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COMMITTEE ON ECONOMIC, SOCIAL AND CULTURAL RIGHTS

Thirtieth session

SUMMARY RECORD OF THE 8th MEETING*

Held at the Palais des Nations, Geneva,
on Thursday, 8 May 2003, at 3 p.m.

Chairperson: Ms. BONOAN-DANDAN

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* No summary record was issued for the 7th meeting.

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The meeting was called to order at 3.10 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 Brazil (E/1990/5/Add.53; HRI/CORE/Add.53; E/C.12/Q/BRA/1)

1. At the invitation of the Chairperson, the members of the delegation of Brazil took places at the Committee table.
2. Mr. PEDRO (Brazil) said that the new President, Luis Inácio Lula da Silva, had constantly reaffirmed his commitment to the rights enshrined in the Covenant, and that the Government considered it to be of the utmost importance to hold a constructive dialogue with the Committee. In particular, he emphasized the importance accorded by the new Administration to the right to food.
3. In drawing up the initial report, his Government had pledged to take into account the views of civil society in general and NGOs in particular. It had made an effort to ensure a maximum of frankness and transparency by describing shortcomings, while at the same time presenting positive aspects in the area of economic, social and cultural rights. The Government considered the preparation of the report to be a difficult, time-consuming task that involved the collection of information on a wide range of rights from a large number of sources. The report was nonetheless a tool that effectively served to mobilize society.
4. It had been decided not to make written replies to the list of issues (E/C.12/Q/BRA/1) because of the recent change of administration and the likelihood that the Committee would find it most useful to receive up-to-date information directly from the delegation. He apologized for any inconvenience that might cause.
5. Since the submission of the initial report there had been a number of developments relating to economic, social and cultural rights, including in particular the adoption of the Zero Hunger Programme and the establishment of a Ministry of Cities and of a Special Secretariat for the Promotion of Racial Equality, the latter being headed by a woman of African descent. The Government acknowledged the existence of racism in Brazil and attached great importance to combating it. In 2002, a Secretary for the Rights of Women had been appointed, with the rank of Minister of State. Brazil was among the countries that had extended standing invitations to the thematic mechanisms of human rights bodies, including the Commission on Human Rights. In 2003, it was to host visits by three special rapporteurs and a delegation from the Inter-American Commission on Human Rights. The State party had recognized the competence of the Committee on the Elimination of Racial Discrimination to hear complaints lodged by individuals, and the executive branch had called upon Congress to take similar action in respect

of the Convention against Torture. The ILO Indigenous and Tribal Peoples Convention (No. 169) had been ratified, in large part thanks to pressure by civil society. The recent appointment to the Supreme Court of Joaquim Benedito Barbosa Gomes, a prominent figure in the field of human rights, marked the first time an Afro-Brazilian had been appointed to that Court.

6. The concluding observations issued by the Committee were a very useful tool that would undoubtedly be of assistance to the Government as it worked for the promotion and protection of human rights.

7. The CHAIRPERSON, noting that Brazil had supported a resolution containing instructions for the working group on the draft optional protocol during the recent session of the Commission on Human Rights, expressed the Committee's thanks for its position.

8. The new Secretary of State for Human Rights, Mr. Nilmário Miranda, had appeared before the Committee two years earlier in his capacity as a representative of an NGO and had presented an extensive alternative report. He had written to apologize for his inability to attend the current meeting.

9. The lack of written replies to the list of issues was a major obstacle to the consideration of the report. The delegation was therefore invited to reply concisely to the questions on the list of issues, and subsequently to answer oral questions by Committee members.

10. Mr. PEDRO (Brazil) said that it was his Government's intention to submit written replies to the questions on the list of issues within a few weeks. Turning to question 1 on the list, he said that the plight of both Quilombos and Gypsies had been raised as a matter of concern by civil society and NGOs during the World Conference against Racism, Racial Discrimination, Xenophobia and Related Forms of Intolerance, and had since been the subject of increased attention by the Government. Quilombos were direct descendants of African slaves who maintained a specific tradition, and the Government was committed to protecting their way of life, in particular by defending their land rights against large landowners and corporations. The Quilombo population was estimated at about 100,000, and they resided in approximately 1,000 communities, 24 of which had so far been granted special status. The exact number of Gypsies was unknown, but had been estimated at 600 to 1,000. Defending their rights was a sensitive matter, as it involved the registration of their children and the issuance of birth certificates, and at the same time the protection of their culture.

