complete and truthful information on the GMOs there were plans to grow and, in particular, the Government should organize advance consultations with indigenous peoples in accordance with national and international regulations. Third, it should conduct scientific, socio-economic and cultural studies in order to fully evaluate the risks of GMO crops and their impact on the rights of all Colombians, especially indigenous peoples and persons of African descent; evaluate the results of those studies and take decisions with due regard to the precautionary principle, as required under international law and in accordance with Colombian legislation; give all citizens access to the results of those studies and evaluations and disseminate them. Fourth, it should revoke all licences relating to the introduction and marketing of genetically modified seeds and food awarded in the country and adopt the measures required to protect the rights of all Colombians, in particular indigenous peoples, to participate in decision-making concerning the introduction of GMOs. Fifth, the Colombian Government – both the public authorities and the law, must recognize the right of indigenous peoples to declare their lands GMO-free. It must support such initiatives in favour of its citizens and ensure that they were carried out.

30. **Mr. Kerdoun** asked the exact number of persons displaced in Colombia; the figures in his possession differed from source to source. Apart from violence, what were the other main reasons for the displacements?

31. **Mr. Schrijver**, referring to the claim that international human rights norms took precedence over domestic law, asked the NGOs what occurred when they directly invoked provisions of international human rights law before a Colombian court.

32. **Ms. Bonoan-Dandan** noted that most of the Committee's concluding observations on the fourth periodic report of Colombia (E/C.12/1/Add.74) had not been put into effect.

33. **Mr. Riedel** requested the views of the NGOs on the use of physical, sexual and psychological violence against women and children as a strategy of war. He wondered what measures the authorities had taken to protect school buildings from occupation by armed groups and to address the resulting interruption of lessons.

34. **Mr. Sadi** asked the NGOs what priority measures they would like the Committee to recommend to the Colombian Government. In respect of persons displaced as a result of armed conflict, he wished to know what the NGOs expected specifically from the Colombian Government, which was at war with illegal groups.

35. **Ms. Ortegón** (Lawyers' Collective – International Federation for Human Rights), replying to the question on the number of displaced persons, acknowledged that there were significant differences between the official figures and the figures presented by NGOs, all of which were, in any event, very high. That year, the Colombian Government had reported 110,000 displaced persons while NGOs had counted double that number: the Colombian Government had admitted that the disparity occurred because it did not include certain categories of persons in its figures.

36. With regard to the flaws in the system for the protection of displaced persons, the Constitutional Court had ruled that the situation of displaced persons was unconstitutional; the court, also noting that the State had not fulfilled its obligations concerning them, it had ordered specific measures. After that judgement, issued in 2004, it had monitored the situation and had issued further decisions concerning instances of population displacement, notably of people of African descent and indigenous peoples, in particular women, thereby establishing a link between displacement and sexual violence. Public policies had not succeeded in putting in place a system capable of preventing those displacements; furthermore, they were short-term emergency aid policies that did not guarantee — and therefore violated — the right to health, education, housing, etc. of those peoples, which the Constitutional Court had declared to be victims of discrimination.

37. The authorities had also adopted a return policy which, in the view of the NGOs, should include the restitution of their lands and property to displaced persons. It was necessary to do so because, while the displacements had been caused primarily by armed conflict, they had also been caused by social conflict and the expropriation of land which had then been used for ambitious industrial, tourist or mining projects. Some 4 million people had suffered as a result.

38. **Ms. Ana María Rodríguez** (Colombian Commission of Jurists) said that the Colombian Constitutional Court could serve as a model for judicial systems in Latin America and further afield because its approach was based on systematic harmonization of international norms relating to human rights, constitutional rights and the applicable law. That doctrine was very useful when domestic law infringed human rights or when it lacked clarity, in which case international norms and the recommendations of the Committee had to be invoked.

39. With respect to the list of priorities to be submitted to the Government, the NGOs considered that the policies should focus on vulnerable people and not on a small group of affluent people; they should stop giving assistance which created dependence and give people the means to take their destiny into their own hands.

40. **Mr. Rosado** (Colombian Commission of Jurists) said that redistribution of wealth must also be included in the priorities because, although Colombia had witnessed strong growth in recent years, employment in the formal sector had not improved. Military expenditure in Colombia, which was the highest in Latin America, was another subject of concern.

41. Another priority area was the worsening of inequalities in recent years. Existing policies had not resulted in redistribution of wealth. There had been neither a reduction in poverty nor an increase in formal employment during the five years of economic growth up to 2008. Other subjects of concern to the Colombian Commission of Jurists were, in particular, welfare-based policies that had not helped the population to lift itself out of poverty and consisted merely of small subsistence payments; very high military spending as

a proportion of gross domestic product, making Colombia second or third in the world in that area and first in its region; the absence of policies to promote formal employment and of progressive health policies.

