

CHILE

CERD 28TH NO. 18 (A/9018) (1973)

269. The initial report of Chile, submitted on 2 January 1973, was considered by the Committee at its eighth session (153rd meeting).

270. Several members noted that the report under consideration contained extensive information on the special legislative and administrative measures which had been adopted for the protection of indigenous groups and for ensuring enjoyment by those groups of equality of treatment and opportunities, and observed that the adoption of such special measures was enjoined in article 2, paragraph 2, of the Convention and countenanced in article 1, paragraph 4 thereof.

271. It was noted, however, that - apart from the information relating to the special measures mentioned in the preceding paragraph - the information contained in the report was scant. Nor was the report prepared in accordance with the guidelines laid down by the Committee. It was also observed that the texts of the provisions of the Political Constitution of Chile and other legislation mentioned in the report were not furnished. In view of the emphasis on special measures adopted for the benefit of indigenous groups, it was felt that information on the demographic composition of the population in general, and data on the indigenous population in particular, would be useful to the Committee. Several members expressed the hope that the second periodic report of Chile would contain such information, as well as information on the results achieved as a result of the measures described in the report under consideration, more comprehensive information on the measures adopted in order to give effect to articles 3 to 7 of the Convention, and information on the relations of the reporting State with the racist regimes in Southern Africa; and that the guidelines laid down by the Committee and the general recommendations adopted by it would be taken into account in the preparation of future reports.

272. The representative of Chile assured the Committee that the comments made by members would be transmitted to his Government and taken into account in the preparation of the next report and that future reports would contain - in addition to the information specified in the communication laying down the guidelines for reports submitted under article 9 of the Convention - information on the results of the special measures adopted with respect to the indigenous populations as well as information on the international stand of his Government.

273. The Committee decided to consider the report satisfactory, while noting that it would be pleased to receive more varied and comprehensive information in subsequent reports.

CERD 30TH NO. 18 (A/10018) (1975)

159. As soon as the Committee opened its consideration of the second periodic report of Chile, and before the representative of that State was invited to participate in the discussion in accordance with rule 64 A of the provisional rules of procedure, the Committee considered a proposal submitted by one of its members on a point of order, to the effect that the report should not be considered. The member who submitted that proposal and other members who supported it argued that the document could not be regarded as having been submitted by the lawful Government of Chile; that, in usurping power, the military junta currently governing Chile had violated the Constitution of that country; that it was blatant hypocrisy that the report referred to the Constitution of Chile when that Constitution had not been in force since the coup d'état; and that the Committee could not seriously consider examining a document based on a Constitution which had been rendered inoperative by a whole series of unconstitutional decrees. The members of the Committee who opposed the proposal - some of whom emphasized that they shared the concerns expressed by their colleagues with regard to the situation of respect for human rights in Chile - argued that the Committee was not competent to determine the lawfulness of the authorities submitting reports of States parties, which were forwarded to the Committee by the Secretary-General in accordance with article 9, paragraph 1, of the Convention; that the general situation in Chile was not within the scope of the Convention and therefore could not be considered by the Committee; and that the Committee was duty-bound to consider the report before it, which had been submitted and forwarded in due form and in accordance with the established procedure. Some of those members, however, suggested that the Committee could immediately proceed to ask the representative of Chile whether, and to what extent, the Constitution was in force, and in particular whether the provisions of the Constitution which related to the provisions of the Convention were operative, in their entirety or in a limited form. Other members of the Committee opposed addressing such a question to the representative of Chile, arguing that the suspension of a country's constitution or the restriction of the application of some of its provisions were essentially within the domestic jurisdiction of a sovereign State and outside the competence of the Committee. The Committee agreed to invite the representative of Chile to participate in its discussion of his Government's report and to address to him, in the first instance, the question relating to the operativeness of the Constitution, and in particular those provisions of the Constitution which were cited in the report.

160. The representative of Chile assured the Committee that the Chilean Constitution was in force and that all its 110 general articles were being implemented. He added that a state of emergency - itself constitutional, inasmuch as it was expressly provided for by the Constitution - prevailed at the moment in Chile; and that a state of siege had been proclaimed, but that the civil, cultural and educational provisions were nevertheless being implemented throughout Chile in complete equality. He was asked specifically whether the provisions of the Constitution which were cited in the report, and upon which the entire report (except for one section dealing with implementation of article 2, paragraph 2, of the Convention) was based, namely, article 10, paragraphs 1, 2, 7, 8, 9, 10, 14, 15 and 17, were being fully or partially implemented or whether they had been suspended by virtue of the state of siege. The representative of Chile stated in reply that the Constitution in force was a general one and included the provisions mentioned in the report, which were being implemented to the extent that the state of siege - which had been proclaimed constitutionally - allowed. Those provisions might not be in force in their entirety - he explained - because of the application of other

constitutional provisions arising from the state of siege. The representative of Chile was asked whether that statement applied also to section 15 of article 10 of the Constitution, which guaranteed all inhabitants of the Republic the freedom to live in any part of the Republic and to move from one place to another, and he stated that right was guaranteed to all persons provided they did not engage in any activities which were considered to be infringements of the state of siege. He emphasized that the state of siege had been proclaimed by what he called a "Supreme Decree" of the Executive, in exercise of powers expressly conferred upon it by the Constitution in article 72, the provisions of which authorized the Executive to restrict the rights guaranteed under article 10, section 15, of the Constitution. He added that that did not mean that the Constitution was not in force, and that it had nothing to do with the problems of racial discrimination, which did not arise in Chile.

