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International Covenant on Economic,
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REPORTS SUBMITTED IN ACCORDANCE WITH COUNCIL RESOLUTION
1988 (LX) BY STATES PARTIES TO THE COVENANT CONCERNING
RIGHTS COVERED BY ARTICLES 6 TO 9

CHILE

/20 December 1977/

In response to the request made, and bearing in mind article 17, paragraph 3, of the above-mentioned Covenant which provides that "where relevant information has previously been furnished to the United Nations or to any specialized agency by any State Party to the present Covenant, it will not be necessary to reproduce that information, but a precise reference to the information so furnished will suffice", this delegation accordingly wishes to point out that the information requested has already been furnished to the International Labour Organisation (ILO) by the Government of Chile.

The information in question has been furnished to ILO in a number of communications during the past two years, the most important of which are the following:

- OFD. (ORLI) No. 19, 23/11/76 Report on ratified conventions and observations on comments made by the Committee of Experts on the Application of Conventions and Recommendations (1975).
- OFD. (ORLI) No. 77, 22/4/76 Report on the development of the trade union situation, and information requested by the ILO Committee on Freedom of Association in connexion with Case No. 823.

- ORD. (ORLI) No. 98, 28/5/76 Submission to the competent authorities of the conventions and recommendations adopted at the fiftieth to fifty-ninth sessions of the International Labour Conference.
- ORD. (ORLI) No. 102, 4/6/76 Observations on comments made by the Committee of Experts on the Application of Conventions and Recommendations.
- ORD. (ORLI) No. 143, 24/9/76 Report on the development of the trade union situation, information requested by the ILO Committee on Freedom of Association in connexion with Case No. 823, and application of Convention 111.
- ORD. (ORLI) No. 156, 15/11/76 Report on ratified conventions for the period ending 30/4/76.
- ORD. (ORLI) No. 2, 21/1/77 Report on the development of the trade union situation and information requested by the ILO Committee on Freedom of Association in connexion with Case No. 823.
- CRD. (ORLI) No. 20, 23/2/77 Survey and statistics on the cost of social security (1972-1974).
- CRD. (OFLI) No. 58, 12/4/77 Report on the development of the trade union situation and information requested by the Committee on Freedom of Association in connexion with Case No. 823.
- CRD. (OFLI) No. 71, 5/5/77 Supplement to survey and statistics on the cost of social security (1972-1974).
- CRD. (OFLI) No. 94, 20/7/77 Submission to the competent authorities of the conventions and recommendations adopted at the 61st and 62nd meetings of the International Labour Conference.
- CRD. (OFLI) No. 109, 28/7/77 Report on ILO Recommendation 123 concerning the employment of women with family responsibilities.
- CRD. (OFLI) No. 118, 26/9/77 Report on the development of the trade union situation and information requested by the ILO Committee on Freedom of Association in connexion with Case No. 823.

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Without prejudice to the foregoing, attached hereto is a communication from the Department of Labour, an office of the Ministry of Labour and Social Welfare of Chile, dated 23 December 1976, which contains additional information on compliance with the implementation of articles 6 and 7 of the aforementioned Covenant.

Communication No. 29 of 3 June 1976
from the Office of International
Labour Relations of the Ministry for
Labour and Social Welfare, concerning
the International Covenant on Economic,
Social and Cultural Rights.

This Department has received the special communication requesting, in essence, that a report be prepared on the measures adopted and progress achieved in ensuring observance of the rights recognized in articles 6 and 7 of the International Covenant on Economic, Social and Cultural Rights, which was ratified by Chile on 10 January 1972 and entered into force on 3 January 1976.

Accordingly, I am able to inform you of the following:

Article 6. With regard to this article, it should first be noted that, in Chile, the principles set forth in paragraph 1 are guaranteed by the Constitution.

Article 10 of the Political Constitution provides as follows:

"The Constitution guarantees to all inhabitants of the Republic:

"(14) Freedom to work and job protection.

"Everyone has the right to employment, to freely choose his work, to sufficient remuneration that will assure the worker and his family of a minimum of well-being commensurate with human dignity, and to a fair share of the profits derived from his labour."