42. **Mr. Yip Tong** (Collectif Urgence Toxida) said that, according to the United Nations Office on Drugs and Crime (UNODC), Mauritius was the second largest consumer of opiates in the world. As a result, the HIV/AIDS rate was alarming: four times higher than that of a country like France. Collectif Urgence Toxida represented NGOs engaged in combating HIV/AIDS and substance abuse. The organization was currently engaged in a programme on risk prevention and methadone-based treatment. The Mauritian Government was aware of the urgency of the situation and had adopted a framework law on syringe exchange and methadone treatment programmes.

43. The consequences of the drug trade were felt throughout the economy. In order to reduce demand, it was indispensable to approach the problem from a social perspective by improving access to education and leisure. The increase in drug use had been accompanied by a steep rise in crime, which had a potential impact on tourism. He took serious issue with the view that the death penalty should be reinstated for drug traffickers, as expressed by the outgoing Prime Minister in the context of the forthcoming parliamentary elections.

44. **Ms. Terlikbayeva** (Global Health Research Center of Central Asia) said that there were approximately 174,000 drug addicts in Kazakhstan. The traditional approach in the former countries of the Soviet Union, which had been to criminalize drug addicts, still prevailed and therefore addicts had little access to drug substitution therapy. The Global Health Research Center of Central Asia recommended the use of that form of treatment, which was more humane and effective. A great many drug addicts were unable to stop drug use as a result of their living conditions or because their health had been damaged by disease or psychiatric problems. It was very important that doctors should be able to treat them. Many patients' state of health had so deteriorated that by the time they were seen by a doctor it was too late to save them. Overdose was one of the main causes of death among drug addicts, particularly among young people. Programmes to help drug addicts were scarce in Kazakhstan. The requirement to register the names of drug addicts discouraged them from seeking help, as they were fearful of the authorities; it also complicated the work of doctors. As a result, it was difficult to administer medicines for the treatment of overdose, such as naloxone, which was effective, simple to use and saved lives. The Global Health Research Center of Central Asia recommended that the requirement to register drug addicts should be lifted and that addicts should be informed of the existence of naloxone treatment in order to prevent deaths from overdose.

45. **Mr. Dawoodzei** (Bureau for Reconstruction and Development) said that the NGO which he represented worked for civil society capacity-building in the area of human rights and was currently supporting the creation of human rights defence networks in six provinces in Afghanistan. Opportunities to promote economic and social rights, linked in particular to the international community's participation in reconstruction, had been lacking in recent years as a result of a weak and inefficient Government. Poverty, unemployment and underdevelopment were some of the country's many problems. While the obligations of States parties to the Covenant were progressive and based on the available resources, a State must not exploit the inadequacy of resources as a pretext for negligence and inaction.

46. The existing legal framework surrounding economic and social rights was based principally on the Covenant and on the Afghan Constitution, along with the Millennium Development Goals and the Afghanistan National Development Strategy. That framework imposed certain obligations on the Afghan Government, which must protect the rights of its citizens, promote social security and an adequate standard of living, enable returnees and displaced persons to reintegrate in society, protect family life and provide health and education services. The Afghan Government maintained that people were deprived of their

economic and social rights as a result of growing insecurity, yet adverse living conditions were a major cause of insecurity throughout the country. Armed insurrection could not be defeated by military means alone, and in order to improve the security situation the Afghan Government and the international community must focus on socio-economic development and an improved standard of living for the Afghan people.

47. While the Afghan Government had taken measures to achieve the Millennium Development Goal to eradicate poverty and had presented a report on the subject, it had not followed up on its commitments to local people at the time the National Strategy for Development had been adopted in 2007. Although myriad factors were preventing the State from fulfilling its obligations under the Covenant, the absence of a dynamic civil society, that demanded the State's accountability and prompted it to respect its obligations under the Covenant, was a major factor. In addition to the lack of resources, Afghan civil society was not sufficiently supported by the national authorities and the international community. Another impediment was that each activity in the field of human rights had to be approved by the Afghan Independent Human Rights Commission which prevented human rights defenders from freely carrying out their work.

48. **Mr. Sadi** said that he would like to know more about the causes of the drug problems currently existing in Mauritius and Kazakhstan.

49. **Mr. Yip Tong** (Collectif Urgence Toxida) said that, according to a study carried out by his association, the problem had become so pervasive, firstly because the drug trade was a very lucrative business; and second, for social reasons, because once the poorest segments of the population had been affected, all of society became involved. Lastly, the island of Mauritius was in the transit path for drugs trafficked from producer countries such as Afghanistan and Pakistan to Africa and Europe.

50. **Ms. Terlikbayeva** (Global Health Research Center of Central Asia) said that the extent of the problem was due to the fact that Kazakhstan was situated on the drug trafficking route to Russia and Europe. The economic crisis, unemployment and the crisis of the 1990s after the collapse of the Soviet Union had served to increase drug abuse.

*The public part of the meeting rose at 5.45 p.m.*