161. Some members of the Committee noted with regret that, although the provisions of article 10 of the Constitution constituted its very corner-stone, the second periodic report of Chile made no mention whatsoever of the fact that the exercise of some of the rights guaranteed under that article was in fact subject to some restrictions - an omission which some members considered to be so grave as to cast doubt on the veracity of the report as a whole as well as on the worthwhileness of its consideration by the Committee.

162. The Committee requested the representative of Chile to furnish it with the text of the "Supreme Decree" declaring a state of siege as well as the text of the relevant sections of article 72 of the Constitution on which that decree was based.

163. Some members of the Committee commented on the two texts made available to it by the representative of Chile, observing that the statement he had made before the Committee, to the effect that the state of siege had been proclaimed constitutionally, was not corroborated by the texts at hand. They noted that "Legislative Decree No. 3" of 18 September 1973 had been proclaimed by the Ministry of National Defense, Subsecretariat of War, and had been signed by four military officers, whereas section 17 of article 72 of the Constitution conferred the power to declare a state of siege upon Congress and - if Congress was not in session - upon the President, who was required to set the duration of the state of siege; it was noted also that the declaration in Legislative Decree No. 3 did not specify the duration of the state of siege. Some members of the Committee, however, denied the competence of the Committee to engage in a discussion of the constitutionality of the Legislative Decree; and they maintained that that situation had no bearing on the implementation of the provisions of the Convention or on the practice of racial discrimination in Chile. Other members of the Committee - while agreeing that the Committee was neither competent nor qualified to discuss the constitutionality of a decree proclaimed in a State party - maintained nevertheless that the Committee could not proceed any further in its consideration of the second periodic report of Chile before receiving further information on the precise effects of the state of siege upon the rights guaranteed under the Constitution to all inhabitants of the Republic, with particular reference to the rights enshrined in the Convention. They wished to know, *inter alia*, whether any other decrees, suspending or restricting the operation of some articles of the Constitution, and any special judicial or quasi-judicial tribunals, had been declared or established, respectively, under the state of siege.

164. During the exchange of views summarized in the preceding paragraphs, several proposals were

made. Under one proposal, the Committee would adopt a decision expressing its deep concern at the contents of the report and at the fact that the Chilean military junta was not complying with the provisions of the Convention, and would also not with deep regret that, following the suspension of the Constitution, there no longer existed in Chile legislative, judicial, administrative or other measures of the kind which every State party to the Convention had undertaken to adopt in order to give effect to the provisions of the Convention. Under another proposal, the Committee, having failed to reach agreement, would so inform the General Assembly in its annual report - in which it would include summaries of the views expressed by various members or, alternatively, extracts from the summary records of the meetings in which the report of Chile was considered, or else simply refer to the documents in question by mentioning their symbols. A third suggestion was made to the effect that the Committee should proceed forthwith with its consideration of the report. Under the fourth suggestion, the Committee would suspend its consideration of the report until additional information on the effect of the state of siege upon constitutional rights in Chile was received.

165. The Committee decided to instruct its Rapporteur to prepare the section of its annual report containing the summary of its consideration of the second periodic report of Chile in the same manner in which other sections relating to reports of other States parties were prepared, reflecting the various views expressed by members of the Committee and the information provided by the representative of the reporting State.

CERD A/32/18 (1977)

68. Before embarking upon its examination of the third periodic report of Chile, the Committee considered at length a proposal to the effect that the examination of that report “should be deferred until such time as the international community could feel that the Chilean Government was supporting its efforts to ensure the protection of human rights and the elimination of racial discrimination”.

69. Supporters of the proposal expressed doubts as to the legality of the Chilean Junta’s participation in international treaties in the sphere of human rights and freedoms. They referred inter alia to the discussions and resolutions of the latest sessions of the General Assembly and the Commission on Human Rights and to the refusal of the Government of Chile to co-operate with the United Nations on questions of human rights. They argued that there was a link between systematic violations of human rights in general and racial discrimination in particular and that racial discrimination could be eliminated only when there was respect for human rights in general. And they questioned the credibility of certain statements in the report, relating to the situation of human rights in Chile, arguing that such statements were not in accord with the known facts about the actual situation prevailing in Chile.

