UNITED NATIONS

CCPR

International Covenant on Civil and Political Rights

Distr.
GENERAL

CCPR/C/SR.1734
17 February 2000

ORIGINAL: ENGLISH

HUMAN RIGHTS COMMITTEE

Sixty-fifth session

SUMMARY RECORD OF THE 1734th MEETING

Held at Headquarters, New York,
on Wednesday, 24 March 1999, at 3 p.m.

Chairperson: Mr. BHAGWATI

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The meeting was called to order at 3.10 p.m.

CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES UNDER ARTICLE 40 OF THE COVENANT (continued)

Fourth periodic report of Chile (continued) (CCPR/C/95/Add.11)

At the invitation of the Chairperson, Mr. Salinas, Mr. Tapia, Mr. Troncoso, Ms. Bertoni and Mr. Arevalo (Chile) took places at the Committee table.

1. The CHAIRPERSON invited the members of the Committee to resume their questioning of the delegation.

2. Ms. EVATT observed that, despite its good intentions, the Government of Chile would be unable to comply fully with its obligations under the Covenant without significant changes in the domestic law and even in the Constitution aimed at ensuring that all political power in Chile passed into the hands of democratic institutions.

3. She had been shocked to learn, from reports prepared by non-governmental organizations, that the staff of public hospitals were obliged to file a police report if they discovered that a woman had terminated her pregnancy. That was an outrageous violation of the privacy of the individual and of the confidential relationship that should obtain between a patient and her physician. Some 300 women were prosecuted on that charge every year and spent time in pre-trial detention. In the view of the delegation, did that practice discourage women from seeking medical help and increase the maternal mortality rate?

4. It was gratifying to learn that the State party had adopted a family planning policy. And yet, rape victims were refused emergency contraception and were not exempted from the law prohibiting abortion. Women were not permitted to choose to be sterilized except if they were married and had the consent of their husbands. Clarifications would be useful on all those points.

5. The CHAIRPERSON expressed the appreciation of the Committee to the Chilean Government for sending to the Committee so distinguished a member of the bar as Ms. Medina Quiroga, whose dedication to the cause of human rights and the work of the Committee were widely recognized.

6. Mr. SALINAS (Chile) said that the Government of Chile was proud of the contribution of Mrs. Medina Quiroga to the work of the Committee.

7. Mr. SOLARI YRIGOYEN had inquired about the case of Mr. Carmelo Soria, a staffmember of the United Nations who had been assassinated by State agents in the late 1970s during the military regime. The family had immediately instituted proceedings against the Government for his torture and subsequent execution but they had moved forward very slowly. However, when the National Commission on Truth and Reconciliation was apprised of the case, it had conducted an investigation into the facts and reactivated the proceedings. After a lengthy court battle, the case had come before the Supreme Court, which

had determined that Mr. Soria was not protected by the Convention on Diplomatic Immunity and that the 1978 Decree-Law on Amnesty therefore applied.

8. Despite the Supreme Court decision, the Government of Chile had acknowledged the responsibility of State agents in Mr. Soria's death and had offered a number of compensatory measures to the family, among them the establishment of a foundation which was to memorialize the victim's name and to be endowed by the State in the amount of 1 million dollars. Indeed, the Government of Spain had recognized that compensatory effort on the part of Chile. However, the family had refused to accept these measures, and had submitted the case to the Inter-American Commission on Human Rights. Only a month earlier, the Chilean Government had held a meeting with the family in an effort to come to an amicable agreement, but no resolution had yet been found.

9. The National Commission on Truth and Reconciliation had been established by the Government of President Patricio Aylwin several months after he assumed office, and assigned the mission of investigating the gravest human rights violations committed during the military regime. Although it enjoyed high moral authority, it did not possess the powers of a court and was limited to conducting investigations and formulating recommendations. All the recommendations discussed in the report had, however, been carried out by the respective Governments of Patricio Aylwin and Eduardo Frei. Judicial investigations had been undertaken, and 400 cases had gone before the courts.

10. The Government acknowledged that to some extent it was powerless to correct the evils wrought by the former military regime. However, that was not a matter of political will and should be seen as a consequence of the manner in which Chile had effected its transition from an authoritarian to a democratic regime. The effort to create a true democracy and to prevent further violence in so doing required broad agreement which reached across all sectors of the political arena.

