



# International Convention on the Elimination of All Forms of Racial Discrimination

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## Committee on the Elimination of Racial Discrimination

### Eighty-third session

#### Summary record of the 2238th meeting

Held at the Palais Wilson, Geneva, on Wednesday, 14 August 2013, at 10 a.m.

*Chairperson:* Mr. Avtonomov

*later:* Mr. Cali Tzay (Vice-Chairperson)

*later:* Mr. Avtonomov (Chairperson)

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Consideration of reports, comments and information submitted by States parties under article 9 of the Convention (*continued*)

*Combined nineteenth to twenty-first periodic reports of Chile* (continued)

*The meeting was called to order at 10.10 a.m.*

### Consideration of reports, comments and information submitted by States parties under article 9 of the Convention (*continued*)

*Combined nineteenth to twenty-first periodic reports of Chile* (continued) (CERD/C/CHL/19-21 and CERD/C/CHL/Q/19-21)

*At the invitation of the Chairperson, the delegation of Chile took places at the Committee table.*

**Mr. Kemal** said that the previous day's exchange with civil society organizations, who had spoken freely about their concerns, demonstrated that Chile had embraced democracy. The provision of Internet connections and radio bandwidth to indigenous groups would contribute to their empowerment. Special measures should be implemented to protect indigenous women from double discrimination and counter-terrorism laws should be applied as the exception rather than the rule in cases of violence. Special measures for the protection of indigenous languages should be implemented, making use of new technology. Finally, more resources should be provided for the education of indigenous people, especially in higher education.

**Mr. Diaconu**, noting that the State party's definition of discrimination referred only to arbitrary discrimination, requested information on acts that were not arbitrary but still discriminatory, as well as examples. Regarding article 4 of the Convention, he said that the report referred only to offences in the media and press, whereas the article in fact called for the criminalization of the dissemination of ideas of racial superiority and incitement to racial discrimination and violence. The law should therefore be amended. Chile seemed to be less developed than other Latin American countries in terms of the situation of indigenous people and it was important to bridge that gap. He noted with satisfaction the amendment to the Anti-Terrorist Act, but in practice the old law continued to be applied. A judicial decision on whether an offence constituted terrorism should be taken far earlier in proceedings; currently, the decision was made after police and prosecution activities had been carried out on the assumption that it did. Since the previous law was currently considered unfair, he wished to know whether the convictions and sentences that had been handed down would be reviewed. Issues regarding indigenous land and consent had not yet been fully resolved; consideration and solutions were needed to comply with the requirements of the ILO Indigenous and Tribal Peoples Convention, 1989 (No. 169). He asked why the United Nations Declaration on the Rights of Indigenous Peoples had not been mentioned in the report, since it contained important norms. Was it accepted by the State party?

**Ms. January-Bardill** said that making discrimination appear to be arbitrary relieved perpetrators of responsibility. Institutions and cultures could be discriminatory, regardless of intent, because they possessed institutional power that could result in discrimination. She suggested that the State party examine the matter and heed the Committee's suggestion that the definition of discrimination be aligned with that of the Convention. She requested that the next report contain information regarding the participation of indigenous peoples and Afro-Chileans in political parties and government. There were complaints from indigenous groups in several countries about threats to their ancestral lands by the extractive industry. Maintaining a balance between mining as a source of revenue and the defence of indigenous rights was a challenge, but the extent of the extractive industry's effect on people's lives was so great that it was necessary to examine how negative implications could be avoided, especially among indigenous groups. The United Nations Global Compact, a strategic platform and practical framework for companies and governments committed to responsible business practices, might be useful and Chile should endeavour to introduce sustainable mining practices.

**The Chairperson** said that the amendment to article 8 concerned the procedures for financing the Committee; the change did not

imply an increase in quotas and was in line with normal procedures and similar to that of other treaty bodies.