70. Opponents of the proposal before the Committee, however - while also expressing their profound concern about the situation of human rights in Chile - agreed that every State party to the Convention had a right as well as an obligation to submit the reports provided for in article 9, paragraph 1, of the Convention, and that the Committee also was duty-bound to consider those reports, in accordance with paragraph 2 of the article. Accordingly, there must be some substantial reason for any decision to defer consideration of a particular report, if the Committee were not to be open to charge of discrimination against the reporting State concerned. None of the arguments advanced by the advocates of deferment provided sufficient reason for the proposed action. Non-cooperation with United Nation bodies was no reason for the Committee to refuse to consider, or to defer its consideration of, a report submitted by the Government concerned. Nor did violations of human rights, even when they were persistent and systematic, fall within the purview of the Committee unless they constituted racial discrimination as defined in the International Convention on the Elimination of All Forms of Racial Discrimination. Even if the situation in a given country did embody violations of the provisions of that Convention, however, that in itself would not justify the Committee’s refusal to consider the report submitted by the Government in question; in fact, it would be a reason for the report to be considered.

71. At the 317th meeting, the Chairman concluded the procedural discussion by stating that “the majority of members appeared to be in favour of considering the report of the Government of Chile at the present session, and of taking note of the views of members who were opposed to doing so”.

72. Much of the discussion that ensued revolved around the question of the actual status of the Constitution of Chile: was it still in force? Had it been abrogated? Or had it been suspended - for a specific or for an indeterminate period? There was interest also in the precise legal nature of the “Supreme Decree” mentioned in the report as well as in the effects of the Decree of 11 September 1973, proclaiming a state of emergency throughout Chile, upon the actual exercise of the rights

safeguarded by the Constitution and laws of the country and listed in the report.

73. Some members observed that it was pointless to proceed with a discussion of the constitutional and legal rights mentioned in the report as long as there was uncertainty about the actual status of the instruments establishing those rights. Other members argued that the Committee could not reach meaningful conclusions about the existence or non-existence of practices of racial discrimination as long as it could not determine whether the Constitution and laws establishing certain rights and proclaiming equality in the enjoyment thereof were actually in force. It was also argued that the fact that the report cited provisions establishing certain rights but withheld the information that the instruments containing those provisions were not in force reflected adversely on the credibility of the report as a whole and rendered the Committee's examination thereof pointless.

74. Apart from these central questions, around which much of the discussion revolved, some of the specific contents of the report were discussed. It was pointed out that the list of rights side to be recognized in the legal system of Chile fell short of the list of rights contained in article 5 of the Convention. It was emphasized that the use of the word "arbitrary", as a qualification of "discrimination", in constitutional Acts Nos. 2 and 3, was disturbing, since no form of discrimination could be justified. Some members drew attention to the fact the trade relations with South Africa were maintained. Other members pointed to the absence of information on the implementation of article 7 of the Convention. And some critical comments were made on the information provided in the report regarding some of the measures taken to ensure the development and protection of certain racial groups.

75. The following specific questions were asked: could provisions of the Convention be invoked before Chilean courts in order to obtain legal protection against racial discrimination? Had there been instances of recourse to the courts by victims of arbitrary or illegal acts or omissions depriving them of the legitimate exercise of their rights? And in what circumstances was Chilean nationality a condition of employment?

76. Some members asked that the actual texts of the provisions of laws and Constitutional Acts mentioned in report should be supplied. Particular mention was made of Act No. 15.576 (promulgated, in a revised form, in Act No. 16.643) and Book II, Title IV, paragraph 10 of the Penal Code - which related to article 4, paragraphs (a) and (b) of the Convention.

77. The representative of Chile made a statement at the 319th meeting of the Committee, in which he dealt with the constitutional situation in his country, the present situation with regard to human rights and the specific issue of racial discrimination. He informed the Committee that four Constitutional Acts, amending the Constitution of 1925, had been promulgated in 1975 and 1976. He described the scope of Constitutional Acts Nos. 1 and 2 in general terms and analysed the provisions of Constitutional Act No. 3, which was entitled "Constitutional Rights and Duties" and which modified articles 10 to 20 of the Political Constitution of 1925. He confirmed that the state of siege, declared on 11 September 1973, was still in force, and that by virtue of that declaration certain rights (not including those in articles 6, 7, 8, 11, 15, 16 and 18 of the International Covenant on Civil and Political Rights) had been restricted. And he informed the Committee that his Government would submit shortly to the Secretary-General the texts of the Chilean Civil and Penal Codes, the Constitutional Acts to which he had referred, the Constitution of 1925 and the various

decrees and acts referred to in his Government's report and in his statement.

78. At its 320th meeting, the Committee decided by consensus to "suspend its consideration of the report of Chile until the legal documents promised by the representative of Chile are made available to the Committee in order to enable the Committee to conclude its consideration of the report at its present session". A working group was set up to examine the additional information to be received from the representative of Chile.

