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COMMITTEE ON ECONOMIC, SOCIAL AND CULTURAL RIGHTS

Thirty-third session

SUMMARY RECORD OF THE 45th MEETING

Held at the Palais Wilson, Geneva,
on Thursday, 18 November 2004, at 3 p.m.

Chairperson: Mr. KERDOUN
(Vice-Chairperson)

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In the absence of Ms. Bonoan-Dandan, Mr. Kerdoun (Vice-Chairperson) took the Chair.

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

CONSIDERATION OF REPORTS (agenda item 6)

(a) REPORTS SUBMITTED BY STATES PARTIES IN ACCORDANCE WITH ARTICLES 16 AND 17 OF THE COVENANT

Third periodic report of Chile (continued) (E/1994/104/Add.26; E/C.12/Q/CHL/1; HRI/CORE/1/Add.103)

1. At the invitation of the Chairperson, the members of the delegation of Chile resumed their places at the Committee table.
2. Ms. PROVOSTE (Chile) said that her Government had felt it necessary to modernize its migration policy. A document currently being drafted in the Ministry of the Interior would provide a general framework for migration based on the principles of the right of residence and freedom of movement, and guaranteeing freedom of opinion and conscience. The International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families was being taken into account in the drafting of the document, and was currently being promulgated by the executive authorities.
3. Mr. BAEZA (Chile) said that several measures had been taken to combat discrimination in education, including the adoption of legal provisions to protect the right to education of (a) pregnant girls and (b) children whose families were no longer able to pay their school fees. Two programmes had been developed: a training in citizenship programme, which included tuition in subjects such as the promotion of tolerance; and a peaceful coexistence programme, which aimed to promote acceptance of cultural differences.
4. Several measures had also been taken that could be considered as positive discrimination in favour of indigenous groups. A series of scholarships and benefits had been created for indigenous students, the budget for which was increased annually. In 2004, some 15,000 indigenous students had been granted scholarships in Chile. A programme had also been developed to promote indigenous people's access to education; following its introduction, indigenous student numbers had increased by 30 per cent.
5. Efforts were being made to train teachers in intercultural education, and several projects had been run for schools in predominantly indigenous areas in order to provide funds for the development of intercultural teaching materials. A considerable amount of State funding had been devoted to indigenous education and culture in general.
6. Referring to the question on human rights education in the military, he said that there had been a recent amendment of the organic law on education aimed at increasing knowledge of human rights and promoting peace. That amendment had, *inter alia*, targeted curricula in the military academies, which had been revised to include human rights issues.

7. Ms. SOTO (Chile) said that the National Indigenous Development Corporation (CONADI) had provided training for civil servants and police officers in conflict resolution in indigenous communities, in order to improve their capacity to deal peacefully with traditional authorities, and to ensure that all action taken during a conflict in an indigenous community was fair.

8. Ms. ESQUIVEL (Chile) said that the idea of establishing a Chilean human rights institute had been part of the “No Tomorrow without Yesterday” programme. Other initiatives deriving from that programme were currently being executed, including addressing the backlog of lawsuits involving compensation to victims of the former military regime. The plan to create a human rights institute based on the Paris Principles was still being considered, and any relevant documents would be forwarded to the Committee as and when they became available.

9. Turning to the issue of the incorporation of the Covenant into domestic law, she said that under the Constitution it was the duty of the State to honour the provisions of international treaties that it had ratified and that had entered into force. Article 19 of the Constitution had been drafted on the basis of a norm guaranteeing respect for all human rights, even in the event that they were not explicitly mentioned in that article. The Constitution did not state that the Covenant had primacy over the law, but that international treaties had constitutional status.

10. Under Chilean law, the penalty for issuing a dud cheque had been deprivation of liberty. Under the Pact of San José, the imprisonment of persons for financial offences was prohibited, and there were currently cases of prisoners sentenced for such offences being released, which was a positive development in the application of international treaties in Chile.