*Mr. Calí Tzay (Vice-Chairperson) took the Chair.*

**Mr. Garretón** (Chile) said that the National Human Rights Institute was financed by the State and consisted of 11 members, 2 of whom were appointed by the President of the Republic, which raised questions regarding its independence. Among its functions were an annual report on human rights in the country, the presentation of information on cases of torture or crimes against humanity and the provision of recommendations to the Government. The Anti-Discrimination Act was not fully satisfactory as it contained faults and contradictions. Indigenous people were not recognized under the Constitution, despite numerous draft bills, because some members of the Government continued to oppose their recognition. Mr. Diaconu's analysis of the Anti-Terrorist Act was very accurate. The Act had led to many accusations and few sentences because the Public Prosecutor often wrongly invoked it in order to use selected provisions, for example the calling of anonymous witnesses to testify against the accused. The Constitution adopted under Pinochet provided that pretrial release must be unanimously granted by a court, meaning that the minority always prevailed. The Mapuche people suffered procedural abuses on a daily basis. He had conducted interviews with Mapuche prisoners that had revealed a high number of Mapuche individuals accused of attempted homicide. There had been cases of Mapuche people firing weapons into the air to demonstrate their discontent and subsequently being accused of attempted homicide; such decisions increased discontent among the indigenous community. While Mapuche groups had been known to burn buildings and vehicles to demonstrate their grievances, they always ensured that no one was harmed and such action could not be classed as terrorism.

There was a range of difficulties regarding the education and participation of the Mapuche people, including the imposition of obstacles by the Government on community radio stations, which was an important method of communication for Mapuche communities. The Mapuche people were often viewed as terrorists, but they did not have access to their ancestral lands or opportunities for development, and their culture was not recognized. Some migrants were detained for long periods while their status was determined and that detention was arbitrary according to the working methods of the Working Group on Arbitrary Detention. However no complaint had been submitted.

**Mr. Baranda Ferrán** (Chile) said that the delegation had provided documents containing socioeconomic statistics and background information on the Government's commitment to the recognition of the Mapuche people. Education and training programmes existed at all levels. However, they sometimes lacked funding, accessibility and reach. The delegation had noted the concerns expressed by Committee members regarding the report produced by the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism after his visit to the country; however, he had not reflected Chile's recent progress. Chile was committed to ongoing cooperation with treaty bodies.

*Mr. Avtonomov (Chairperson) resumed the Chair.*

**Mr. Urquizar** (Chile) said that one of the objectives of the Anti-Discrimination Act was to establish a legal mechanism that ensured the prevalence of the rule of law in cases of arbitrary discrimination. To date, 29 cases had been presented relating to the Act. Among the cases that had concluded, 25 per cent had found in favour of the complainant. Arbitrary discrimination was defined as occurring when distinction, expulsion or restriction was founded on one of numerous grounds, including race, belief and sexual orientation. In those cases, the burden of proof lay with the defendant and any type of evidence could be submitted. The concept of arbitrary discrimination existed in the Constitution, which stated that no law or authority could differentiate arbitrarily. Non-arbitrary discrimination, which was defined as distinguishing between one thing and another, was not punished. For example, if a doctor and lawyer both applied for the position of lawyer in a public body, the exclusion of the doctor would not be arbitrary. However, if two lawyers applied and one was excluded because he or she was a member of an indigenous community, it would be unacceptable and prohibited by law. Regarding article 4 of the Convention, offences linked to beliefs or political opinion were dealt with by the Anti-Discrimination Act, whose norms amended other legislation relating to the actions of civil servants and municipal officials involving attacks on the dignity of a person and sexual harassment. Finally, there was a national television council that penalized television channels in cases of incitement to racial discrimination.

**Ms. Jaraquemada** (Chile) said that the law imposed penalties for sanctions for incitement to hatred or racism via social communication media. In August 2010, a bill was proposed that incorporated incitement to hatred in the Criminal Code. During discussion of the bill, civil society organizations had been able to voice their opinions and reference had been made to international treaties.

**Ms. Badillia** (Chile) said that, in 2012, over 40 courses had been run to train State officials on the new Anti-Discrimination Act. Since 2010, over 30 training courses had been run on the provisions of the ILO Indigenous and Tribal Peoples Convention, in addition to other training courses in indigenous issues aimed at meeting the needs of the indigenous population. Police and border officials had received training in the new refugee legislation and the law criminalizing human trafficking. Human rights training for the police currently placed particular emphasis on the ILO Indigenous and Tribal Peoples Convention. The 2012 bill that would establish the new ministry of justice and human rights provided for an under-secretariat for human rights, which would be responsible for mainstreaming human rights throughout the government structure. To that end, in cooperation with civil society, it would develop a human rights action plan with measurable goals and specific indicators.