11. The new Government had been obliged to accept the Constitution of 1980 and with it, a number of institutional obstacles that had been put in place by the military Government, including a dual electoral system, a Senate chosen by appointment, the selection and composition of the Constitutional Court, and the powers and composition of the National Security Council. That should not be seen as a justification for its actions but as a factor in evaluating the circumstances. It should nonetheless be emphasized that a state of law existed in Chile which was both evolving and growing stronger. The rule of law and the rights of persons were respected, and all members of society could make their voices heard.

12. Chile had done its utmost to depict the prevailing situation with the greatest transparency and candor. To suggest, however, that the human rights violations described in the report reflected a broad pattern of abuse was both exaggerated and untrue. The policy of the Chilean Government was to confirm, promote and protect human rights and to create institutions for that purpose. Admittedly, efforts must be made to train and re-educate State agents, public officials and members of the judiciary with a view to transforming their attitudes and practices. The isolated cases that did arise were duly prosecuted. It was worth noting, in that regard, that although such

organizations as Human Rights Watch and Americas Watch had been severely critical of Chile in the early 1990s, recent reports reflected a dramatically different view.

13. The Senate had been conducting a constitutional review of the Convention on the Non-Applicability of Statutory Limitations to War Crimes and Crimes Against Humanity since 1994. While the Government had made efforts to hasten its approval, that body unfortunately had sole power to determine how long the process would last. It nevertheless expected that it would eventually be approved and pass into law. The Government had sponsored a draft law to abolish the death penalty and had supported related initiatives; those efforts had been blocked in the Senate. Chile was nonetheless a de facto abolitionist State, since no execution had been carried out in the previous decade. The Government viewed the death penalty as a violation of the right to life and would continue to promote its abolition whenever the political occasion arose, both in the national and international spheres.

14. Mr. TRONCOSO (Chile) said that in the view of the Chilean Government, the excessively broad jurisdiction of the military courts was incompatible with the terms of article 14. The Government supported a judicial reform that would restrict the competence of those courts to crimes of a military nature, such as crimes committed among members of the military.

15. Some remarks made at the morning meeting had not been understood. The Supreme Court of Chile had 21 members, all of whom were civilians. The penal chamber was composed of five civilian members, and was joined by one member of the military in cases that ensued from the military courts. Although some cases from the military courts sometimes came before the Supreme Court, cases referred from the civil courts were never reviewed by military courts. It was important to note that a draft law that would eliminate the role of the military judge on the Supreme Court had already been approved by the House of Representatives. In addition, various persons had recently observed that the participation of a military judge on the Supreme Court violated the current constitution. The Government wholly supported all efforts to abolish the participation of the military in the Supreme Court.

16. Under the terms of the Code of Military Justice, any crime that occurred during or arose from military service came within the competence of the military courts. It was the view of many observers that crimes as grave as forced disappearances should not be viewed as acts of a military nature. Some of those crimes had been tried by the military courts, others by the civilian courts: no set system existed for making that determination. Decisions handed down by the Supreme Court did not establish a precedent by which other courts were bound; each decision applied only to the case in question. The Government was nevertheless endeavouring to limit the competence of the military courts.

17. The delegation had endeavoured to explain that in the view of the Chilean Government, the Decree-Law on Amnesty was an obstacle to the attainment of justice. It was not, however, an insurmountable obstacle, since the investigation and prosecution of many cases continued. In 1990, a human rights lawyer had brought a case before the Supreme Court in which he had argued that under the terms of article 15 of the Chilean Constitution, the International

Covenant on Civil and Political Rights had constitutional status in Chile and that, since the Decree-Law on Amnesty was incompatible with the terms of that instrument, it was unconstitutional. The Supreme Court had not sustained his view. Fortunately, however, its decision did not constitute a precedent and did not preclude others from reviving that argument in other cases.

18. The membership of the Supreme Court had significantly changed since then; and the Court had taken the view that under the terms of the Geneva Conventions of 1949, forced disappearances were crimes of a continuing nature and could therefore not be subject to an amnesty.