11. In 1998, a Supreme Court decision relating to enforced disappearance had stated that the non-application of the 1949 Geneva Conventions and the International Covenant on Civil and Political Rights had been an error. National legislation in all States parties to international instruments must be adapted to adhere to international law, unless a treaty had been denounced. The Supreme Court had repeatedly acknowledged that the internal sovereignty of the Chilean State had limits that were based on human values; those were superior to any State laws, including the Constitution.

12. Ms. PROVOSTE (Chile) said that the New Treatment Act took into account all the recommendations made by the United Nations Special Rapporteur on indigenous people, particularly those on the land fund and on recognition of the rights and improvement of the situation of indigenous women. A survey was being carried out to determine what improvements needed to be made to the situation of indigenous women in Chile, in order that appropriate measures could be taken.

13. Mr. SÁEZ (Chile) said that International Labour Organization (ILO) Convention No. 81 had been signed before Chile’s return to democracy, and had not yet been ratified because certain aspects of it had been found to be incompatible with domestic labour legislation, which had also been drafted before 1990. The domestic legislation had now been amended, all the incompatibilities had been resolved, and the ratification process was currently under way.

14. Ms. ESQUIVEL (Chile), turning to the question of training for judges in economic, social and cultural rights, said that all judicial academy curricula included human rights training. A seminar on economic, social and cultural rights had recently been organized by the Ministry of Justice, with the participation of the main human-rights and academic institutions and civil society. A Supreme Court judge had attended the whole seminar and recommended that other members of the Supreme Court attend such events in future. Having been approved by consensus in the Senate, the constitutional reform was awaiting approval by the Chamber of Deputies.

15. Mr. TEXIER said that the Committee had been informed about the use of emergency, anti-terrorism and State security laws by justice officials in cases involving the Mapuches. He wished to know why such laws had been implemented, and why there had been cases of Mapuches coming before military tribunals following conflicts with carabineros.

16. Mr. PILLAY asked whether there had been any judicial cases in which the Covenant had been invoked. He wished to know why not all the Covenant rights were explicitly protected under the Constitution, and whether, in the event of a violation of the rights that were spelled out in the Constitution, a complaint must be filed within 15 days. He wondered whether the Covenant had been published in the Diario Oficial, in order to acquire force of law.

17. Mr. MARCHÁN ROMERO said that the Government's efforts to return land to indigenous peoples, particularly the Mapuches, should be commended. He wished to know how many indigenous land claims had been filed and approximately how much more land must be returned.

18. Ms. PROVOSTE (Chile) said that the text of the Covenant had indeed been published in the Diario Oficial.

19. Ms. SOTO (Chile) said that the case of 144 Mapuches that had been brought before the Inter-American Court was still under way. The Chilean State was taking all possible measures to reach an agreement with the complainants. There had been irregularities in the judicial procedure initiated against the defendants in relation to a land issue. The events had taken place before the beginning of the movement for the social and political recognition of land issues, and the current Government therefore felt that agreement must be reached.

20. Addressing the issue of the trial of Mapuches in military courts, she said that there had been no racial discrimination. All offences against the police were tried in military courts, irrespective of whether or not the defendant was of Mapuche origin. The number of indigenous land claims was currently unknown. The original target had been to return 50,000 hectares, which had been achieved very quickly, and further studies had increased that figure to 150,000 hectares. Approximately 150 communities had made land claims through indigenous law, but there had been conflicts between pre-colonial claims and current law.

21. Ms. ESQUIVEL (Chile) said that, while not all economic, social and cultural rights were explicitly protected by the Constitution, the right of assembly was upheld in domestic legislation. There was case law based on indirect invocation of the right to health, since it had been linked to the right to life. The Government was aware that further constitutional reform was required to ensure full protection of the other rights enshrined in the Covenant.

Articles 6-9 of the Covenant

22. Mr. TEXIER asked for statistics on people employed in the informal sector, as they were not included in the official unemployment figures.

