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COMMITTEE ON ECONOMIC, SOCIAL AND CULTURAL RIGHTS

FORTY-FIRST SESSION

SUMMARY RECORD OF THE 34th MEETING

Held at the Palais Wilson, Geneva,
on Thursday, 6 November 2008, at 3 p.m.

Chairperson: Mr. TEXIER

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The meeting was called to order at 3.05 p.m.

CONSIDERATION OF REPORTS

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

Initial report of Kenya ((E/C.12/KEN/1); list of issues to be taken up (E/C.12/KEN/Q/1); replies by the Government of Kenya to the list of issues to be taken up (E/C.12/KEN/Q/1/Add.1))

1. *At the invitation of the Chairperson, the members of the delegation of Kenya took places at the Committee table.*

2. The CHAIRPERSON welcomed the delegation of Kenya and invited the delegation to introduce the initial report of the State party.

3. Ms. KARUA (Kenya), introducing the initial report of the State party, said that the Government of Kenya attached great importance to the promotion of human rights. The Government was determined to improve the state of human rights in the country and was currently developing a comprehensive human rights policy and action plan to help the ministries, administrative departments and other actors to integrate human rights into the national planning process. This framework was based on an overall vision according to which development, peace and prosperity were closely linked to the realization of human rights.

4. The crisis which had engulfed the country after the 2007 general elections brought to the fore deep divisions and a sense of inequality and injustice, which had turned into ethnically-based political violence. The ethnic issue was a significant problem in many developing countries where, as was the case in Kenya, national sentiment was weak and political life was dominated by the interplay of ethnically-based parties and coalitions. To a great extent, Kenya's future as a nation depended on meeting the twin challenges of recognising and celebrating diversity while building a strong and cohesive national identity.

5. Kenya was party to most international and regional human rights instruments and over the previous five years had adopted a number of measures towards establishing a state based on human rights. Those measures included establishment of the Kenya National Commission on Human Rights in accordance with the Paris Principles; creation of an inter-agency committee to advise the Government on its human rights obligations and on the instruments to which the country should be party; accession to the African Peer Review Mechanism within the framework of the New Partnership for Africa's Development (NEPAD), Kenya being one of the first four countries reviewed under that mechanism; submission of reports under the various international instruments to which Kenya was party; transposition of a number of international human rights instruments into national legislation, for example on gender equality, persons with disabilities and refugees; launch of a programme on governance, justice and law and order programme aimed at creating an effective and fair system of governance and administration of justice that would respect, promote and protect human rights; establishment of

a permanent body to handle complaints against officials and public institutions in a coordinated manner; and introduction of a national legal aid scheme to enhance access to justice, targeting the poor and vulnerable.

6. As regards economic, social and cultural rights, the Government of Kenya had created a Ministry of Housing, established a Housing Policy, prepared a National Housing Bill and conducted a slum upgrading programme. It was still difficult to provide adequate housing for all in the urban centres, especially in Nairobi. In order to ensure the best attainable mental and physical health for all, Kenya had adopted a law on HIV/AIDS, outlawing any form of discrimination against persons having HIV or AIDS; developed a national strategy on reproductive health based on the Programme of Action of the 1994 International Conference on Population and Development (ICPD) and established a national strategy against malaria focusing particularly on vector control, treatment of the disease during pregnancy and control of epidemics.

7. Kenya was beginning to reap the rewards of its policy of universal free primary education; school enrolment was increasing and more children were going on to secondary school. Measures had been introduced to help poor and vulnerable children, for example school meals programmes targeting the arid and semi-arid areas of the country, and a fund to assist with school costs and school books. Grants were also provided to help children with special needs enrolled in schools and other public institutions to integrate effectively.

8. In the field of employment, the Government had taken steps to expedite settlement of labour disputes, adopted legislation on health and safety at work, and endeavoured to establish a systematic means of measuring productivity. It had also focused on the fundamental rights of employees, and strengthened all trade union legislation in order to promote freedom of association.