19. There had been three distinct interpretations of the Decree-Law on Amnesty. At the time of its inception, the courts had been reluctant to apply international law; the Aylwin Government had therefore sought to affirm that there were provisions of the domestic law which obliged them to continue to investigate and prosecute cases despite the amnesty law. A later interpretation held that the Decree-Law on Amnesty did not prevent the courts from investigating illicit acts and identifying the responsible parties. The Government would continue to insist that the courts must uphold Chile's international legal undertakings. In particular, it would express that position vociferously at the time of the next congressional elections with a view to attaining a majority that would uphold it. There was no other avenue to change.

20. The transition to full democracy could only be attained by institutional change from within: the recent changeover in the composition of the Supreme Court stood as an example. The Supreme Court had been composed mostly of ministers appointed by General Pinochet, and the Constitution of 1980 had established that they held those positions for life. The Government had achieved a broad agreement that the Supreme Court should be reformed, and it had been established that judges should retire at the age of 75. From one day to the next, six judges were replaced. Four new posts had been created and it had been decided that five posts must be filled by lawyers who had not previously participated in the judiciary. The purpose of that element of the agreement was to introduce into the Supreme Court a fresher, more progressive approach to the law, and to achieve an independent and impartial judiciary. It was essential for the Committee to understand that some of the agreements struck by political forces in Chile had the effect of promoting, not impeding progress.

21. International human rights conventions were applicable in Chile in accordance with article 5 of the Constitution, and that principle was recognized by the courts.

22. The Public Prosecutor was not an agent of the executive, legislative or judicial branch. However, all three branches of State power participated in his or her appointment: the President of the Republic chose one candidate from a list of five nominated by the Supreme Court, and his choice was subject to confirmation by a two-thirds majority of the Senate. A proposal to appoint a public defender enjoying a similar degree of autonomy was under consideration, while some non-governmental organizations favoured the establishment of a public defence fund to finance the defence of accused persons by associations and voluntary bodies.

23. While the Judicial Academy was an independent body, it was administered by a council under the chairmanship of the President of the Supreme Court. The purpose of the Academy was to provide training and education for members of the legal profession, including on human rights issues such as observance of due process of law, inter alia. There were plans to introduce a course on international human rights law.

24. The large number of persons in pre-trial detention, representing some 46 per cent of all those in custody, could be understood only in the light of Chilean criminal procedure. Under the system, an investigating judge could order the arrest of a person if there was reasonable suspicion that he or she had committed a crime. The judge then had five days to decide whether to dismiss the case or bring charges. Once charged, a suspect could be released on bail or held in custody pending trial. The system was somewhat anomalous in that, while the principle of presumption of innocence still applied, the bringing of charges was held to justify the practice of pre-trial detention.

25. Some 50 persons were currently being held in Chile's high-security prison. All had been convicted under anti-terrorist legislation of serious crimes, including the murders of policemen and senators, committed since 11 March 1990. Those prisoners who were being held at the facility pending trial had already been convicted of other serious crimes.

26. Ms. BERTONI (Chile) said that her Government's policy on abortion emphasized prevention, in particular through the use of contraceptives. In accordance with the Chilean Constitution and the Inter-American Convention on Human Rights, the right to life must be protected from the moment of conception. Recent surveys had shown that the majority of the population still opposed decriminalization of abortion. The long years of authoritarian rule appeared to have reinforced traditional attitudes by stifling free debate on many issues.

27. As stated in the report (para. 86 (b)), decisions by patients, including Jehovah's Witnesses, to refuse blood transfusions had been set aside by the courts, which had a duty to protect the right to life.

28. With respect to preventive detention, she said that under the previous Code of Criminal Procedure, a person could be held incommunicado for up to 10 days. Various amendments had been adopted since 1991 to ensure that no one was subjected to torture or threats or denied medical attention. The new draft Code of Criminal Procedure limited detention incommunicado to five days.

Gender equality (article 3 of the Covenant)

29. The CHAIRPERSON read out the questions relating to issue 5: measures taken to prevent discrimination against women with respect to property rights, parental authority and custody upon separation of spouses; minimum age for marriage; expulsion of pregnant adolescents from school; discrimination against women in the workplace; and legislation to protect women against violence and sexual harassment.