Article 1 of Constitutional Act No. 3 which entered into force on 18 September 1976, also states:

"All men are born free and equal. This Constitutional Act guarantees to all persons:

"20. Freedom to work and job protection. Accordingly, anyone has the right to employment, to freely choose his work and to fair remuneration that will assure the worker and his family of a minimum of well-being commensurate with human dignity.

"Legal machinery shall be established to provide for the participation of workers in the working community constituting the enterprise.

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"No type of work or industry may be prohibited, unless it conflicts with public morals, safety or health, or unless the national interest so demands or legislation so provides."

With regard to the measures referred to in paragraph 2 of the article in question, it should be noted that, as far as labour legislation within the competence of this Department is concerned, the provisions of the Statute on Training and Employment, promulgated on 1 May 1976, are designed in part to attain some of the objectives set forth in the Covenant in that they pursue and promote vocational training, full employment and the elimination of acts of discrimination in employment, under the supervision of a State body, namely the National Training and Employment Service.

The provisions of Legislative Decree No. 1446, which contains the above-mentioned Statute, expressly state:

"3. Such provisions must include those relating to the vocational training of workers and to the promotion of employment through placement and information activities, all as part of an over-all policy of human resources and full employment;

"4. The structuring and development of vocational training and placement constitute factors for the regulation of the labour market, and permit the broadest development of the intellectual, technical and manual skills of workers and the optimum utilization of human resources, thereby facilitating greater productivity."

Article 1 of this same legal instrument states:

"The regulations for training and employment established in this Legislative Decree are intended to achieve an adequate level of employment, with a view to ensuring the advancement of workers and the optimum organization and productivity of enterprises."

Similarly, article 9 provides:

"Vocational training shall mean the process designed to promote, facilitate, foster and develop the capacities, skills or level of knowledge of workers to provide them with better living and working opportunities and conditions and increasing national productivity, by providing them with the training required by technological advances and changes in the structure of the economy."

The above-mentioned Legislative Decree, a copy of which is attached, is due to enter into force on 1 January 1977 and will constitute the first stage in an over-all plan for the training of workers and full employment.

Article 7. The rights established in paragraph (a) of this article are guaranteed, in the first instance, in the constitutional provisions referred to in

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connexion with article 6 of the Covenant; they have been put into practice through the institution of a minimum remuneration, which is at present known as minimum income and is intended to meet the essential needs of the worker and his immediate family.

The right of women to receive the same pay as men for work of equal value is also guaranteed by constitutional provisions. Article 1, paragraph 2, of Constitutional Act No. 3 stipulates that "men and women shall enjoy equal rights". That equality, in the area in question, is embodied in the Labour Code, section 35 of which expressly states:

"The wages of men and women shall be the same for work of the same kind."

The safe and healthy working conditions referred to in article 7, paragraph (b) is given recognition, firstly, in Act 16744 of 1968 concerning Industrial Accidents and Occupational Diseases and in the supplementary legislation. Under this law, a State agency, the National Health Service, is assigned "general competence for supervision and inspection of preventive, safety and health measures in all places of work, regardless of the activities carried out in them."

The same piece of legislation also establishes the Joint Health and Safety Committees which must be set up in every industry or undertaking involving more than 25 individuals, and are made up of representatives of the management and of the workers.

Under article 6 of Act 16744, the main functions of these bodies are as follows:

- "1. To advise and instruct workers in the correct use of safety equipment;
- "2. To ensure that both managements and workers implement preventive, health and safety measures;
- "3. To investigate the causes of industrial accidents and occupational diseases occurring in enterprises;
- "4. To recommend the adoption of all health and safety measures designed to prevent occupational hazards;
- "5. To perform any other functions or duties assigned to it by the relevant administrative body."

Mention should also be made in this connexion of Decree 655 of 1941 containing the Industrial Health and Safety Regulations, which, as stated in article 1, "lays down the general health and safety conditions applying to industrial and commercial establishments of all kinds and to work places in general, and prescribes the measures and limitations governing the performance of human labour in undertakings to which they are applicable."