**Mr. de Feudis** (Chile) said that since 2000, the criminal justice system had enshrined a wide range of constitutional guarantees that protected the fundamental rights of all persons involved in criminal proceedings. The reform of criminal procedure had gradually been implemented throughout the country, beginning with the Araucanía region. Judicial proceedings that could affect suspects' fundamental rights were overseen from the outset by a judge responsible for procedural safeguards. All cases of imprisonment were reviewed and preventive detention in cases in which the Anti-Terrorist Act was invoked was monitored particularly carefully. The new criminal justice system applied to all cases, including those involving terrorism. The 2010 revision of the anti-terrorist legislation had introduced additional safeguards to guarantee due process and ensure the authenticity of witness statements, in line with the good practices drawn up by the United Nations Office on Drugs and Crime. Anti-terrorist legislation had first been introduced in 1984, but

had undergone significant revision on three occasions since the return to democracy, which had brought it into line with the reformed criminal justice system and with the international human rights instruments Chile had ratified. The Anti-Terrorist Act was not invoked in order to investigate or target specific groups of individuals. The statement made in July 2013 by the United Nations Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism, in the wake of his visit, failed to reflect the fact that the Anti-Terrorist Act contained objective criteria and requirements for the principle of legality in criminal proceedings, similar to the requirements contained in the legislation of other Latin American States and to that of the European Union. The Anti-Terrorist Act applied to the letter the 10 areas of best practices in countering terrorism identified by the former United Nations Special Rapporteur (A/HRC/16/51). The Act had been invoked against individual perpetrators of terrorist acts only, but not in order to criminalize legitimate protests or demands.

**Mr. Palavecino** (Chile) said that the carabineros received continuous human rights training, which was delivered in cooperation with civil society and several international organizations. There were over 2,700 members of the Mapuche people among the ranks of the carabineros, and several other ethnic minorities were also represented on that force. Carabineros did not conduct searches unless they were ordered to do so by the courts, and did not carry out ex officio action on Mapuche territory. In September 2012, the human rights department of the carabineros had organized a round table in Araucanía to discuss differentiated protocols for its work with the Mapuche people. The carabineros had also set up several initiatives to respond to the particular needs of the Mapuche people in Araucanía, staffed by carabineros with particular knowledge of the Mapuche community.

**Ms. Cabellos** (Chile) said that under domestic legislation all persons had employment rights, regardless of their migration status within the country. Several ministries as well as experts and civil society representatives had been consulted on the migration and aliens bill before it had begun the legislative process in June 2013. The bill, which had incorporated many of the amendments proposed during those consultations, was currently before Congress. The legislation currently in force, which dated back to 1975, would be brought into line with the international instruments Chile had ratified. The bill, inter alia, included specific reference to the right to family reunification, gave dependents the right to work, abolished Subject to Contract Visas, provided for diplomatic asylum, introduced a national migration policy and decriminalized clandestine entry and entry with forged documents. The bill also provided that transient foreigners whose children could not acquire any other nationality could request Chilean nationality for them, and that unaccompanied minors could not be deported. Under the bill, refugees were given special protection status and applicants for refugee status and their family members were given a residence visa for eight months, which could be renewed. They had the right to assistance, including accommodation, food, health care and employment. Under MERCOSUR agreements, immigrants were granted residence permits provided they were nationals of a MERCOSUR country and did not have a criminal record. The legislation criminalizing human trafficking and smuggling provided for the protection of victims and gave them the right to a residence permit. A national action plan to combat those crimes was currently being drawn up in cooperation with civil society.