30. Ms. BERTONI (Chile) noted that, upon entering into marriage, women could opt for separation of assets, instead of joint ownership. Even under the latter

system, the wife was entitled to administer and dispose freely of that portion of her property which was the product of her labour. In case of dissolution of the marriage, such property reverted to the common property for the purposes of division between the spouses. However, the law granted women the right to renounce their claim to the common property and retain their own assets, if that would result in a more favourable outcome for them.

31. An Act of 23 September 1994 had instituted a third form of property ownership, known as the earnings-sharing regime. The new system offered several advantages for women. In particular, upon dissolution of the marriage, the earnings obtained by each spouse from his or her assets and labour were adjusted so that each received half, even when the wife had not engaged in paid employment, thus recognizing women's contribution to the family by maintaining the home. The use of the family residence was awarded to whichever spouse continued to care for the common family. The civil registrar was obliged to inform couples at the time of marriage of the various alternatives.

32. Following an amendment to the Civil Code, parents could elect, in the event of separation, to sign an agreement assigning parental authority and custody either to the father or the mother, or to exercise those rights jointly. In the absence of such an agreement, custody was generally awarded to the mother, while the father would automatically assume parental authority.

33. No person under the age of 18 could enter into marriage without parental consent. In setting the minimum age for marriage at 12 for girls and 14 for boys, the Civil Code was reflecting the biological differences between adolescent females and males.

34. In 1991, the National Women's Service (SERNAM) and the Ministry of Health had implemented a programme aimed at preventing teenage pregnancies. Some 400 community debates on sexuality and related issues had been held in 1998 with the participation of students, parents and teachers. The number of births to women under 20 had been 40,000 in 1998, representing 14.8 per cent of all births, compared with 10.5 per cent in 1960. A bill had been introduced in Congress in 1994 to prohibit the expulsion of pregnant girls from school.

35. SERNAM had introduced a number of reforms with a view to securing greater equality for women in the workplace. The Labour Code had been amended to ensure that working women were able to assume their family responsibilities without suffering discrimination. Specifically, both mothers and fathers could now take parental leave to care for a child under the age of 18 in case of serious illness or for a sick infant under the age of one. Also, following the adoption of Law No. 19.591, it was no longer legal to require women to undergo a pregnancy test before being employed. SERNAM was studying a bill aimed at expanding the network of crèches, which were currently provided only in companies employing more than 20 workers. One of her Government's priorities was employment training for low-income women. Preference was given to women heads of households, some 33,000 of whom had participated in the programme since December 1998. In addition, efforts were being made to promote women's employment in areas traditionally dominated by men, including the armed forces and the police.

36. With regard to the bills referred to in paragraph 62 of the report, she said that the new law on sexual offences adopted by Congress had been vetoed by the executive, which had sent the law back to Congress for improvement. The new law, when enacted, would provide more effective and consistent protection of both sexes against violence and sexual abuse by broadening the definitions of some offences and increasing the penalties imposed in certain cases. It also eliminated those provisions of the existing laws which could be interpreted in a discriminatory manner with respect to women. In addition, it recognized the right of married persons to consent to or refuse sexual relations with their spouse. A number of procedural changes would be made in order to facilitate convictions in sexual abuse cases: the testimony of close relatives would be admissible and judges would be accorded greater flexibility in evaluating evidence. A bill on sexual harassment in the workplace was currently before Congress.

Discrimination (article 26 of the Covenant)

37. The CHAIRPERSON read out the questions relating to the issue: protection against discrimination in employment, housing and other areas; and enactment of the bill prohibiting discrimination against children born out of wedlock.

38. Mr. TRONCOSO (Chile) said that, while there was no umbrella anti-discrimination legislation, Chilean law contained a number of provisions prohibiting discrimination in various spheres. Also, victims of discrimination could employ the remedy of amparo, which entailed petitioning the courts for protection of their constitutional rights.

39. The new Filiation Act referred to in paragraphs 244 to 245 of the report would enter into force on 26 October 1999. The Act eliminated all differences in treatment between legitimate and illegitimate children and provided for free paternity tests.

Freedom of religion (article 18 of the Covenant)

40. The CHAIRPERSON read out the questions relating to the issue: extent of preferential treatment accorded the Roman Catholic Church in Chile; and impact on the freedom of religion of members of other denominations.