Another of the basic concerns of the present Government has been to guarantee the safety and health of workers in work places under conditions consistent with current levels of technological and economic development. Accordingly, on 18 May 1976, Decree No. 19 was published in the Diario Oficial (Official Journal), establishing the regulations governing maximum permissible concentrations of workers in work places.

Provisions have also been laid down for the protection of workers against forms of radiation to which they might be exposed in the performance of their duties. These provisions are contained in Decree No. 115, published in the Diario Oficial of 22 April 1977, which "Adopts basic standards for protection against radiation."

With regard to the rights established in article 7, paragraph (c), it should be noted that although no general provisions recognizing these rights exist in the private sector, it is common practice for advancement and promotion to be based on the seniority and competence of the employee.

In the case of public sector employees, articles 38 and following of Administrative Statute DFL338 of 1960 set out in detail the conditions governing the advancement of civil servants, stipulating specifically that "for the purposes of advancement, employees shall be placed on registers according to merit and seniority."

Each of the rights to rest and leisure and the other guarantees called for in article 7, paragraph (d), is recognized fully in the Labour Code.

The right to rest and remuneration for public holidays is covered in articles 323 and following of the Labour Code, which provide as follows:

"323. A wage-earner shall be entitled to his base pay in cash for Sundays and statutory holidays.

"'Base pay' means the normal cash remuneration which the wage-earner receives for his services, excluding any other additional or special remuneration.

"In the case of piecework where no base pay has been agreed upon, the remuneration for Sundays and holidays shall be reckoned according to the average wages earned during the wage period in question. In such cases, the base pay shall not be less than the minimum base pay in cash which the undertaking pays to wage-earners employed on time work.

"A wage-earner must have completed a full day's work on all the days on which the undertaking or section of the undertaking was in operation during the week in question in order to qualify for the right established by the first paragraph of this section.

"Absence from work due to industrial accidents shall not cause him to lose the said right.

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"Similarly, lateness and leave of absence shall not affect the said right if the total time lost does not exceed two hours in any one week or four hours in a calendar month.

"324. Industrial and commercial establishments shall remain closed on the days specified in the preceding provisions; they shall not serve the public nor sell goods in their branch of business and shall suspend all work.

"The President of the Republic shall have power to decree the compulsory closing of commercial establishments from 1 p.m. on Saturday till Monday, subject to specified exemptions.

"326. The rest period provided for in section 322 and the obligations and prohibitions imposed by section 324 shall begin at 9 p.m. on the day preceding the Sunday or public holiday and shall end at 6 a.m. on the day following such Sunday or holiday."

The limitation of working hours is established in sections 24 and following, concerning wage-earners, and articles 125 and following, concerning salaried employees, the texts of which are as follows:

"24. The normal hours of actual work of each wage-earning employee, irrespective of sex, shall not exceed eight hours in the day or forty-eight hours in the week.

"25. The above provision shall not apply to persons holding positions of supervision, management or trust, such as stewards, foremen, hall porters, etc., or persons performing duties which are of an intermittent nature or require mere presence on duty (such as hairdressers' assistants, salaried hotel employees, night watchmen, railway gangers, etc.) or any other duties which are declared by the General Labour Inspectorate to be of this nature; nor to any persons performing duties which, owing to their nature, cannot be kept within a fixed working day.

"Nevertheless, such employees shall not remain at the workplace for more than twelve hours a day, and shall have a rest period of not less than one hour in the course of this working day.

"The provisions of two preceding paragraphs shall not apply to kitchen staff of hotels, restaurants and clubs.

"26. A weekly half holiday may be introduced in pursuance of an agreement concluded between the employer and the wage-earning employees in an undertaking; in this case the limit of eight hours may be exceeded on the other days of the week, subject to a maximum of forty-eight hours in the week.

"28. In the case of work which, owing to its nature, does not prejudice the health of the employees, an agreement may be made in writing, in special cases laid down by the competent labour inspection office, to work overtime not exceeding two hours a day, provided that the rate of pay for such overtime shall be fifty per cent higher than the rate agreed upon for the normal hours of work.