79. When the Committee resumed its consideration of the report of Chile at its 336th meeting, it considered the proposals made by the working group. At its 338th meeting, the Chairman read out a statement which represented the conclusions he drew from the Committee's debate on the report. It read:

"1. It appeared from the discussions that the Committee regretted that the third periodic report of Chile as submitted on 3 February 1997 did not contain sufficient information to enable the Committee to ascertain the extent to which the constitutional situation prevailing in Chile might affect the implementation of the International Convention on the Elimination of All Forms of Racial Discrimination.

"2. The Committee had noted that the additional documentation, consisting of constitutional and other legislative material, submitted during the session by the representative of Chile could not, because of its form and volume, be made available to the Committee in the working languages.

"3. The Committee wished to indicate that, if the Government of Chile so wished, it could present to the Committee the information mentioned in the preceding paragraph in a form and volume that could be made available to the Committee."

The Chairman also stated that, "in drawing that conclusion, he was aware that the majority of members of the Committee, when considering the information presented to it by the Government of Chile, had expressed their deep concern with regard to the systematic violations of human rights and fundamental freedoms in that country and their fear that that situation presented a serious obstacle to the fulfilment of the obligations of Chile under the International Convention on the Elimination of All Forms of Racial Discrimination".

CERD A/34/18 (1979)

243. The fourth periodic report of Chile, consisting of two documents (CERD/C/18/Add.2 and 5), was considered by the Committee together with the supplementary information given by the representative of the reporting State in his introductory statement. He highlighted Constitutional Act No. 3 of 1976 which replaced the Political Constitution of Chile and the Legislative Decree of 22 March 1979 concerning the descendants of the Mapuche.

244. The Committee found it necessary to consider the report in the light of the background of the consideration of the third periodic report at its fifteenth session in March / April 1977. ^{12/} It may be recalled that at that session, in view of its deep concern with regard to the systematic violations of human rights and freedoms in Chile, the Committee found itself unable to ascertain the extent to which the constitutional situation might affect the implementation of the Convention under whose terms it worked. Additional documentation submitted during the session could not, because of its form and volume, be made available to the Committee and it therefore had invited the Government of Chile to present the necessary information on the general constitutional and legislative situation in a form and volume that could be made available to the Committee.

245. The Government had failed to do so. Its fourth report again treats the problem of racial discrimination as an isolated one without giving the necessary information about the general constitutional situation in that country. On the contrary, the representative of Chile expressed certain reservations as to the Committee's competence to deal with institutional aspects which concerned the internal sovereignty of States or with questions of human rights in general. The only new factor in the report was the announcement that a draft constitutional document would be submitted to the Chilean people in the course of the year.

246. Several members insisted that the Committee was not in a position to carry out its functions as long as it was not informed whether and to what extent the Chilean Constitution was still in abeyance and what was the precise status of the Constitutional Acts No. 1, 2 and 3 cited in the report. They consequently abstained from examining the report in substance. Others went even further and proposed to defer the discussion. Not more than three members entered into a substantial examination of the report. The results of this examination are given below.

247. The representative of Chile tried only at the end of the discussion to inform the Committee about the general constitutional situation in the country. He explained that the provisions of the Constitution of 1925 relating to racial discrimination had been enlarged by Constitutional Act No. 3. In addition, he stated, safeguards were also provided in the Civil Code and in a number of laws and decrees. Those principles were to be enshrined in the new Constitution that was being drafted. He would convey to his Government the Committee's concern that the new Constitution should make more specific provision for the prohibition of racial discrimination as such.

^{12/} Official Records of the General Assembly, Thirty-second Session, Supplement No. 18 (A/32/18), paras. 68-79.

248. Referring to article 5 of the Convention, he said that most of the rights specified in it, with the

exception of certain political rights which had been suspended, were unaffected by the state of emergency and were observed in practice in Chile. Certain rights which had been suspended during the state of siege were now in force again under the state of emergency. The 1925 Constitution was still in force and in certain areas its provisions had been expanded and improved by the series of constitutional acts.

249. The discussion of some specific points had the following results: in general it was noted that the fourth periodic report of Chile was too brief and contained little information concerning the implementation of articles of the Convention, in particular articles 4, 5 and 7.

250. Some members welcomed the reform of the land-tenure system in Chile under which individual titles of ownership could be granted to members of the indigenous communities concerned if they so wished. The decision of the Government to combine the leadership of the Institute of Indigenous Development with that of the Farming Development Institute was considered useful.

251. With reference to special measures to help the Mapuche people, the question was asked whether similar assistance was being given to the Indians in the north of Chile. More information was requested concerning educational and cultural programmes for the indigenous communities and the measures being taken with regard to employment and health.