41. Mr. ARÉVALO (Chile) said that Chile was a secular State, the separation of church and State having been established by the 1925 Constitution. The Roman Catholic Church and the Orthodox Church enjoyed special status in that they were recognized as having legal personality in public law. His Government had introduced legislation to accord other denominations the same status, thus enabling them to benefit from tax breaks and other privileges.

Freedom of opinion, expression and political participation (articles 19 and 25 of the Covenant)

42. The CHAIRPERSON read out the questions relating to the issue: prohibition of political parties; and compatibility of film censorship and privacy laws with article 19 of the Covenant.

43. Mr. TRONCOSO (Chile) said that no political parties were currently prohibited in Chile. The constitutional provision banning the Communist Party had been repealed in 1989. In fact, the President of the Communist Party intended to run for the presidency of the Republic in the December elections and the Socialist Party was one of the partners in the governing coalition.

44. In 1997, his Government had introduced in Congress a bill aimed at replacing film censorship with a system of classification. The bill also recognized the right to freedom of artistic creation. The constitutional provisions on privacy established the right to freedom of expression without prior censorship and without prejudice to ulterior liability. There had been a number of cases in which the right to freedom of expression had been infringed because judges had misinterpreted the relevant provisions, but that problem could be resolved through an interpretative ruling by the Supreme Court.

Protection of the family (article 23)

45. The CHAIRPERSON read out the questions relating to the issue: implementation of the Domestic Violence Act described in paragraphs 240 and 241 of the report; the number of cases brought and the sentences imposed on those convicted of domestic violence; whether the proposal to establish family courts, mentioned in paragraph 184 of the report, had been implemented.

46. Ms. BERTONI (Chile) said that, even prior to the adoption of the Domestic Violence Act, her Government, through the National Women's Service, had taken measures to address the problem. The National Programme for the Prevention of Domestic Violence, established in 1992, had, inter alia, launched municipal programmes, established municipal centres offering psychological and legal assistance to victims of domestic violence and established institutional networks for the prevention of violence and the provision of support networks for victims. In 1997 and 1998, the Programme had offered technical advice to 19 centres, 111 programmes and 164 support networks. Moreover, the police had established a Department of Family Affairs and the Ministry of Justice had opened a hotline for reporting complaints. Between 1992 and 1996, the Women's Rights Information Centre had received 15,000 complaints of domestic violence. In 1991, the National Women's Service began establishing women's information centres in the country's 13 regions, which provided legal, psychological and social information to women on the exercise of their rights.

47. The number of cases brought before the courts since the promulgation of the Domestic Violence Law had more than doubled between 1995 and 1997. While no data were available on sentences or protection orders, two follow-up studies of the Domestic Violence Law conducted by the National Women's Service, in 1995 and 1997, respectively, had shown that most court cases had been resolved amicably or resulted in light sentences. Most of those convicted had been instructed to seek therapy and had not served prison sentences or paid fines. There were not many protection orders; they were imposed only on request. Sixty per cent of the women surveyed had indicated that domestic violence had abated as a result of the complaint procedure and 39 per cent had said that their relationships had improved.

48. Mr. TRONCOSO (Chile) said that the legislative branch was considering an initiative to establish family courts with a view to resolving family conflicts through cooperative agreement and better communication. The family courts would be competent to decide cases of domestic violence, marital and family property regimes, filiation, civil status, divorce, maintenance and visitation rights. Family court hearings would be preceded by a mandatory mediation phase.

Rights of persons belonging to ethnic minorities (article 27)

49. The CHAIRPERSON read out the questions relating to the issue: measures adopted by the State party in order to ensure the enjoyment of rights by persons belonging to the Mapuche people, including rights to ancestral land and to participate in decisions affecting their land, culture and traditions.

50. Mr. ARÉVALO (Chile) said that the ethnic identity of the Mapuche people and other indigenous peoples had been recognized for the first time in the Indigenous Peoples (Protection, Promotion and Development) Act, which established the duties of the State and society to maintain and promote the development of indigenous cultures. The recently established National Indigenous Development Corporation (CONADI) helped indigenous peoples to recover their land, provided subsidies to farmers for the acquisition of land, including former indigenous lands belonging to a lumber company, and transferred government land to indigenous peoples. By March 1999, CONADI had acquired 75,000 hectares, and it was attempting to acquire another 10,000. The participation of "indigenous advisers" on the National Council of CONADI and the establishment of legally recognized indigenous communities and associations ensured that indigenous peoples had a say in decision-making. By 1997, there were 2,340 communities and 340 associations participating in the design and implementation of local development plans.