11. Illiteracy, referred to in question 2, was more prevalent among the population over the age of 40. Some 97 per cent of the population had access to basic education, but efforts were required to encourage school attendance. For example, the Government was working to eliminate elements of racial discrimination that prompted children of African descent to leave school. There were also general programmes to combat illiteracy. In the past 10 years the illiteracy rate had fallen, but there were still some 15 million people affected.

12. On question 3 he said the poverty line was being redefined by an ad hoc commission so as to ensure that it more closely reflected reality. In 1999, it had been estimated that one third of the population was poor. There was a dramatic and regrettable link between poverty and racism. Poverty had a direct impact on education and particularly affected children. On the other hand, there was no obvious correlation between poverty levels and gender. As part of its efforts to combat poverty, the new Government had established the Ministry of Cities and had consolidated a number of social programmes that had previously lacked coherence and coordination. The first task facing the new Administration consisted in taking stock of poverty reduction measures so as to determine priorities for action.

13. The problem of unbalanced income distribution, the subject of question 4, demanded a strong political will for fundamental change, as the issue involved questions of land tenure and impunity, and would be difficult to address because of the close link with the country's structure and history. The Government was aware of the very serious need for measures to improve the distribution of income.

14. Methods of protecting the right of indigenous peoples to benefit from profits gained from the exploitation of their ancestral lands (question 5) were under discussion both domestically and at the international level. Brazilian law, including constitutional provisions, did impose certain limits on the exploitation of such lands. There had been no cases where the provisions of the Covenant had been invoked directly before the courts in the past five years (question 6). While it was technically feasible to do so, there was a general lack of awareness of that possibility. On the other hand, the Council for the Defence of the Rights of Human Beings, while not a judicial body, had recently begun legal action in support of the right to health, in particular in the capital. As to practical compliance with the obligations under the Covenant (question 7), while there were formidable problems in the realization of economic, social and cultural rights, the State had a well-developed body of law and various mechanisms to deal with them. It had established a Special Secretariat for that purpose, and there were a number of projects aimed at ensuring compliance, including many that were implemented through international cooperation. To improve the effectiveness of the law, the Government and civil society were trying to bring domestic legislation into line with the State's international obligations.

15. On question 8 he said there was currently a proposal before Congress to convert the Council for the Defence of the Rights of Human Beings into an entirely independent body capable of making recommendations and raising political issues, with sufficient resources to act effectively on its own initiative. The Government strongly supported the idea of the optional protocol (question 9), and had made that position clear during the most recent session of the Commission on Human Rights. It would do its utmost to promote its adoption. In recent years, school curricula had been updated to strengthen the teaching of civics (question 10), and measures were now under way to overhaul textbooks by eliminating racial bias and by highlighting positive aspects of the culture and history of certain racial and ethnic groups. Similar efforts were under consideration in order to sensitize the civilian and military police forces to racial issues. Many human rights education programmes were included in the national human rights plan.

16. Mr. PILLAY, observing that the delegation seemed to have underestimated the degree of illiteracy in the country, said that it did appear aware of the problems in the distribution of wealth, and he wondered why agrarian reform had not been speeded up. He invited comments on the existing impunity for human rights violations, which meant that the institutions in place did not offer adequate protection. The judicial system in particular seemed negligent, biased and very conservative.

17. He had been pleased to learn that the Covenant had been constitutionally recognized and that a federal public prosecutor and special rapporteurs on the various economic, social and cultural rights had been appointed. Yet the system in place did not seem to ensure the enforcement of such rights, and the people did not seem to use the courts in order to obtain redress. He also wondered whether the Government took its Covenant obligations into account when negotiating the terms of its huge debt; whether the national plan integrated Covenant principles into government policies; and whether adequate funds had been allocated to ensure that programme benefits reached the disadvantaged.