252. With regard to actions taken against racial discrimination and apartheid, particulars were sought concerning programmes carried out in Chile in the fields of information, education, culture and science in connection with the Decade for Action to Combat Racism and Racial Discrimination. Questions were asked as to what extent Chile supported the various trust funds established by the United Nations for the benefit of peoples of southern Africa and what Chile's position was on the subject of political asylum and refugees.

253. Referring to article 4 of the Convention, it was noted that the report took the same line as several others, simply stating that adequate general provisions for dealing with activities of the kind covered by that article already existed in the Constitution and the Criminal Code of Chile. It was stressed that States parties to the Convention were under obligation to enact specific legislation for giving effect to article 4 and the hope was expressed that this view would be conveyed to the appropriate Chilean authorities. A member welcomed the reform of article 30 of the Labour Code referred to in the report and asked what penalty was applied to any official individual found guilty of an act of racial discrimination.

254. The representative of Chile replied to some of these specific points. He stated that Chile had participated in the struggle against apartheid with contributions to the Trust Fund for Namibia. As a member of the Organization of American States, his country was a party to a regional convention concerning the right of asylum and would be prepared to grant asylum in situations covered by that Convention. Propaganda for racial discrimination advocating violence was covered by article 11 of the Constitutional Act No. 3.

255. Touching upon the remedies open to aggrieved persons, he elaborated on the remedy of

amparo provided for in the Code of Criminal Procedure and in relevant provisions of the Penal Code and the Civil Code of Chile.

256. With regard to article 7 of the Convention, he said that the Government was in the process of revising its policies and programmes in the educational, social and cultural fields and that the important provisions of article 7 would be taken into account during that process.

257. Questions on which he did not have sufficient information would be answered in the next periodic report.

258. In his concluding remarks the Chairman noted that the Committee's right to inquire into the details of the constitution of States parties had been fully recognized. He believed, however, that conditions in Chile of concern to the Committee had not altered substantially. On his suggestion the Committee decided to reiterate the substance of the statement made at the 338th meeting during the fifteenth session 13/.

13/ Ibid., para. 79. The second periodic report of Mexico (CERD/C/16/Add.1) was praised for its quality and comprehensiveness and demonstrated that country's readiness to co-operate actively with the Committee.

CERD A/36/18 (1981)

260. The fifth periodic report of Chile (CERD/C/65/Add.3) was considered by the Committee after a brief introductory statement made by the representative of the reporting State.

261. Some members of the Committee noted with satisfaction that the report had been prepared in accordance with the guidelines laid down by the Committee; however they regretted that many questions which had been put to the Chilean Government during the examination of its fourth periodic report had remained unanswered.

262. In connection with article 2 of the Convention, members of the Committee drew particular attention to the question of the protection of the indigenous minorities living in Chile. It was noted that earlier reports had mentioned Indian tribes of which no mention had been made in later reports, which had referred only to the Mapuches and the Aymaras, and information was requested on where such groups were living and how large they were; in addition statistics should be provided about the demographic composition of the population to make it clear whether the minority groups were growing or diminishing in size and whether they were victims of racial discrimination. In this connection, particular attention was drawn to the information contained in paragraph 412 of the report of the Special Rapporteur of the Commission on Human Rights concerning Protection of Human Rights in Chile (A/35/522), according to which the procedures established for the acquisition of title to land by Mapuches failed to take into account their institutions, customs and traditions, and that situation, combined with a lack of effective technical and financial assistance, created conditions for the Mapuches to be progressively dispossessed of their lands by economically and socially more powerful groups, thus endangering the existence of the Mapuches as an ethnic group. The Committee required information on the allocation of land in the areas where members of that indigenous minority lived and on the reasons for the closure of the Indigenous Development Institute which had promoted cultural, social and educational measures for the Mapuches. Information was also requested about the specific provisions of the chapter of the Constitution entitled "Bases of the institutional system" to determine whether it gave effect to article 2, paragraph 1 (d) of the Convention.

263. Some members of the Committee wished to know in what way articles 3 and 7 of the Convention were being implemented by Chile, since the report contained little or no information on the subject, and details were requested in particular, on Chile's relations with the racist regime of South Africa.