23. The State party should be commended for its ratification of the ILO Discrimination (Employment and Occupation) Convention, 1958 (No. 111); it would, however, be useful to learn whether the laws listed by the ILO Committee of Experts on the Application of Conventions and Recommendations in its report had been repealed. While articles 2 and 5 of the Labour Code had been amended to prohibit discrimination, it was unclear whether legislation had been adopted to ensure that women and men received equal pay for equal work.

24. The delegation should be more specific about whether the current minimum wage was sufficient to provide workers and their families with a decent living. The Committee would at least need to know the amount of the current minimum wage and the cost of the “basic basket of goods” used as an index to calculate the standard of living. Clarification was needed on whether some employment sectors, such as domestic work and apprenticeship, were or were not covered by the minimum wage.

25. Additional information would be welcome on the significant number of professions whose members did not enjoy the right to join a trade union or the right to strike. Further details should also be provided on restrictions on strike action. It was difficult to understand how the right of an employer to replace workers who went on strike did not conflict with employees’ right to strike. The right to engage in collective bargaining without recourse to a trade union needed clarification.

26. Ms. BRAS GOMES, referring to the privatization of the social sector, asked how the State party ensured that unemployed people not covered by unemployment insurance were protected under the dual social security system. Was the minimum pension linked to the cost of living, thus guaranteeing a decent standard of living for pensioners and their families? How were self-employed people protected, given that they were excluded from insurance for accidents at work, occupational diseases and family benefits? Women were often unable to contribute continuously to an individual capitalization system for several reasons; it was unclear how the State party would protect them if they had insufficient means. While the Government had retained power in several areas, it had done little to mitigate the imbalance between the well-funded, private social service sector and the markedly deficient public sector. It would be useful to learn how the State party intended to rectify that situation.

27. Mr. CEAUSU asked whether the authorities were aware that many cases brought before industrial tribunals were dropped owing to the length and cost of the proceedings involved. The State party should indicate what measures it intended to take to facilitate workers’ access to justice, to speed up procedure in labour disputes, and to reduce the cost for claimants. While the doubling of the number of industrial tribunals was commendable, it would be useful to know whether the number of judges had also doubled.

28. Further details should be provided on the number of inspectors employed by the two ministries responsible for enforcing legislation on health and safety at work. Details on their powers would be useful, particularly whether they had the right to close down a work place if conditions there were found to endanger workers' lives.

29. Mr. SÁEZ (Chile) said that several policies had been introduced aimed at reducing the bureaucratic burden on workers in small businesses who wanted to enter the formal employment sector. While figures on the number of people still involved in the informal sector were not available, the number had decreased as a result of those policies and owing to the general economic upturn. The Ministry of Labour had focused on small and medium-sized enterprises when verifying respect for workers' rights, as those were the areas in which rights were most frequently violated.

30. The minimum wage was assessed on an annual basis, in consultation with all the social partners, and was approved by Parliament. Over the previous decade, it had increased at a rate well above average wage increases, while remaining at a level that reflected the continuing upturn in the economy.

31. Chilean labour law was in strict accordance with the ILO Freedom of Association and Protection of the Right to Organize Convention, 1948 (No. 87). A government fund had invested about US\$ 5 million over the previous four years to establish new trade unions, raise awareness of their value and provide training on the running of unions. The high quorums introduced by the previous Government had also been lowered in order to promote union membership. While about a thousand new unions had been set up in Chile during the previous two years, union membership was still low relative to other countries in the region. The Government intended to continue its efforts in that direction.

32. The right to strike was linked to the collective bargaining process. There had been little demand to expand the right to strike beyond that context. While employers had the right to replace workers who went on strike, the Government had introduced legislation imposing several conditions on the exercise of that right. Employers were currently required to give the replacement workers the same pay and conditions as those enjoyed by the workers on strike, and to pay a sum of money to the relevant trade union for every replacement worker employed. The Ministry of Labour had drawn up a bill proposing the abolition of that right, but it had been rejected by the National Congress. The right to employ replacement workers during strikes was, in fact, rarely exercised.