18. Mr. RIEDEL said he had been heartened to hear that legislation was being drafted for the establishment of an independent national human rights institution in keeping with the Principles relating to the status and functioning of national institutions for protection and promotion of human rights (Paris Principles). Brazil had also set up a very interesting system of special rapporteurs on the rights to work, education, food, the environment, housing and health, a system modelled on that of the Commission on Human Rights. He would like to know how independent their powers of investigation were, and whether the Government alone or NGOs as well determined what would be investigated.

19. Regarding Brazil's position on a draft optional protocol to the Covenant, he asked whether it was in favour of a broad or a limited mandate, and envisaged individual as well as collective complaints.

20. Mr. MALINVERNI asked, in view of the huge social, urban/rural and State/State disparities in Brazil, whether the new Government had taken any steps to spread wealth more evenly by taxing the richest States more heavily in order to give more federal aid to the poorest States. What results, if any, had been achieved?

21. Mr. SADI asked whether the Covenant figured in the Government's policy formulation - for example, in the negotiations with IMF, and how aware Brazilians were of their rights under the Covenant and the obligations it imposed. The Committee had high expectations of the new Government. However, to be told that the Government was trying was not enough, given the magnitude of the inherited problems. An effective plan of action was needed.

22. Mr. TIRADO MEJIA said that he had been disappointed not to receive even interim replies to the list of issues from the new Government, providing updated statistics. He would like clarification as to how Brazil's federal structure affected the realization of human rights, how federal/State legal and judicial obligations were shared, and how much autonomy the States enjoyed.

23. Mr. TEXIER said that the new Government had an enormous responsibility and its inauguration had aroused great hopes the world over. The question was how the Government could manage in one term to strengthen the observance of economic, social and cultural rights and at the same time reduce hunger; and how it could reconcile its ambitious programme with the international constraints imposed on it by IMF. He recalled the Committee's position that the Covenant should be borne in mind when States negotiated structural adjustment terms. The system of special rapporteurs on economic, social and cultural rights seemed very promising and it would be interesting to know what plans there were to ensure that those civilian officials would coordinate with each other and with the Government in the coming years.

24. Mr. PEDRO (Brazil) said that Brazilians had high expectations of the new Government. There was now a very significant sense of inclusion among the whole population. Although the agrarian reform had been rightly criticized, especially by civil society organizations, as proceeding too slowly, it should be noted that close to 600,000 families had been settled on land between 1995 and 2002. President Lula da Silva was absolutely committed to the reform, and improvements were already being made in the Land Bank and other mechanisms that had not been operating well. The thinking now was that it was not enough to give people land but that they must also be given the means for a decent living.

25. It was true that the inaction of judges has been partly responsible for the existing impunity but new judges were regularly being appointed and, as a branch of government, the judiciary was fully independent. There was not much familiarity with the Covenant in Brazil and, as in other developing countries, the power structure as a whole must be induced to give greater attention to the economic, social and cultural rights of the poor. The application of an optional protocol to the Covenant would help give impetus to renewed thinking on the matter.

26. He personally did not think that IMF was receptive to human rights mainstreaming, but one must hope that that would happen eventually. However, it was possible to work through other institutions like the World Bank and a number of Brazilian bodies so as to make observance of human rights one of the conditions for the distribution of wealth. In the meantime, his Government was doing everything it could to mobilize development agencies in support of international initiatives that promoted economic, social and cultural rights.

27. As to human rights monitoring mechanisms in Brazil, one was, of course, the special rapporteur system; the various human rights councils, in which NGOs participated on an equal footing, were another. Such bodies were mandated to work independently, as was the national Council for the Defence of the Rights of Human Beings. Within the Government itself, there was the Secretariat of State for Human Rights, a Ministry of Foreign Affairs department of human rights and a Congressional human rights committee, which worked independently but reported directly to the Government. The only bodies completely independent of the Government were the civil society organizations.

28. Brazil needed to devise a more effective transfer of resources from the Federal Government to the States, a question now being widely discussed in society. The important point was that the authorities at all levels must represent the wishes of the people in implementing policies.

29. His Government was very much in favour of giving the broadest possible mandate to the Committee under the proposed draft optional protocol and allowing it to receive both individual and group complaints. It would welcome the advice it received from the Committee in that process.