9. The Government of Kenya considered food security to be another priority, and had put in place agricultural sector reform, set up mechanisms to enable effective intervention in emergencies, established a food security monitoring system in arid areas, and created a national body to ensure reliable and timely distribution of relief food. Food insecurity remained a threat, and increased during long periods of drought. The recent political crisis had resulted in the destruction of part of the country's agricultural product, which in the affected areas had not yet returned to levels achieved before the violence took place.

10. A national plan of action to combat corruption was in its second year. The aim of the plan was to protect public resources from plunder and wastage and devote them more effectively to national development and poverty alleviation. There were still great disparities between Kenyans. The absolute poverty found in certain areas of the country, gender inequality and inequalities between regions and generations had not yet been overcome. The population growth rate was high, but corresponding viable economic opportunities were not being created. The current situation, in which 72 per cent of the unemployed were under the age of 30, carried substantial risks. The problem was aggravated by rural-urban migration, chronic underemployment and the general mismatch between emerging jobs and the skills available on the labour market.

11. Other difficulties were due to poor governance and lapses in the rule of law. Despite a series of reform efforts, the current Constitution was inadequate. Furthermore, at individual, institutional and national level there was inadequate commitment to patriotism, national values and norms fundamental to good governance, like democracy, ethics and integrity, human rights, justice for all and respect for the rule of law. Ineffective justice and dispute resolution mechanisms continued to promote impunity, as did low public confidence in institutions upholding the rule of law.

12. The weakness of institutions made it more difficult to promote and protect human rights. Incompetence, corruption, unsuitable legislation, inadequate resources and magistrates' lack of independence prevented the judiciary from playing an effective role in that sphere. The Kenya National Commission on Human Rights had been set up recently, and was striving to establish a viable working relationship with other institutions such as the police, prisons and the armed forces, the goal being to develop and entrench a human rights culture in all their operations.

13. Kenya had embarked on a process of constitutional review, which was scheduled for completion by the end of 2009. Draft legislation would enable significant progress to be made on questions like gender equality, citizenship, economic and social rights and group rights. The Government had undertaken a review of all laws affecting the enjoyment of human rights in order to make any appropriate modifications. Many people were unaware of their rights and suffered human rights abuses without seeking redress. The Government had launched a national legal aid and awareness programme in order to improve the situation.

14. The Government's national development strategy, "Vision 2030", sought to secure socio-economic rights by eliminating poverty, which constituted the greatest obstacle to the enjoyment of human rights in Kenya. The main thrust of that strategy was to make Kenya a globally competitive and prosperous country with a high quality of life by 2030. The economic objective was to achieve a growth rate of 10 per cent by 2012, in order to have more resources available to meet the development goals set out in the Millennium Declaration and Vision 2030. The social component of the strategy was to achieve just, cohesive and equitable development in a healthy and secure environment. The political component of the strategy was to ensure an efficient, open and accountable democratic system. Those aspects of the strategy which sought to realize a just and cohesive society emphasized several key sectors, namely education and training, so that Kenya could provide good quality teaching and become a regional centre for research and development and the new technologies; health: to achieve better living conditions for all Kenyans by providing an efficient, integrated, high quality and affordable health care system; water and sanitation; the environment; housing and town planning, so that most people could have access to decent housing by 2030; and special measures for women, young people and vulnerable groups.

Articles 1 to 5 of the Covenant

15. Mr. RZEPLINSKI asked whether there were plans to increase the number of working judges, and how many lawyers there were in Kenya. To his knowledge, there were no more than 300 judges for a population of nearly

40 million people. In those conditions it must be very difficult to obtain justice in the Kenyan courts, and that could prompt citizens to bribe judges. He also asked whether the High Court and Court of Appeal judges recently dismissed for corruption were being replaced quickly, in order that justice could be dispensed without delay.

16. In its written replies to the list of issues to be taken up, the Government of Kenya had referred to certain problems of international cooperation. He asked whether more specific information could be provided about those problems, and about a sentence in the written replies according to which lowering of tariffs through trade liberalization could result in loss of government revenue, as those matters were especially important in the Kenyan context.