33. The legislation on collective bargaining by groups of workers who were not members of a union had also been amended. Such groups were currently required to appoint an executive body and a leader, and to adopt a basic framework. In effect, they were regulated by the same rules as those imposed on trade unions, while not taking that name. While such groups had no legal status, that was a matter of personal choice on the part of those involved.

34. Employees of all sectors had the right to establish trade unions, in accordance with article 1 of the Labour Code. Public sector employees' associations, known as associations of civil servants, were not, however, regulated by the Labour Code.

35. Steps had been taken to double the number of labour courts and specialized labour judges because of major delays in dealing with the backlog of cases. There were only 20 labour courts in the country, the same number as in 1973, to handle some 5 million offences each year. The civil courts had to date been handling the overflow of cases. The reform would double the coverage of cases by specialized courts, with one serving each region. The ritualized written proceedings would be replaced by a new oral procedure in the form of a single hearing. Studies by the Ministries of Labour and Justice, and also by universities and other independent bodies, indicated that the time required to dispose of cases would be reduced by at least one third. The new regime should be fully operational by 2005.

36. Mr. MUÑOZ (Chile) said that 70 per cent of the population were covered by the public health insurance scheme, the National Health Fund, and 25 per cent by private schemes. Since 1980, all workers were required to join the new pension fund scheme or individual savings and investment schemes. Workplace accidents and occupational illnesses were covered by two schemes financed by employers in proportion to the frequency of accidents in the workplace concerned. Fifty per cent of the working population were covered by mutual benefit funds and 20 per cent by the publicly-funded Instituto de Normalización Previsional. However, 30 per cent of the workforce, i.e. those employed by the informal sector, had no insurance coverage for workplace accidents or occupational illness. The mutual benefit funds tended to provide coverage for larger and better organized enterprises. Employees of smaller enterprises covered by the public insurance institute were perhaps at a disadvantage in terms of inspections of safety, hygiene and other conditions in the workplace.

37. Some 500 health and labour inspectors currently operated on behalf of the national health authority. As from 2005 responsibility for inspections under the Health Code would be devolved to the regional authorities. Penalties for breaches of the Code depended on the seriousness of the offence and ranged from fines, which had been significantly increased by amendments to the Code adopted in 1998, to closure of the enterprise. In 2005 the health authorities planned to increase the number of inspections by about 30 per cent by means of two initiatives. One involved redistribution of the funds received by the Ministry of Health from contributions to the public accident insurance scheme. The second was based on an agreement between the Ministry of Health and the Ministry of Labour to supplement the former's team of inspectors by 1,500 Ministry of Labour inspectors. The health inspectors could then focus on the assessment of health risks, thus ensuring more efficient use of resources.

38. Mr. SÁEZ (Chile), replying to a question regarding equal pay for work of equal value, said that Chile had ratified the ILO Discrimination (Employment and Occupation) Convention, 1958 (No. 111), and modernized the anti-discrimination provisions of the Labour Code, particularly articles 2 and 5. However, the Code made no explicit reference to the equal pay principle. On the other hand, non-discrimination was a general principle of law and the existing legislation could not be construed in a manner inconsistent with that principle.

39. The minimum wage was mandatory and could be derogated from only in very exceptional cases such as where the job-seeker was a retired person over 60 years of age or a minor under the age of 18. The minimum wage was frequently paid for seasonal work in agriculture and some kinds of craftwork but was rarely encountered in other branches of the economy such as industry, trade or finance. Wage scales in the public service had been well above the legal minimum for many years.

40. As already noted, responsibility for health and safety at work was shared by the Ministries of Labour and Health. Penalties for non-compliance with existing legislation had been made proportionate to the size of a company's staff in 2001. The sanctions now had a dissuasive impact and the inspectors' powers had been greatly enhanced.