30. Mr. GHISLENI (Brazil) said that the Government favoured beginning speedy negotiations on a draft optional protocol to the Covenant on the basis of the draft text formulated by the Committee.

31. Mr. PEDRO (Brazil) said that regional disparities were an unfortunate fact, but priority was now being given to eliminating them. The 1998 Constitution provided for a transfer of federal funding to the States and sought to decentralize the process, which aimed to involve the communities themselves. The funds to be transferred were generated by taxation, and the President had recently held a number of consultations on tax reform. The distribution of wealth to the poorest States (traditionally in the north-east) was crucial to the elimination of injustice and racism. Trying was indeed not enough, but - with the current President as a living symbol - Brazil needed to continue trying to implement all human rights as a continuum, although for the moment priority was being given to economic, cultural and social rights.

32. It had to be said that the population as a whole was not really very aware of the nature of economic, social and cultural rights, and a good deal of work remained to be done before those rights would be enforceable. However, his Government attached the utmost importance to their realization, as witnessed by its widely praised Zero Hunger Programme. The Government's task was complicated by the need to operate within the constraints set by IMF; obviously, it would need to negotiate with IMF, but it also needed to minimize the negative repercussions of financial constraints on its programmes. That was one of the reasons why the Government was about to launch an appeal to set up a worldwide fund to combat poverty.

33. The Government took the recommendations of national rapporteurs and initiatives by civil society very seriously indeed. The national rapporteurs were all highly independent experts and were often critical of government policy. He believed that the Government had made considerable headway in meeting its international commitments in the field of economic, social and cultural rights, but much remained to be done.

34. The CHAIRPERSON invited the Brazilian delegation to reply to questions 11 to 14 of the list of issues.

35. Mr. PEDRO, replying to question 11, acknowledged that Brazil had a mixed record in dealing with the sustainable management of the resources of the Amazon region. It was difficult to strike a fair balance between the needs of the population and the environmental impact of exploiting natural resources. His Government was using modern methods to monitor the environmental impact of human activity while focusing on ways to ensure that traditional communities would be able to continue enjoying the use of natural resources.

36. In reply to question 12, he said that Brazil had stepped up its efforts to prevent all forms of discrimination as part of its preparations for the World Conference against Racism held in September 2001. The Government had introduced a number of affirmative-action programmes

and was looking into ways to improve the relevant legislation and to raise awareness of the problems posed by discrimination. He offered to send the Committee a copy of Brazil's forthcoming periodic report to the Committee on the Elimination of Racial Discrimination, which would contain more details about action being taken by the Government. It was true that women were still under-represented in positions of authority, but the Government was determined to improve that situation, as shown by the appointment of a number of women to posts of ministerial rank.

37. On the question of discrimination against indigenous people, he pointed out that their rights were guaranteed under the Constitution and land was set aside for them, but the issues raised were complex, especially when the people concerned were reluctant to move to new areas that had been designated for them. With regard to discrimination against Afro-Brazilians in the areas of employment, education and health care, he said that there were various programmes to combat discrimination in the workplace and in education and a study had been undertaken on the impact of certain diseases that were widespread among Afro-Brazilians. In addition, the National Council to Combat Discrimination had been set up to comply with Brazil's pledges at the World Conference against Racism. More detailed information would be available on the situation of the Quilombos, the direct descendants of slaves, in the report due to be submitted shortly to the Committee on the Elimination of Racial Discrimination.

38. The problem of gypsies' access to birth or death registries was complicated by the fact that they led a nomadic existence and did not see the need for registration, which was not part of their culture. Indeed, the main issue was how to reconcile the gypsies' culture and traditions with the law of the land; for instance, a gypsy woman who committed adultery was often expelled from the community and lost her rights vis-à-vis her children. The Government was trying to tread lightly in its approach to that kind of problem. As far as discrimination against disabled persons was concerned, he acknowledged that much work remained to be done before comprehensive information could be provided on that subject.

39. On question 13 relating to equality between men and women, he said that some progress had been made but, again, much remained to be done. More detailed information on the subject would be contained in Brazil's forthcoming report to the Committee on the Elimination of Discrimination against Women, a copy of which he would be glad to send to the Committee if it so desired.