17. The violence which followed the last elections had had serious consequences for human rights and social rights in Kenya. Some people in Kenya had suggested setting up a Truth, Justice and Reconciliation Commission to examine that recent episode, and other periods when wrongs had been committed. He wanted to know whether that idea, or any other solutions, were under consideration.

18. The question of land was a burning issue, especially the lack of arable land, which was due to complex factors that were difficult to control, but also to ethnic discrimination and to clientelism. He asked what decisions were in the pipeline, and whether it was intended to create a body responsible for agrarian reform that would be independent, offer guarantees of non-discrimination against women, be free of ethnic bias, and be able to return impartial verdicts in order to settle a number of land-related suits. He asked about the recommendations adopted by Kenya on the equitable allocation of state lands, which offered effective solutions to certain problems but were not being followed by the authorities.

19. Mr. ATANGANA said that the reasons given in the State party's report for the non-incorporation of the provisions of the Covenant into domestic law were consistent with those given in the delegation of Kenya's introductory statement, according to which, in so far as economic, social and cultural rights were not set forth in the current Constitution, the courts were reluctant to pronounce judgements to promote and protect the rights. He asked whether a new Constitution establishing the rights provided in the Covenant had to be adopted before economic, social and cultural rights could be invoked before the courts. He wanted to know whether the fact that the provisions of an international instrument were not incorporated in domestic law meant that they were not applicable by the courts.

20. Ms. BRAS GOMES asked whether, in the light of paragraphs 27 and 28 of the Government of Kenya's replies to the list of issues, the Government intended to increase the proportion of the national budget set aside for welfare expenditure, which was the only way for progress to continue in the absence of international cooperation and assistance. She also asked about the status of negotiations with the European Union on Economic Partnership Agreements, given that such agreements involved the threat of unfair competition to 65 per cent of Kenyan businesses, that is over 100,000 employees. Lastly, the costs

involved in setting up 40 export processing zones were known, but there was no information on the benefits they would bring.

21. Mr. PILLAY wanted the delegation of Kenya to give a clear answer to Question 1 on the list of issues. Thirty two years after ratifying the Covenant, Kenya had still not incorporated economic, social and cultural rights into its legislation. The failure to meet its obligations under the Covenant could be put right simply by passing legislation. Turning to the issue of pervasive corruption in the judiciary, he noted that the population still did not trust in justice, as was shown by the fact that the results of the 2007 elections had not been challenged in the courts. He also referred to the corruption scandals surrounding high ranking civil servants (embezzlement of funds allocated for controlling HIV/AIDS or social security), and asked how many Government officials had been prosecuted for corruption. Finally, he noted that the principle of non-discrimination on the grounds of gender was immediately applicable, therefore its implementation could not be progressive.

22. Ms. WILSON asked whether the new draft constitution would set out the entire set of economic, social and cultural rights. She expressed surprise that the law made exceptions to the principle of non-discrimination in respect of non-citizens, adoption, marriage, divorce and other issues in the private sphere, and individuals belonging to certain races or tribes. She wanted to know what objective factors there were for treating people differently. She also asked what progress the Government had made towards the resettlement of the country's 350,000 to 500,000 displaced persons and their reintegration into society.

23. Mr. RIEDEL asked how the Government intended to integrate economic, social and cultural rights into domestic law, there being three options: Parliament could make a ruling, a law could be passed to modify the existing Constitution, or a chapter could be added to the Constitution.

24. Mr. TIRADO MEJIA found the extent of discrimination in Kenyan society surprising and wondered about the cultural aspect of the phenomenon. He therefore wanted to know what measures, such as awareness campaigns or education, the State had taken to modify such behaviour, especially towards women. He was concerned about the rapid pace of urbanization caused by population displacement, and enquired what action the Government was taking to manage the problem of displaced persons. Lastly, he asked about the extent of the independence enjoyed by the Kenya National Commission on Human Rights, its composition, and whether it had participated in preparing the report submitted to the Committee.