"Hours worked on Sundays and statutory holidays shall be considered as overtime and shall be paid for as such if the total hours of work, including the said hours worked on Sundays and statutory holidays, exceed the maximum limits established by law (or those stipulated in the contract if they are less).

"Undertakings or establishments not excepted from the rule respecting rest on Sundays shall not distribute the normal daily hours of work in such a way as to include Sundays, except in circumstances which the General Labour Directorate considers to be cases of force majeure. If they do so without such authorization, the hours worked on the said days shall be paid for at the legal overtime rate.

"125. The hours of work shall consist of normal hours of work and overtime.

"'Normal hours of work' (horas ordinarias) shall mean hours of actual work not exceeding forty-eight hours in the week for all salaried employees in general.

"However, the maximum normal working hours of radio telephone operators, telephone operators and telephone testers shall not exceed forty-two hours in the week.

"Telephone operators shall be entitled to two rest periods during the working day, such rest periods not to exceed a total of one hour in the day.

"The normal working hours of operators, punch-card operators and supervisors of mechanized accounting or statistical systems, when performing such duties, shall not exceed thirty-three hours in the week.

"126. The maximum of forty-eight hours a week may be increased to fifty-six hours for salaried employees in telegraph, light and water supply undertakings, theatres, tramway undertakings and other similar services where in the opinion of the General Labour Inspectorate, the business done during the day is obviously not great and where the salaried employees are obliged to be constantly at the service of the public.

"In the case referred to in the third paragraph of the preceding section, the working day may be increased to a maximum of forty-eight hours in the week under the conditions established in the first paragraph of this section.

"In the case referred to in the fifth paragraph of the preceding section, the working day may be increased to a maximum of thirty-nine hours a week under the conditions specified in the first paragraph of this section.

"128. The weekly maxima fixed above shall be distributed over six days.

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"The normal hours of work shall be divided into days of eight hours or of nine hours and twenty minutes, as the case may be. The employer in agreement with the salaried employees may alter this arrangement by increasing the hours of work on certain days and decreasing them on others, provided that the weekly maximum specified above shall not be exceeded and that the daily maximum shall not be exceeded by more than one hour or forty minutes, as the case may be."

The right to annual holidays with full pay is also embodied in sections 98 and 158 of the Labour Code, which provide as follows:

"98. Wage-earning employees who have been employed for 288 days in a year in an undertaking or works shall be entitled to fifteen days annual leave with full pay. The said leave shall amount to seven days for those who have been employed for more than 220 days, but less than 288 days. The leave shall be granted in conformity with the rules laid down in the regulations.

"Wage-earning employees of mining undertakings, excluding those working outside the province in which the mining establishments in question are located, shall be entitled to the following special scale: wage-earning employees who have been employed for 288 days in a year shall be entitled to 25 days annual leave with full pay. The said leave shall amount to fifteen days for those who have been employed for more than 220 days, but less than 288 days. The leave shall be granted in conformity with the rules laid down in the regulations and in accordance with relevant local agreements, provided that they establish benefits greater than those granted under this article.

"For the purposes of annual leave, wage-earning employees of the major mining undertakings shall only be required to have worked 270 days in a year.

"Any wage-earning employee who has been employed for ten years, whether such employment has been continuous or not, shall be entitled to one additional day of annual leave for each three additional years worked, under the same conditions as those set out in the foregoing paragraphs.

"158. Salaried employees with more than one year's service shall be entitled to fifteen working days' leave annually with full pay, in conformity with the rules laid down in the regulations.

"Any salaried employee who has been employed for ten years, whether such employment has been continuous or not, with one or more employers, shall be entitled to one additional day of annual leave for each three additional years worked, under the same conditions as those set out in the preceding paragraph.

"The said leave shall amount to 25 working days in each year for salaried employees residing in the provinces of Tarapacá, Antofagasta, Atacama, Chiloé, Aisén and Magallanes, and for salaried employees working in mining undertakings, with the exception of those working outside the province in which the mining establishments in question are located.

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E/1978/8/Add.10

English

Page 10

"Civil servants, salaried employees of semi-public and municipal institutions and of autonomous or independently administered State corporations shall enjoy the same annual leave entitlements, without prejudice to the rights granted to them under other legislation."