State of emergency (article 4)

51. The CHAIRPERSON read out the questions relating to the issue: whether the proviso mentioned in paragraph 72 of the report, according to which the courts could not pronounce on the grounds and circumstances adduced by the authorities for declaring a state of emergency, was still valid; the results of the measures taken by the Government of Chile in order to put an end to the continuation of external exile or internal banishment following the termination of the state of emergency.

52. Mr. TRONCOSO (Chile) said that article 41 (3) of the 1989 Constitution prohibited courts from pronouncing on the grounds or circumstances invoked for declaring a state of emergency; that represented an improvement over the Constitution of 1980, which simply denied all remedies in such cases. The provision of the 1989 Constitution had been interpreted to mean that the significance or moral justification for declaring a state of emergency could not be questioned; however, it did not imply that the Government was acting irresponsibly. Nonetheless, the Government wished to derogate the restrictions, imposed on the courts, in accordance with the recommendations of the report of the National Commission on Truth and Reconciliation. He added that states of emergency had not been declared under the democratic government.

53. Under its repatriation policy, his Government had established the National Office for Returnees and taken measures to provide housing, education and access to credit for those returning from exile.

Dissemination of information about the Covenant (article 2)

54. The CHAIRPERSON read out the questions relating to the issue: steps taken to disseminate information on the submission of the report and its consideration by the Committee, in particular, on the Committee's concluding observations; information on education and training about the Covenant and its Optional Protocol provided to government officials, schoolteachers, judges, lawyers and police officials.

55. Ms. BERTONI (Chile) said that the fourth periodic report was the first report submitted to the Committee since the restoration of democracy in Chile and that her Government was intent on disseminating the Committee's concluding observations as widely as possible. The report had been disseminated to non-governmental organizations which defended human rights, including the Vicaría de la Solidaridad and their opinions had been solicited prior to its consideration by the Committee during the current session. Pursuant to the recommendation of the National Commission on Truth and Reconciliation, the texts of all the international human rights instruments incorporated in Chilean legislation had been circulated to government officials and, in particular, to judges. In addition, the department of the Official Journal, a unit of the Ministry of the Interior, had published a compendium of all the human rights treaties currently in force in Chile and the relevant domestic legislation. A course on international human rights law would be offered in the judicial training academy, and human rights courses were given to police officers, including those at the training institute for high-ranking officers. Both training courses emphasized the principles contained in the Covenant and were conducted by eminent human rights instructors.

56. Lord COLVILLE asked whether the Domestic Violence Act was applicable to unmarried couples as well and whether, in cases of domestic violence, the courts could bar the offender from the household.

57. Mr. YALDEN expressed disappointment at the lack of a response to his question concerning the establishment of an independent human rights commission in line with the Principles relating to the status of national institutions for the promotion and protection of human rights (General Assembly resolution 48/134, annex). Nor had the State party's delegation addressed the question that he and Mr. Kretzmer had raised with respect to investigations of alleged ill treatment of prisoners. He wondered whether any independent agency or human rights body had been set up to deal with allegations of discrimination in employment, housing and other areas. The report did not mention the situation of homosexuals in Chile; he wondered whether there were any exclusions in force on the grounds of sexual orientation.

58. Lastly, he inquired about steps the Government of Chile had taken to implement its commendable legislation for the protection of indigenous peoples, specifically in the areas of education, employment and participation in public life. He would also appreciate further details on the communities and

associations of indigenous peoples and what their establishment implied in terms of eventual self-government or self-determination in accordance with the Covenant.

59. Mr. SCHEININ stressed the need to deal with the problem of impunity if the State party was to comply with its obligations under the Covenant. He believed that the legal age of marriage in Chile constituted a violation of article 24 of the Covenant, which protected the rights of minors. The consent of a parent and a child's capacity to express his or her own opinion were not sufficient safeguards in that regard.

60. Under the heading "freedom of religion", and in line with the Committee's general comment under article 18, he inquired about the situation and treatment of conscientious objectors in Chile.