25. Mr. DASGUPTA asked whether the delegation of Kenya agreed that a fundamental conflict existed between the provisions of the Covenant and the exceptions to the non-discrimination law set out in Article 82 (4) of the Constitution of Kenya, and whether the new Constitution being prepared would be free of such discriminatory provisions.

26. Mr. ZAHN Daode asked the delegation to explain what possible reasons could have made 57 per cent of the population reject the exhaustive provisions of the Draft Constitution on non-discrimination, as indicated in paragraph 22 of the report under consideration.

27. Mr. SADI asked whether a sense of a shared national culture existed in Kenya, a country comprising 42 different ethnic groups. He was surprised by the goal of creating a 75 per cent urban population, which he thought excessive and inappropriate. He also wanted to know how the Covenant fitted into domestic legislation and the importance ascribed to it by different ministries.

28. He hoped that the dialogue between the delegation and the Committee would at least succeed in eliminating the exceptions in the Constitution to the non-discrimination law. The existence of such exceptions at the present time in a country like Kenya was surprising, to say the least. Dismissing the reasons put forward for rejection of the new Draft Constitution, namely customs and religion, he said that the Government had probably failed to educate and sensitize the public. Education in human rights, and especially in the principle of non-discrimination, had to start in early childhood, and he sensed that it was lacking in Kenya.

29. Lastly, he asked whether the Kenya National Commission on Human Rights had been accredited by the International Coordinating Committee of National Institutions for the Promotion and Protection of Human Rights (ICC), or by any other international institution.

30. Mr. ADBEL-MONEIM said that, as statistics were a vital element in understanding the situation in a country, the report submitted by Kenya should have been more detailed and substantial. He hoped that the next report would provide more exhaustive information.

31. Ms. BONOAN-DANDAN referred to paragraphs 19 to 22 of the replies by the Government of Kenya to the list of issues, which concerned the Kenyan National Commission on Human Rights (KNCHR). She requested more specific information on donor finance (para.19) and on what was meant by “semi-autonomous body” in paragraph 17 of the report under consideration. It was surprising that the Economic, Social and Cultural Department of the KNHCR should have been mandated to improve the living conditions of vulnerable groups, and in particular their access to social services. The Government should be responsible for that work, and she asked for clarification on the matter. She also wanted to know which goods were on the exclusion list under the Economic Partnership Agreement with the European Union.

32. Two different explanations had been given for the rejection of the new Draft Constitution. According to the Government, it was due to the content and range of the new provisions, whereas according to other sources it was for “other reasons”. She requested the delegation of Kenya to shed light on the matter. She also wanted to know whether Kenya’s template for bilateral investment treaties made any reference to investors’ social responsibility and the consequences for the population of those investors’ decisions.

33. Ms. KARUA (Kenya), replying first to the question on corruption in the judiciary, explained that all the posts left vacant after implementation in December 2002 of the policy of zero tolerance concerning corruption of magistrates had since been filled. However, a decision had been taken in October 2007 to create 20 more posts for judges of the Supreme Court, of

which only five were currently occupied. As there was to be institutional reform of the judiciary, there was no reason to fill the 15 vacant posts in a hurry.

34. The Draft Constitution had been rejected for purely political reasons, but the national coalition government intended to submit a new draft within a year. The laws of Kenya applied to everyone without any exception whatsoever, and anyone could bring a complaint before the relevant courts if he considered himself a victim of discriminatory provisions, including under customary law. Following the outbreak of post-election violence in January 2008, a Truth, Justice and Reconciliation Commission had been set up to examine demonstrators' claims and to right the wrongs at the root of the civil unrest. At the same time, a court had been created to judge perpetrators of violence or incitement to violence during that period. The Government had followed through a number of recommendations made in the report of the Commission of Inquiry into Illegally Acquired Land. The State would have to adopt a law to eliminate all inherited corrupt practices. Corruption remained a problem but real progress towards ending impunity had been achieved, and the Government of Kenya spared no effort in bringing before the courts those who had acted corruptly. The Government thus intended to introduce a new way of governing, but its room for manoeuvre would remain limited until the new draft constitution had been adopted. The Government was determined to pursue its policy of increased promotion and protection of economic, social and cultural rights, but it respected the will of the people and certainly did not intend to impose its draft constitution.