**Ms. Jaraquemada** (Chile) said that there were some 3,000 people of African descent in Chile, most of whom lived in the region of Arica. A survey was currently being conducted, the results of which would form the basis for a policy to improve the situation of that community. A dedicated office had been set up in 2010 in the municipality of Arica to respond to the needs of the community, which had established links with similar units in Brazil and Uruguay. The Ministry of Foreign Affairs had conducted a seminar in 2011 on the International Year for People of African Descent and had participated in a regional meeting in January 2013 on a programme to support people of African descent and their cultures. The bill on the recognition of the Afro-descendent ethnic group in Chile had been pending since 2009.

**Mr. Crisóstomo** (Chile) said that some 60 NGO representatives, indigenous leaders, members of the Mapuche community working in traditional medicine, municipal bodies working to eliminate discrimination and organizations of persons with disabilities had participated in the seminar held in August 2012 on the preparation of the periodic report. The seminar had given the Government the opportunity to hear criticism of its efforts to date and to appreciate the work that remained to be accomplished in terms of legislative amendments and awareness-raising to eliminate racial discrimination. The core document had been finalized and would be submitted in the near future.

**Ms. Badilla** (Chile) said that, while there had been a Mapuche Public Criminal Defender in Araucanía since 2003, the national ombudsman's office for indigenous peoples specializing in criminal matters had been set up in 2011 to address indigenous issues nationwide. It had assisted over 7,000 accused of indigenous origin in 2012, compared with 1,776 the previous year. It placed particular emphasis on the incorporation of international standards on the rights of indigenous peoples, especially the ILO Indigenous and Tribal Peoples Convention, 1989 (No. 169). Ombudsmen and other staff had been trained and were assisted by intercultural facilitators.

**Mr. Baranda Ferrán** (Chile) said that the Government had set up a dialogue with representatives of indigenous communities, which had resulted in a series of programmes to promote indigenous languages. In addition to the courses provided at the preschool and primary school levels, some 10,000 people had been taught indigenous languages in 2012 and another 10,000 were attending courses in 2013. The Government planned to extend its primary school indigenous language programme from four years to eight.

In order to protect indigenous communities from the detrimental effects of investment projects, the Government had introduced new regulations on environmental impact assessments. In the future, mining, energy and waste dump projects would not be approved without the prior consultation of indigenous communities that were affected by them.

The Government had not blamed members of the Mapuche community for the arson attack that had taken place near Carahue in the Araucanía region; it had submitted a complaint against whichever individuals proved to be responsible. The Government and the vast majority of Chilean society did not stigmatize the Mapuche people or any other indigenous community, and did not call them terrorists. In order to continue rebuilding indigenous communities' trust in the Government, it had engaged in a process of gradual cultural transformation, developing a strategy of genuine recognition and social dialogue with all the indigenous peoples, with the full support of the overwhelming majority of Chilean society. There were many forums for social dialogue between the Government and indigenous peoples, including the National Indigenous Development Corporation and the Easter Island Development Commission.

Furthermore, the Government provided funding to indigenous communities to enable them to convene their own meetings and receive advice from individuals they considered trustworthy. It was aware of the need to continue those efforts and was committed to providing more resources, support and recognition for the nation's indigenous peoples. While the constitutional recognition of the indigenous peoples of Chile was a priority for the Government, at the request of many indigenous representatives, a decision on that initiative had been postponed until the new mechanism for the consultation of indigenous peoples was in place.

In 2011 the Government had announced the start of consultations on the institutional recognition of indigenous people's status in Chile. However, numerous indigenous communities had called for the consultations to be halted on the grounds that they were not being held in accordance with the ILO Indigenous and Tribal Peoples Convention, 1989 (No. 169) and the recommendations of the United Nations Special Rapporteur on the rights of indigenous peoples. Supreme Decree 124 on consultations with indigenous peoples had subsequently been repealed, and representatives of indigenous peoples had put forth counterproposals, after which consultations had resumed.

Regarding participation in political life, he said that indigenous people were free to run for political office; that 30 of the country's mayors, or 8.7 per cent of the total, and 138 members of municipal councils were of indigenous origin; and that indigenous peoples were represented in various public decision-making bodies.