41. Ms. SILVA (Chile) said that the provision of the Chilean Constitution to the effect that "all men" were equal had been amended in 1999 to read "all persons". Equality between men and women was thus a constitutional principle. Although wage differentials could not be gender-based, there was nevertheless a substantial wage gap of almost 31 per cent between men and women. In cases where the terms and conditions of employment were negotiated by individual employees, women were often at a disadvantage for gender-related reasons, such as the presumption that childcare and housework responsibilities would jeopardize their productivity. The authorities were tackling the problem by means of programmes aimed at promoting the employment of women, enhancing women's economic independence and combating poverty. In addition, employers were provided with guidelines on labour practices and with statistics showing that women's labour was not more costly, for instance because of the maternity factor. The National Women's Service had launched a successful publicity campaign to promote the employment of women in branches of the economy that had formerly been male preserves, such as mining, public works and high-technology industries.

42. Ms. PROVOSTE (Chile) said that the prescribed period for filing an application for protection under the Code of Criminal Procedure was 15 days. A similar time limit was applicable to other judicial safeguards such as applications for judicial review.

43. The basket used to calculate the minimum wage was based on caloric standards developed by the Economic and Social Commission for Latin America and the Caribbean (ECLAC). Different standards were used for the basic urban and rural baskets. Households living on twice the basic urban basket were considered to be living beneath the poverty line. Households living on the equivalent of one basic rural or urban basket were considered to be living in extreme poverty.

44. The legislation on family micro-enterprises encouraged companies in the informal sector to join the formal system. The Ministry of Economic Affairs offered technical cooperation and other services to assist companies in making the transition. There were an estimated 600,000 micro-enterprises in the country, many of which were already part of the formal system.

45. Mr. SÁEZ (Chile) said that there was currently a dual system of public and private pension schemes. However, a major pension reform was under way and the public scheme was being phased out except for the armed forces. There had been some criticism of the changeover to exclusively private pension schemes. According to studies by the Ministry of Labour, many Chileans had either a very small pension or none at all. Contributions to private schemes could be interrupted, for instance during a long period of unemployment, or they might be irregular, as in the case of seasonal or temporary workers. Furthermore, many self-employed people preferred not to join any scheme.

46. The Government was studying ways to address such imbalances and shortcomings, for instance by promoting the low-risk and yet profitable administration and investment of funds contributed to private schemes. It was hoped that the self-employed would join the pension

schemes once they were convinced of their profitability. In the case of temporary or seasonal workers, the structure of the market and the services provided were not sufficient to ensure an adequate level of contributions. Additional support measures would probably be required. All workers who had contributed regularly would receive a guaranteed minimum pension, which would probably be increased in the near future. All in all, the authorities were very much aware that the new regime, which had been introduced with great fanfare, was far from ideal. A major reform could be expected over the next few years involving, in particular, fiscal support for seasonal and temporary workers.

47. Mr. TEXIER asked whether workers who had been dismissed for their involvement in trade union activities could appeal to the labour courts. The Committee would be interested in hearing details of jurisprudence in such cases.

48. Ms. BARAHONA RIERA asked what action the Chilean authorities were taking to protect temporary and agricultural workers whose health was endangered by the use of pesticides and other chemicals. Women workers were particularly vulnerable because of the impact on their sexual and reproductive health.

49. She expressed regret at the delay in adopting the bill on sexual harassment. As 20 per cent of women workers apparently suffered harassment, it was important to ensure that it was characterized as an offence as soon as possible.

50. With regard to the transition to exclusively private pension schemes, she noted that women in the informal sector or working at home were particularly vulnerable. If they had no old-age pension, they would clearly become a public health problem.

51. Mr. MALINVERNI asked the delegation to explain why the minimum age of sexual consent was so low. According to a report by UNICEF, 10,000 children aged 6 to 18 had been involved in prostitution in 1999. The delegation should provide information on measures being taken to combat child prostitution and explain why the Government had not ratified any international instruments relating to trafficking in human beings and prostitution.