40. With regard to the reports of discrimination against homosexuals (question 14) he pointed out that Brazil had taken the initiative of co-sponsoring a draft resolution on human rights and sexual orientation in the Commission on Human Rights at its fifty-ninth session. Unfortunately, the draft had met with considerable resistance and the Commission had taken no decision on it. He believed that the issue should be on the Commission's agenda and hoped that the Committee would support efforts to raise it at the Commission's next session. In Brazil, progress had been made on several fronts in efforts to prevent discrimination based on a person's sexual orientation: a procedure existed for lodging complaints about discriminatory treatment with the Department of Human Rights; special courses had been organized to raise awareness among the police; some States had introduced legislation to prevent discrimination based on sexual orientation; and in at least one case a court had upheld the right of homosexuals to receive a pension when their partner died. However, further progress would only be possible with the

support of society at large: for example, the outright criminalization of discrimination on grounds of sexual orientation could only be achieved if the Brazilian people were persuaded it was necessary.

41. The CHAIRPERSON said that references to forthcoming reports to be submitted to other treaty bodies were unsatisfactory as answers to the Committee's very specific questions, which might, or might not, be covered in the reports to the other committees mentioned. Those reports would not be available to the Committee before it adopted its concluding observations, for which it needed detailed information on, for example, the impact of environmental policies on traditional populations or encroachment on the land of indigenous populations.

42. Mr. PILLAY agreed with the Chairperson's comments, adding that the Committee's main concern was to find out in what way the new Brazilian Government - of which many people had high expectations - as doing things differently from its predecessor in relation to the implementation of economic, social and cultural rights.

43. Mr. TIRADO MEJIA said that he would like to have more detailed information on government policy vis-à-vis the sustainable management of the resources of the Amazon basin and the impact of the policy on the traditional communities concerned.

44. Ms. IYER said that indigenous people, despite their constitutional right to land, were still being exploited. She would like to know if they were given new land or financial compensation when their land was taken from them either legally or illegally, through intimidation or requisition. She would also welcome more detailed information on any schemes to share the profits of mining concessions in indigenous people's ancestral lands with the indigenous people themselves.

45. Ms. BARAHONA RIERA said that she would like more information on the body responsible for overseeing the demarcation of land for indigenous people, as it appeared that those people still suffered from discrimination in that respect. With regard to equality between men and women, she asked for details of the programmes of some of the new institutions set up by the Government, such as the Council to Combat Discrimination, the Ministry for Women and the Department for the Promotion of Racial Equality. She also wished to know what specific measures the Government was taking to alleviate poverty among women, particularly in rural areas. What specific programmes did the new Ministry for Women have to combat the double discrimination suffered by Afro-Brazilian or indigenous women? And what legislative changes was the Government proposing to promote equality?

46. Mr. MARCHAN ROMERO commended the State party for the quality of its written report, although he regretted that it had failed to provide written answers to the questions in the Committee's list of issues. Recalling that, under article 2, paragraph 1, of the Covenant, States parties undertook to take steps to achieve progressively the full realization of economic, social and cultural rights by all appropriate means, he noted that those rights had not yet been fully incorporated into domestic legislation; a large number of institutions had been set up to give effect to those rights, but there was no central authority with overall responsibility for doing so.

One example was the Council for the Defence of the Rights of Human Beings, which appeared to have a range of functions but no specific competence in relation to implementation of the Covenant.

47. Referring to article 2, paragraph 2, of the Covenant, he wondered what instruments the State party used to ascertain the ethnic make-up of the country and how it ensured that any statistics produced were used, not to exacerbate racism, but to improve the situation. He asked whether Quilombos (report, para. 824) was the term applied to that population group by the group itself or by the State party. If “official” labels did not coincide with the identities population groups applied to themselves, it was difficult to get an accurate picture of the ethnic make-up of the overall population.

48. Mr. PEDRO (Brazil) said he had not intended to suggest that Brazil’s reports to the Committee on the Elimination of Racial Discrimination and the Committee on the Elimination of Discrimination against Women would be no more than supplements to its report to the Committee on Economic, Social and Cultural Rights.