264. In connection with article 4 of the Convention, the Committee noted that, like the preceding report, the report under consideration stated that no specific legislative measures had been taken in Chile to combat racial discrimination, which was apparently not considered a punishable offence by the law unless accompanied by acts of violence; it was stated that such a situation was plainly inadequate, in view of the requirements of the Convention. The Committee could not be satisfied with the explanation that there was no need to adopt such legislation because there had never been a racial problem in Chile. That affirmation was inconsistent with the statement, contained in the report, that the Convention had been incorporated into Chilean law and could therefore be applied as and when appropriate. The view was expressed that it was not possible to accept the claim that

the Convention was self-executing because it automatically became part of the country's internal law: article 4 stated that States parties should "declare" certain acts to be an "offence punishable by law", should enact specific legislation to that effect and should state what the punishment for any infringement would be. Furthermore, it was noted that the only legislative text mentioned in the report in connection with the implementation of article 4 (a) of the Convention was Act No. 16,643 relating to improper use of the information media, but it was observed that the Act covered only one aspect of the article in question and did not fully meet the requirements of the Convention. The situation regarding the prohibition of racial organizations was similar. It also appeared from the constitutional provision reproduced in the report that persons who had committed certain offences were not permitted to exercise any public office or function for a period of 10 years, or if they already held such an office or function, they were dismissed, but there was unfortunately no reference to the type of offence involved. It would therefore be useful for the Committee to have detailed information on the subject and, in particular, to know who was responsible for deciding that such offences had been committed.

265. With reference to article 5 of the Convention, the Committee was unable to ascertain from the report whether the provisions of the Convention, particularly those concerned with the enjoyment or exercise, on an equal footing, of human rights and fundamental freedoms in the political, economic, social and cultural or any other field of public life, were being implemented in Chile where a state of emergency had been in force for several years. It appeared from United Nations documents that, during that period, the exercise of some fundamental rights had been limited or suspended and it was hoped that the Government of Chile would provide precise information on its implementation of all the provisions of article 5 of the Convention and some information on the extension of the state of emergency. In this connection, it was asked whether, despite the entry into force on 11 March 1981 of the new Political Constitution, the state of emergency had been maintained and, if so, whether the scope of that Constitution was not being limited, how the principles and the provisions of the Constitution were being applied in practice. It was also pointed out that the Committee should be provided with the text of the Chilean Constitution in order to determine whether the provisions of the Convention were being respected. Dispelling a doubt expressed during the discussion as to whether it fell within the competence of the Committee to express any views on the effects of a state of emergency on human rights in general, it was emphasized by several members that article 5 of the Convention guaranteed the right of everyone, without distinction as to race, to equality before the law, notably in the enjoyment of the rights enumerated in that article. A State could not be a party to the Convention unless it guaranteed those rights. If such rights were not guaranteed those rights. If such rights were not guaranteed to everyone without distinction or not exercised, the Committee could put questions with regard to the relationship between that state of affairs and the state of emergency.

266. The Committee also requested full information on the implementation of article 6 of the Convention and expressed the wish to receive the relevant legislative texts in order ascertain whether any person who was a victim of racial discrimination could obtain redress in the courts. In addition, with regard to the powers of the Constitutional Court recently set up in Chile, the Committee should have the text of the provisions empowering the Court to block any legislative measure which sought to undermine or weaken racial non-discrimination.

267. Replying to questions by members of the Committee, the representative of Chile referred to

the concern expressed by the Committee about the indigenous populations and their right to own land and stated that considerable progress had been made during the last few years due, in particular, to the promulgation of Decree-Law No. 2568, referred to in his Government's fourth periodic report providing for access by the Mapuche to the individual ownership of land. That Decree-Law had been amended by Decree-Law No. 2750 so as to provide greater guarantees and safeguards of the socio-economic and cultural rights of the indigenous population, to give them educational support and to ensure complete respect for their customs, beliefs and way of life.

268. In connection with article 4 of the Convention, he stated that the Convention like any international instrument ratified by Chile was published in the Official Bulletin and automatically became part of the country's domestic law and that the first chapter of the new Chilean Constitution fully reflected article 1 of the Convention. Its impact was further strengthened by specific legal texts containing provisions which prohibited any type of racial discrimination and which had been quoted in Chile's third periodic report.

269. The representative, then, pointed out that chapters III ("Constitutional rights and duties") and IV of the Constitution repeated the guarantees set out in article 5 of the Convention. Those rights were further reinforced in Chile's Civil Code, which provided for equality before the law for both Chileans and foreigners, and in the Penal Code, which reiterated that there must be no discrimination on the grounds of race, colour, sex, political opinion, etc. The measures taken during the period of the emergency had been applied in accordance with the principles of the Convention and had in no case discriminated against any particular section of the population because of its descent, race or tradition.

270. In conclusion, the representative of Chile stated that his Government would provide information in the next periodic report with regard to those questions which had remained unanswered.

CERD (A/38/18) (1983)

265. The sixth periodic report of Chile (CERD/C/90/Add.4 and Corr.1) was introduced by the representative of the reporting State. He indicated in particular that the report supplied updated information on the measures taken in Chile for indigenous populations with respect to the registration of individually owned property, and he corrected the text of the report dealing with the “Alcalufes” Indians.