35. Poverty was a great problem, and Kenya did not have the financial resources to guarantee universal enjoyment of the human rights to housing, education and health. The socio-economic situation was aggravated by the international trade regimes negotiated at the World Trade Organization, which were most unfavourable to developing countries.

36. The Kenya National Commission on Human Rights was established fully in accordance with the Paris Principles, and was therefore wholly independent. The Commission was indeed financed by the State, but was free to decide how to use the resources which it received from the Ministry of Justice. As indicated in the Government of Kenya's replies to the list of issues, the Commission was also authorized to receive donations and subsidies from individuals and associations.

37. The Government had been able to resettle most internally displaced persons. Some 20,000 people still lived in permanent camps, where they had access to health care and education. The number of refugees in temporary camps was probably much higher. The resettlement programme for displaced persons posed major problems for the Government, whose available resources were very limited, as indicated before.

38. Mr.GITAU (Kenya) said that the current Economic Partnership Agreement between the European Union and four of the five countries of the East African Community was a standard economic partnership agreement, so that countries could negotiate total or partial exemption of certain goods considered to be sensitive, with the aim of progressively removing all obstacles to trade between the European Union and the African countries

concerned, while mitigating the harmful effects of sudden complete trade liberalization. The delegation could not, at the present stage, provide a list of all goods excluded or granted exemption.

39. Mr. TIRADO MEJIA asked what specific policies the Government of Kenya had implemented to reduce internal displacement of the population, and to ensure displaced persons could exercise their rights to housing, health and education. He asked what measures had been taken to sensitize public opinion to the principle of non-discrimination, in particular through education. Lastly, he requested precise information about the composition of the Kenya National Commission on Human Rights, and about its possible contribution to preparing the report under consideration.

40. Ms. BRAS GOMES requested information on progress in negotiations on the Economic Partnership Agreement and on working conditions in the Export Processing Zones (EPZ). She also said that, whatever obligations were linked to trade liberalization imposed by WTO trade regimes, States party to international human rights instruments were committed to respect, protect and fulfil human rights. Many structural adjustment programmes and international trade promotion programmes had damaging effects on the most vulnerable groups in the population, and it was the duty of the State to protect those groups as a matter of priority.

41. Mr. RZEPLINKSI asked what specific measures the State party had adopted to prevent discrimination and promote equality, for example by making it clear to the people in the North that they were Kenyans first and foremost, and as such were entitled to the State's protection. According to information supplied by the Government, free health care was provided in the refugee camps, but according to other sources many camps did not have any sanitary facilities. The delegation was invited to explain.

42. Mr. KOLOSOV asked whether human rights education programmes were provided in schools and universities. He was aware of the extent of poverty in the country, but education programmes were not generally expensive for a State. He had been surprised to see that, according to the State party, there had been a noticeable improvement in living conditions in the camps for Sudanese refugees in northern Kenya, whereas according to many sources, refugees were living in appalling conditions and had no protection. He wished to know the views of the delegation on that issue.

43. The CHAIRPERSON invited the delegation of Kenya to give precise answers to the questions it had been asked, so that a constructive dialogue could take place between the Committee and the delegation, which would enable the State party to fulfil its obligations under the Covenant more effectively.

44. Ms. MOHAMED (Kenya) said that human rights education programmes were organised in primary and secondary schools, and that there was currently a programme of advanced studies in human rights at the University of Nairobi. Kenya had been offering such programmes since it had ratified the Convention on the Rights of the Child. Regarding the situation in the refugee camps, the delegation maintained that every effort was being made to improve inmates' living conditions, with the help of the United Nations High Commissioner for

Refugees (UNHCR) and non-governmental organizations like Médecins Sans Frontières. Children living in camps in northern Kenya had access to primary and secondary education. The quality of health and education services there might not be especially good, but it was the same as outside the camps.