49. In order to enable his delegation to do justice to Committee members’ questions on indigenous populations and gender equality, he wondered whether it would be possible to postpone his replies until the meeting the following day.

50. The CHAIRPERSON said that, if there was no objection, she would take it that the Committee agreed to that suggestion.

51. It was so decided.

52. Mr. PEDRO (Brazil) said Quilombos was an African term used by Quilombos themselves in order to underline their African heritage and had positive, rather than negative, connotations.

53. Statistics were a tool used as a basis for policy formulation. They made it possible to discern the various categories more clearly and thus appreciate the extent of problems. At one time a myth of racial democracy had been prevalent in Brazil but, thanks to research by the Institute for Applied Economic Research, among others, that myth had been exploded. Other studies had shown how racism affected women in particular: poverty, for example, had both gender and colour - its gender was feminine and its colour was black.

54. The Council for the Defence of the Rights of Human Beings was able to work on economic, social and cultural rights. There was currently a wide-ranging debate in Brazil on the extension of the Council’s competence. Its role should be to mainstream public policies. However, it also needed to work more closely with law-enforcement agencies.

55. The incorporation of economic, social and cultural rights into domestic law was well under way, and gradually the Committee’s conclusions would provide an increasingly solid basis for progress towards the enforceability of those rights. The procedure was less flexible in Brazil

than in some other countries and so would take time. In the meantime, it was necessary to raise awareness, not only within the judiciary and the legislature, but also among those sectors of society, particularly the most vulnerable groups, that still did not realize they had rights. A more holistic approach was required.

56. There were some specific human rights mechanisms, such as the new Special Secretariat for the Promotion of Racial Equality, but in his view the main issue was how to ensure that such institutions would influence public policy.

57. Mr. KOLOSOV said it would be helpful if the delegation of Brazil, in its replies at the following meeting, would concentrate not so much on existing legislation and administrative and judicial measures, of which the Committee was already aware, but rather on whether the measures were being implemented, and to what extent. The Committee wished to make reasonable and practical recommendations that were based on the actual situation in Brazil.

58. The CHAIRPERSON invited the delegation to reply to questions 15 to 17 of the list of issues.

59. Mr. PEDRO (Brazil), referring to question 15, said slavery and slavery-like practices still existed in Brazil, but the eradication of slave labour was a high priority for the new Government. Several thousands of people had been freed from conditions of slavery in a campaign launched some years previously, and compensation had been paid. That was no easy task, however, owing to the geographical remoteness of some of the areas involved, the difficulty of proving that landowners kept people in such conditions and the fact that the fines imposed were not heavy enough to act as a deterrent.

60. With regard to item 16, he said the “severe” measures in question had basically been a monetary austerity policy, imposed with the aim of stabilizing the economy. Those worst affected had been the least-educated and the youngest workers in the labour market: 15- to 17-year-olds had suffered a 35.81 per cent decline in employment and, according to one survey of six major metropolitan areas, workers with a maximum of four years’ education had experienced a decline in employment of 19.78 per cent. The impact had not been as great on those with 11 years of education. The data also showed that the impact had been greater on women than on men.

61. Mr. TEXIER said he was convinced of the Government’s determination to eliminate forced labour and it was true that progress had been made. However, since the level of fines was clearly not dissuasive, he wondered what penal measures were envisaged.

62. The Committee had a variety of figures on the unemployment rate and he would appreciate some concrete statistics showing the real situation, including a breakdown by formal and informal sectors. He wondered whether there were any plans to progressively reduce the proportion of informal to formal employment. He would appreciate having a better idea of the Government’s plans to deal with unemployment in general.

63. Mr. TIRADO MEJIA requested clarification of whether forced labour or slavery was in fact an offence under the Penal Code; if so, he would welcome specific information on any relevant court cases.

64. Mr. PEDRO (Brazil) said slavery was indeed a criminal offence in Brazil: the problem was what penalty to impose and how to enforce the law.

65. Mr. MARCHAN ROMERO said that, according to the information provided by the Government, 48 per cent of the labour force were employed in the informal sector. Those figures dated from 1991 and he wondered whether more up-to-date information could be provided in order to help the Committee to make specific recommendations.

The meeting rose at 6 p.m.