52. He was concerned that abortion was prohibited even in cases of serious illness or pregnancy resulting from rape. The strict abortion laws put women's life and health at risk, often forcing them to resort to clandestine abortion.

53. Mr. TIRADO MEJÍA wished to know whether it was true that some hospital staff had forced pregnant women who needed an abortion because of a health risk to provide a written statement to that effect before treating them. The statement was later transmitted to the authorities as evidence of a crime. Such behaviour on the part of hospital staff could constitute a form of torture because women were humiliated and their health put at risk. If the allegation was true, the practice must be abolished and criminal proceedings initiated against the staff concerned.

54. Mr. ATANGANA, referring to paragraph 385 of the report, asked whether persons who had been found guilty of a serious offence lost their citizenship rights. He would also be interested to know what the minimum age for marriage was and what measures were being taken to prevent the use of corporal punishment in families and schools.

55. The CHAIRPERSON asked the delegation to provide data on poverty for the period 2002-2004 and enquired what steps the Government was taking to ensure an adequate standard of living throughout the population. It would be useful to know whether there was a considerable difference in poverty levels between the indigenous people and the rest of the population. He wished to know whether Chile's solidarity-based social protection programmes had succeeded in reducing poverty and enquired how the Government planned to make those programmes more efficient.

56. Mr. PILLAY asked whether the Government had considered formulating a national plan of action to combat poverty. Such a plan should include measures for the realization of social, economic and cultural rights and ensure the protection of indigenous culture and way of life.

57. He enquired whether people living in illegal housing risked being evicted. If so, would they be provided with alternative accommodation? In its next periodic report, the delegation should provide further information on homeless people.

58. Mr. KOLOSOV asked the delegation to substantiate its claim that the minimum wage was sufficient to ensure decent living conditions for workers and their families.

59. The information provided in the written replies in relation to female sexual activity seemed contradictory. On the one hand, it appeared that the majority of Chilean women did not become sexually active until after the age of 25 but, on the other, 16.2 per cent of all births in 2004 had been to women under 20. Could the delegation clarify that point? He would welcome information on pregnant schoolgirls. Were they stigmatized and likely to drop out of school?

60. Mr. RIEDEL wished to know why, despite the measures that had been taken to combat the spread of disease, the number of people who had contracted various diseases was high and new infections were on the increase. Did the Government envisage changing its approach to health education? What steps was the Government taking to ensure that people on low incomes could afford expensive treatment and medication in the event of serious illness?

61. According to one source, civil society and the Catholic Church might be undermining the effect of sex education. He asked whether that was the case and, if so, wished to know what the Government planned to do about it.

62. He was concerned that the proposed law on incapacity for work would constitute a violation of article 12 of the Covenant. Under the new law, mothers would only be granted leave to look after a sick child if the illness was liable to lead to serious incapacity. He asked the delegation to substantiate the Government's claim that the new law was needed in order to reduce expenses linked to the provision of incapacity benefits and to prevent mothers from abusing the right to leave of absence from work. Finally, in its next periodic report, the delegation should provide information on its waste reduction strategy.

63. Mr. CEAUSU asked whether the Government had adopted measures to raise public awareness of the health risks involved in smoking addiction and drug abuse. He wished to know whether steps had been taken to control the advertising of alcohol and tobacco products, protect non-smokers, and ban the sale of alcohol and tobacco products to minors.

64. Ms. BARAHONA RIERA said that the Government should take steps to fill the gaps that existed in legislation relating to the rights of unmarried couples and their children.

65. Although around 34 per cent of Chilean women had suffered from domestic violence, few women complained about the phenomenon. The law relating to domestic violence did not characterize domestic violence as a specific offence. She asked the delegation to provide statistics on complaints, and to describe the success of victim protection orders and measures taken to raise women's awareness of existing complaint mechanisms and relevant legal provisions.

66. She stressed the need to make the legislation banning abortion more flexible. Finally, she asked whether measures had been taken to monitor the quality of air and water, and enquired how those measures had affected public health.

The meeting rose at 6 p.m.