45. She stressed that the Government did not have a deliberate policy of marginalizing any group, in particular in the north of the country. In January 2008 the coalition government had created a ministry responsible exclusively for the northern areas, where lack of infrastructure could have left people feeling abandoned. The Government had taken steps so that local communities could participate more fully in the allocation of funds released by the State, and so local people should be involved in developing their area.

46. In 2008, Kenya had hosted the International Conference for National Human Rights Institutions and the Government of Kenya attached great importance to the independence of the Kenya National Commission on Human Rights, which was actually very critical of the Government. The members of the Commission were appointed by Parliament, and elected their Chairman and Vice-Chairman themselves. The Commission's reports were systematically sent to the media for distribution.

47. Mr. GITAU (Kenya) said that the European Union and the East African Community had agreed to conclude the final phase of negotiations on the Economic Partnership Agreement by July 2009. However, this was unlikely because no agreement had yet been reached on such issues as rules of origin, agricultural products and trade issues.

48. Ms. KARUA (Kenya) confirmed that the Kenya National Commission on Human Rights had been involved in preparing the report under consideration. Primary education was free, compulsory and accessible to all on a non-discriminatory basis. Parents or guardians who did not send their children to school were committing an offence. Special education for disabled children was provided throughout the country. As the camps for internally displaced Kenyans were located near big cities, and were temporary arrangements, they were attended by mobile medical units but did not have medical services on site. The potential advantages of the Export Processing Zones had not yet been evaluated, but that could take place in the framework of the newly adopted rights-based approach to planning. Those zones were currently under heightened surveillance in order to protect the people working there more effectively, especially as wages were below the legal minimum.

49. Mr. KIMANI (Kenya) said that according to a now commonly accepted democratic concept, culture could not be imposed on anyone. According to the provisions of the Covenant, it was important to promote everyone's culture. However, the State intervened when a cultural practice was contrary to justice or morality.

50. Ms. MOHAMED (Kenya) recalled that there were more than 42 ethnic groups living in Kenya. Government policy had always been to promote the culture of every group, without discrimination, and without any group imposing its culture on the others. The ethnic groups could practise their own cultures, and all had equal opportunities in that respect. The national language, Kiswahili, helped to unite the country on a cultural level. The

Government did not adopt any policies which could foster the superiority of one ethnic group over another, for that would tear the country apart. She recalled in particular that the violence which broke out after the 2007 elections had resulted from certain ethnic groups feeling excluded from the process of national development.

51. Mr. KOLOSOV said that the Kenya National Commission on Human Rights had to be accessible to all, and asked whether there were plans to create local stations. He also pointed out that, while it was necessary to promote the culture of every ethnic group, there must a culture shared by all, otherwise there would strictly speaking be no nation.

52. Ms. KARUA (Kenya) said that the Kenya National Commission on Human Rights (KNCHR) had already set up a station outside Nairobi, as stipulated in its statutes. This was only the start, as the main mission of KNCHR was to inform the public about human rights and that presupposed reaching out to the population. A national culture did exist, and the media took part in its dissemination; moreover, the cultures of different ethnic groups had elements in common. The country had experienced tensions related to political rather than to cultural problems, in particular to discrepancies in development and in access to basic services. The authorities were currently working on those neglected issues, but it was as yet early days. The Government must ensure that all individuals were equal, not only in law but also in the way they were treated and in terms of their access to various services. That was the way to achieve national cohesion.

Articles 6 to 9 of the Covenant

53. Ms. BRAS GOMES was concerned about the substantial growth of the informal sector and its corollaries, namely lack of labour regulation, social security, pension rights and maternity benefits. She asked how the Government intended to remedy the matter, for example in terms of regulation, given that it was obviously impossible for the millions of workers concerned to join the formal sector, which was of course having problems of its own. Likewise, she wanted to know what provision had been made for the internally displaced persons who would go home and would have to find employment.

54. As to article 7 of the Covenant, she acknowledged that many new laws had been adopted but, according to the information before the Committee, these were unfortunately not being implemented effectively. She asked whether statistical data existed, for example on inspections performed by labour inspectors, or on any complaints about violations of the law. It seemed there was considerable gender inequality at work. Women's average wages were two thirds lower than men's wages, and she wondered how the Government meant to reduce the wage differential, after first acknowledging that it was a problem.