61. He expressed gratification at the adoption of the Indigenous Peoples Act and the establishment of CONADI, but he hoped that the sustainability of indigenous lifestyles would be taken into account in mining operations and the construction of dams and hydroelectric power plants. He would appreciate more details, in particular, with respect to the impact of the Ralco Dam project on the Mapuche and Pehuenche peoples.

62. Ms. EVATT noted that the representatives of the State party had not disputed her comments concerning compulsory reporting of abortions by hospitals. With regard to the participation of women in public life, she inquired whether women were entitled to hold any of the nine special positions and/or whether the creation of those special positions was actually a further impediment to representation by women. Similarly, she inquired whether the binomial list system was a contributing factor to the low level of female representation in the Chamber of Deputies. She would appreciate additional information on the legal remedies prescribed to combat discrimination in the workplace and on the mechanisms in existence to guarantee their application.

63. She deplored the victimization of women and children by the absence of divorce procedures in Chile and requested further information on the consequences of that deficiency. She also noted that there was no property regime for unmarried couples. She inquired whether women who were separated from their husbands were still prohibited from applying for loans or entering into contracts. She expressed concern about the prohibitive cost of the annulment procedure for those who wished to remarry and requested details on property and maintenance arrangements following annulments.

64. Lastly, she requested clarification of the distinction between the right of association of civil servants and that of private employees. She would also appreciate a more detailed definition of civil servant.

65. Mr. ANDO, referring to paragraph 197 of the report, asked whether subsidies were available for religious education by non-Catholic denominations. He requested details on the procedure and criteria for obtaining them and asked whether they had ever been denied. He wondered whether the State party could provide specific examples of the kind of religious intolerance the draft legislation described in paragraph 200 was intended to eliminate. Referring to

paragraph 204, he requested the State party to clarify what constituted the broadcasting of "false or unauthorized reports". With regard to paragraph 215, he would appreciate a definition of "public meeting", including number of participants, venue and purpose, and clarification of the procedure and criteria for giving prior notice to public authorities. Turning to paragraph 227, he inquired about protection for workers in small-scale agricultural cooperatives of less than five people. Lastly, he shared Ms. Evatt's concern with regard to the right of association of civil servants.

66. Mr. LALLAH asked Ms. Bertoni to comment on the legal age for marriage - 12 years for girls and 14 for boys - which had been established on the basis of biological maturity, whereas article 23, paragraph 3, of the Covenant also required free and full consent. Mr. Scheinin had properly noted the relevance also of article 24 to this issue. Reverting to Mr. Troncoso's remarks on the intricacies of pre-trial and trial proceedings in Chile, he said that he still maintained his criticisms.

67. Mr. AMOR asked whether Chilean law or jurisprudence provided a definition of religion. Also, he would like to know if a religion acquired legal personality as a result of government authorization - and, if so, what the criteria were for authorization - or by virtue of a government declaration - and, if so, whether such declarations extended to all religions, including those recently established.

68. Mr. SOLARI YRIGOYEN asked whether married couples could share patria potestas under the law; and said that he was also concerned about the marriageable age in Chile. With respect to ethnic minorities, he wondered whether the Government had any plans to introduce legislation to adopt International Labour Organization (ILO) Convention No. 669. He would also appreciate comment on outside reports that women in high-security prisons were being held under discriminatory and unhealthy conditions.

69. Mr. ZAKHIA said that he would like clarification of the last sentence of paragraph 64 of the report, where the concluding emphasis on the nature and specificity of women deriving from the natural differences between the sexes as embodied in family relations seemed to militate against the previously declared intention of the Government to achieve full equality for women. Also, had any of the many bills on women, family and the children still pending in October 1997 been adopted in the interim, and were any facing serious obstacles?

The meeting was suspended at 5.30 p.m. and resumed at 5.40 p.m.

70. Mr. ARÉVALO (Chile) said that independent human rights organizations could be freely organized and would have access to government departments for assistance in their investigations. Moreover, there were standing human rights commissions in the Chamber of Deputies that could receive and investigate complaints directly. In addition, he noted that the courts of appeal appointed investigators who were legally bound to inspect prison conditions.

71. Turning to freedom of religion, he pointed out that the status of religious institutions was not based on government authorization but simply upon the acquisition of legal personality through the deposit of their constituent

instruments - provided, of course, that they satisfied basic morality and security considerations. There were no restrictions on the freedom of religious education and legally established religions could maintain educational institutions of their own.