266. Some members opposed considering the report or entering into a dialogue with the Chilean authorities because of their persistent and systematic violations of human rights and fundamental freedoms since the military takeover 10 years ago. Following the military takeover, it was stated, some 1.2 million Chileans had been forced into exile and the Chilean authorities continued contravening basic human rights. Such violations had been denounced by the United Nations bodies on a number of occasions and more recently by the General Assembly in its resolution 37/183; the Special Rapporteur on Chile had also expressed particular concern (see A/37/564) about the situation of indigenous populations in that country. The aim of the new Constitution, it was stressed, was to institutionalize the state of exception in Chile, and the provisions mentioned in the report in relation to article 5 of the Convention had no force of law.

267. Other members, however, were of the opinion that, although the Committee might disagree with the nature of the regime of a particular State party, such considerations should not prevent the Committee from carrying out its tasks. Moreover, if the Committee refused to consider the report of a State party to the Convention, it would be remiss in fulfilling its own obligations under the Convention. The Chairman, in ruling on that issue, stated that, while the Committee could not operate in a political vacuum and ignore General Assembly resolutions, it should take into account only those Assembly resolutions bearing directly on racial discrimination: there were other bodies in the United Nations to deal with other human rights issues.

268. The Committee took account of the measures taken for the indigenous populations. Yet, it emphasized that it was important for the Government to step up its efforts to solve the problems arising from the Mapuche practice of subdividing ownership. It was requested whether property titles held by indigenous groups were transferable and whether there were any restrictions imposed on members of those groups in such transfers. Queries were also made about the nature of authority held by the locally elected chiefs and their status vis-a-vis the Government.

269. In relation to article 3 of the Convention, the Committee pointed out that Chile had not provided the specific information requested on the status of diplomatic, economic and other relations with South Africa.

270. Members of the Committee disagreed with the reply of Chile that there was “no reference in the Convention to an obligation to establish specific rules concerning discrimination”. They stressed the fact that the provisions of article 4 (a) and (b) sufficed as a refutation to such argument. States parties need not take special measures if it could be clearly proved that at the time of their accession to or ratification of the Convention, their legislation already contained such guarantees. But it was incumbent on individual Governments to prove that anti-discrimination measures were contained

in their legislation. If Chile was complying with article 4, it should provide the Committee with information on how the law punished violations of article 4 that might be committed against the Mapuches or any other ethnic group and the relevant texts of law.

271. As far as article 5 of the Convention was concerned, members expressed doubts about the new Constitution and pointed out that an indefinite number of rights had been suspended. It was observed, for example, that under article 13 of the Constitution those who had been sentenced for a serious offence could not become citizens of Chile. This measure deprived hundreds of thousands of victims of the early years of the regime, who had been arbitrarily sentenced, of the right of citizenship. Clarifications were requested about the Constitution in relation to the rights to freedom of: movement and residence; opinion and expression; thought, conscience and religion; peaceful assembly and association. Further clarification was requested concerning the difference between laws adopted by a quorum calificado (special quorum) and constitutional organic laws and whether there had been any court cases involving violations of the rights in article 5 of the Convention. Members stated that the relevant texts of laws should be furnished, in particular those regulating political parties and concerning the right to freedom of opinion and expression. Referring to passages of the Constitution, the question was posed as to who defined the moral standards of the country and in which manner the Government defined political activities. Commenting on article 24 of the Constitution which authorized the President of the Republic to suspend under certain circumstances the enjoyment of a number of fundamental freedoms, it was requested how those powers were exercised and how the judiciary functioned. The next report, it was said, should contain details of the way in which Chile's judicial system was organized and the degree of independence of the judges as well as what effect the current state of emergency had on the functioning of the courts. The Committee was of the opinion that opposition to racial discrimination could occur only in an environment where human rights were fully respected and the question was posed as to whether the state of emergency was a temporary derogation from that country's obligation under the Convention, or whether the situation amounted to a formal and permanent suspension of human rights. The hope was expressed that the next periodic report would present an account of the current situation in the context of article 5.

272. Regarding article 6, details were requested about the right of defence and opportunities for recourse in cases involving racial discrimination from any source, including government officials. In addition, the Committee felt that the next report should also contain more information on the implementation of that article as well as of article 7.

273. Replying to the questions raised by the Committee, the representative of Chile stated that the next report would provide the background information as well as the legal texts requested. He added, however that the Political Constitution of 1981 covered almost all the provisions of the Convention.

274. He stated that Chile had enacted basic laws regarding indigenous populations whose aim was to bring their treatment into line with the general legal order of the country. The law currently sought to have reservations and individual property owners legally register their holdings so as to protect indigenous property ownership rights. That procedure had been determined after consultations with FAO officials. The Mapuche people had their own private associations that served as a link between them and the Government. There was a common effort to keep their culture intact.

275. Chile's diplomatic relations with South Africa were long-standing and had evolved under the past four governments. Chile had consistently condemned apartheid. Its relations with South Africa were confined to economic matters which served Chile's purposes as a developing country without involving it in any way in South Africa's political policies.