55. Concerning article 9 of the Covenant, the difficulties all seemed to stem from the fact that there was no constitutional right to social security, hence no official policy or protection in that area. She was surprised to read in paragraph 47 of the Government of Kenya's replies to the list of issues that the Government was encouraging workers in the informal sector to join social security and health schemes. She wondered how that would be possible, since

only 20 to 30 per cent of workers could afford to pay even the low contributions required by the National Hospital Insurance Fund. She acknowledged that Kenya had a participatory pension system, but asked whether people who had been unable to contribute received welfare or any other benefits. Lastly, she asked whether it was true that the Government and the President had the power to determine whether employees should receive their pension, and if so, what the decision criteria were; such a practice would be utterly contrary to the very concept of social security.

56. Ms. WILSON acknowledged the State party's difficulties in collecting and updating unemployment and under-employment statistics (para. 55 of the Report), but asked for official data, especially for the purpose of comparison with data sent by non-governmental organizations. She also asked whether the Government intended to create a system of regular data collection in order to monitor the situation. It would be useful to know the number of jobs created in recent years, as the figures in the Report under consideration went back to 2004. She also asked about the impact of tourism on the Kenyan economy in terms of income, employment and wealth creation.

57. Mr. ZHAN Daode agreed with Ms. Wilson that the shortage of statistical data was regrettable, and wanted to know the reasons for it. He thought it must be difficult to take the measures necessary to solve the problem of unemployment without knowing the scale of it.

58. Mr. ABDEL-MONEIM said that, according to the information provided in paragraph 47 of the Report, in 2004 the State party had achieved 90 per cent of its goals in terms of job creation. That was a remarkable result, and he hoped it had been repeated in subsequent years. Paragraph 53, however, stated that the economy did not have the capacity to maintain high levels of employment. Infrastructure was required in order to overcome that lack of capacity while also achieving the goals set. The delegation of Kenya had indicated that infrastructure was lacking. It was therefore legitimate to ask how the Government meant to remedy the situation.

59. He also said that export practices of the type pursued in Kenya were often necessary in a developing country, but there were risks attached. For a long time the Committee had therefore urged the World Trade Organization to take all human rights into account in its negotiations with countries, and in particular in its current negotiations with Kenya. Referring to the end of paragraph 53 of the Report, he said that the purpose of education was not to respond to market needs, although those had to be taken into account.

60. Mr. RZEPLINSKI asked the delegation to confirm the employment figures provided by the Kenya National Commission on Human Rights, namely 1.8 million workers in the formal sector and 6.4 million in the informal sector, and to explain how it was possible to count jobs in the informal sector, which was by definition invisible. He wanted to know whether the Export Processing Zones were in the formal sector or the informal sector, as it seemed that in those zones workers were subjected to racial discrimination, women were subjected to sexual harassment, and the right to belong to a trade union was highly restricted. Lastly, he was concerned that the Ministry of Labour had the right to abolish trade unions without the right of appeal to the courts, and asked why Kenya had adopted the spirit of ILO Convention No.87 on the

Freedom of Association and protection of the right to organize, but not incorporated its provisions into the law.

61. Mr. MARTYNOV questioned the cautious approach adopted by the Government, which was “exploring ways of including such groups [domestic workers, workers in the Export Processing Zones (EPZs) and workers in the informal sector] within the provisions of the Country’s labour laws” (para. 62 of the Report), and enquired how it meant to proceed. He asked why the Export Processing Zones were not required to apply health and safety standards at work, and what the Government would do to remedy that situation.

62. The CHAIRPERSON, speaking as a member of the Committee, noted that the right to strike did exist in Kenya, but that unfortunately under conditions so severe as to be prohibitory. Those conditions seemed, moreover, to be contrary to the provisions of article 8 of the Covenant and of ILO Conventions on the subject.

The meeting rose at 6 p.m.