72. Ethnic minorities were permitted under law to organize and govern themselves as associations or communities. Representatives of ethnic associations were officially recognized and sat on government councils or other government bodies. A minimum number of members of the same ethnic group could come together to form an association in order to pursue specific educational or cultural aims or economic and vocational development objectives.

73. The indigenous communities were groups of persons of the same ethnic or ancestral descent who recognized a national leadership and held title to indigenous lands. They acquired legal personality when they deposited their constituent instruments with the National Indigenous Development Corporation (CONADI). With regard to the specific case referred to by Mr. Scheinin, he pointed out that environmental projects were permitted under the Indigenous Peoples (Protection, Promotion and Development) Act of 1993. According to CONADI data, the hydroelectric dam in question had displaced two Pehuenche communities from about 9 per cent of their lands; and only 8 of the 86 families affected had not accepted the resettlement opportunities offered them by CONADI.

74. The first democratic Administration of President Aylwin had adopted a law allowing public-sector employees to form trade unions, and the Government ratified an ILO Convention allowing them to engage in collective bargaining. There were trade unions in each government agency and at the regional and national levels. It was currently being debated whether a constitutional provision restricting the right to strike of officials responsible for strategic services should be amended.

75. Ms. BERTONI (Chile) said that with the adoption of the Filiation Act, spouses could now decide to exercise patria potestas jointly or to assign parental authority to either parent, a decision which would be indicated on the child's birth certificate.

76. Abortion was indeed a crime in Chile, and thus it was possible for a woman having an abortion in a public hospital to be reported to the police because of the civil-service obligation to report all crimes. No special instructions to do so, however, had ever been issued nor had anyone been prosecuted.

77. The marriageable age had not been altered because it was not a problem in Chile; it was certainly not customary for girls to marry at 12 or boys at 14. However, her Government would study the possibility of providing stronger safeguards to protect minors on that score.

78. Among the available remedies if the labour laws protecting women were not properly enforced, was to bring a complaint before the labour courts or to request an investigation by the labour inspectors appointed by the Government.

79. The Domestic Violence Act applied to unmarried women as well. The National Women's Service had made a tremendous effort to have that law adopted and to

raise public awareness of the problem and of the available remedies. The Act established rapid procedures, including conciliation of the family members or, failing that, imposing security and protective measures for a period of 180 days. If a crime had already been committed, the victim would be assisted in bringing a court case. Repeat offenders were listed in a civil register with full details of their cases.

80. Mr. TRONCOSO (Chile) said that there was not yet a law allowing for conscientious objection, although, after pressure from youth groups, Parliament had considered the matter and the Ministry of Defence was now studying it. It should be noted in any case that only 30,000 of the 120,000 men over 18 had been drafted.

81. In connection with the status of homosexuals, he observed that the Penal Code classified sodomy as a crime. The recently vetoed Sexual Crimes Act, which had enjoyed considerable support in both Houses of Parliament, had proposed the decriminalization of consensual homosexual acts between persons over the age of 18; and it was likely that such legislation would be adopted in the near future.

82. His Government knew of no discriminatory practices against women in its prisons. There were very clear rules on the matter, and any abuses could be reported.

83. The Government's position with respect to General Augusto Pinochet was that, as a Senator for Life, he enjoyed immunity, which could be lifted only by the Chilean courts. There was a precedent, incidentally, for doing so, in the recent case of another Senator. Of the 19 charges brought against General Pinochet since 1998, some covered the period between 1978 and 1990, where judges could apply the laws discussed earlier; others applied to the period since the amnesty, and there the Amnesty Law would apply.

84. Mr. SALINAS (Chile) said that divorce was actually not legal in Chile but that a public debate favoured a bill allowing it. After a number of legal démarches had failed, one proposal was now before the Senate. His Government did not regard divorce per se as a human rights question, but it had an obligation to deal with any negative social effects of the unavailability of divorce, such as children born out of wedlock, whose problems would now be resolved through the Filiation Act.

85. He assured the members of the Committee that the Government would willingly and carefully study all the suggestions made for improving its democratic system and the rule of law in Chile.

The meeting rose at 6.05 p.m.