Turning to land-related issues, he said that the list of indigenous communities waiting for land had shortened and that it was hoped that within five years all claims for ancestral lands would be resolved. When acquiring land for that purpose, the Government made an effort to buy land near where the indigenous communities concerned were living so as to avoid uprooting them. He cited measures to protect natural resources relevant to indigenous communities, including a law establishing a maritime protected area for their benefit.

A plan to promote the development of communication media for indigenous communities, developed on the basis of article 16 of the United Nations Declaration on the Rights of Indigenous Peoples, was being piloted, and a law allotting additional radio frequencies to indigenous stations had been enacted. More than 400 community radio stations were operating, and funding had been allocated to establish 30 additional stations. His delegation would provide written replies to some other questions.

**Mr. Thornberry**, referring to Mr. Garreton's observations about the crime of attempted homicide, said that the *mens rea* requirement for classifying a crime as attempted homicide was traditionally stricter than for homicide itself. He asked whether that was the case in Chile. He also requested clarification regarding whether the cases mentioned had involved convictions for, or merely charges of, attempted homicide.

Recalling the Committee's general recommendation No. 32, he asked whether the State party considered arbitrary discrimination to include indirect discrimination. Doing so impelled a State to review apparently neutral laws and policies, including antiterrorist legislation, that might in practice harm some communities. He wished to know whether indigenous-language programmes in schools were bilingual throughout or began with monolingual indigenous-language instruction.

**Mr. Diaconu**, referring to an earlier mention of dissemination of racist ideas, said that such ideas could be disseminated by a variety of means other than the news media. It was important to ensure that national laws punished all such dissemination.

Citing information in the report of the National Human Rights Institute about violence perpetrated against children in schools, he said that in his view the mechanism of having judges decide whether such cases should be brought to trial was too unwieldy to ensure accountability. Similarly, recognition of the status of indigenous peoples could not wait until the constitutional change process ran its course – a speedier approach must be found.

**Mr. Calí Tzay** said that he would have appreciated answers to the questions he had asked at the previous meeting but hoped that the Committee would receive those answers before long in writing. He asked whether the State party was prepared to develop a specific policy or programme to address the problems created for Mapuche communities by the location of waste dumps on their lands. He requested information about any environmental impact assessments performed on existing dumps.

**Mr. Saidou** asked whether the National Human Rights Institute had actually ever initiated a legal proceeding of the type mentioned in paragraph 41 of the State party's report, whether the State party's legislation included provisions to combat discrimination in sport, and whether large corporations active in areas inhabited by indigenous communities practised corporate social responsibility.

**Mr. Ewonsan**, commending the State party for its expressed willingness to combat racial discrimination, urged it to adopt special measures to protect Afro-descendent people.

**Mr. Vázquez** emphasized that an overly broad definition of terrorism allowed prosecutors to invoke antiterrorist legislation in cases where it did not apply, and to thereby obtain procedural advantages that could have negative effects even if a defendant was ultimately convicted of ordinary crimes rather than terrorist acts.

**Mr. Retamal** (Chile), responding to questions about language education, said that the Chilean Government was energetically pursuing indigenous-language education and had made notable progress in revitalizing the use of such languages. Citing a bilingual approach used in Easter Island schools, he said that there were plans to extend the approach to other indigenous communities in Chile. The Government hoped to establish language academies for all the country's indigenous languages.

**Mr. Baranda Ferrán** (Chile), expressing his delegation's appreciation to all who had helped to bring about the interactive dialogue, said that his country was committed to honouring its international obligations. While his Government was making headway in reducing discrimination by changing social and cultural attitudes, much remained to be done. His delegation looked forward to receiving the Committee's recommendations, hoping that they would reflect the progress made by Chile in combating discrimination.

**Mr. de Gouttes** (Country Rapporteur), commending the State party for the quality and regularity of its periodic reports, said that the interactive dialogue during the meeting had been of high quality and that he had received a wealth of relevant information from the

State party, NGOs, United Nations bodies and other sources. The State party had made progress since the submission of the previous report, and the Committee looked forward to receiving updates on the numerous pieces of draft legislation currently being debated. He outlined the content of the Committee's concluding observations, which would be published shortly in official form.

*The meeting rose at 1.05 p.m.*