276. It was clear, he said, that article 4 of the Convention made the adoption of legislative measures mandatory and he expected that Chile's next report would state that internal legislation covered all provisions of the Convention. He pointed out that the Political Constitution equated a treaty to a law: the Convention in its entirety was currently in effect in Chile without the enactment of specific legislation. He indicated that since there was no racial discrimination in Chile there was no need for administrative or judicial measures. Explaining the difference between constitutional organic laws and quorum calificado (special quorum) laws, he said that the former required a three-fifth majority for adoption, amendment or abrogation, while the latter required an absolute majority. Replying to the question about whether the state of emergency was transitional, he informed the Committee that it had a specific time-limit that could not be extended but could only be renewed as new state of emergency if the circumstances warranted it. With regard to the statement made that the Constitution would exclude hundreds of thousands of Chileans from citizenship, he noted that the Government had promulgated an amnesty law covering the period 1973-1983. Thus, no one had as yet been excluded from citizenship. He explained that there were three types of recourse: the authority that handed down a decision, namely, the President, could be requested to reconsider that decision; beyond that there could be the recourse of protection in cases of alleged violations of constitutional guarantees and the recourse of amparo, which was similar to habeas corpus.

277. He concluded by stating that it was not dignifying to reply to political comments voiced during the consideration of the report. Any question which had been left unanswered for lack of sufficient information would be dealt with in the next periodic report. Chile assured the Committee that it fully supported efforts to implement the Convention.

CERD A/40/18 (1985)

501. The seventh periodic report of Chile (CERD/C/117/Add.3) was considered by the Committee at its 735th meeting, on 12 August 1985 (CERD/C/SR.735).

502. The report was introduced by the representative of Chile who said that the population of his country was a homogenous one and that any upsurge of racist attitudes was inconceivable. Moreover, the principles of non-discrimination and equality among citizens had been incorporated in the Chilean Constitution and legislation and the Convention itself had acquired the force of law in Chile. The representative then outlined the substance of his Government's report with regard to measures to give effect, in particular, to articles 2, 3 and 7 of the Convention in Chile. He also stated that the measures provided for in article 4 of the Convention were implicitly incorporated in the Constitution and other domestic legislation. Article 18 of Act No. 16.643, for instance made it an offence to produce publications or communications representing an incitement to hatred, hostility or prejudice against persons or groups on grounds of race or religion. He added that the suspension of certain rights as a result of exceptional situations in Chile had never entailed discrimination under the meaning of the Convention. Furthermore, Chilean courts were under an obligation to hear and judge, on independent basis, any appeals and requests brought before them, such as those concerning acts of discrimination, which constituted an infringement of Chilean law.

503. The Committee, while welcoming the report as an indication of Chile's willingness to maintain its dialogue with the Committee, regretted that the report had not been prepared in conformity with the Committee's general guidelines (CERD/C/70/Rev.1) and that it appeared to be unrealistic in substance with regard to the actual situation of human rights in Chile. Furthermore, the Committee felt that the Chilean Government was still not sufficiently co-operative in the implementation of the Convention, since it did not provide information on concrete measures, which were necessary to enforce its provisions, and it persisted in its view that no specific legislation was needed to the effect as there were laws in Chile that duly guaranteed the rights set forth in the Convention.

504. The Committee stressed that it was particularly important that Chile should give details concerning legislation and other measures for the implementation of each article of the Convention, especially articles 4, 5 and 6, since in its report, the Chilean Government merely referred to provisions of the Chilean Constitution without clarifying whether those provisions were actually in force, which constitutional rights had been suspended as a result of the state of emergency in the country and when all constitutional rights could be fully implemented.

505. Members of the Committee were of the view that the Convention itself could not be seen in isolation from other United Nations human rights instruments and, before dealing with racial discrimination, the Committee had to be sure that all fundamental human rights were respected in the reporting State; they observed that they could not dissociate themselves from world public opinion and from the decisions and resolutions adopted by the United Nations and other international organizations expressing concern about the persistent violations of human rights in Chile. In that connection, they referred to Commission on Human Rights resolutions 1983/38, 194/63 and 1985/47 which constituted a severe indictment of the Chilean regime and expressed the Commission's concern, in particular, at violations of human rights among the indigenous population living in Chile.

506. The Committee expressed the hope that, in its next periodic report, the Government of Chile would provide factual information on concrete measures to guarantee without discrimination all the rights set forth in the Convention, in order to establish a constructive dialogue with the Committee and to permit a detailed evaluation of the human rights situation and the implementation of the Convention in Chile.

507. With particular reference to article 2, paragraph 2, of the Convention, members of the Committee wished to receive detailed information on specific programmes adopted to ensure the adequate economic, social and cultural development and protection of the Mapuches and other indigenous peoples living in Chile. It was observed, in the connection, that measures concerning Mapuches which had been adopted and reported by the Government of Chile seemed to contain discriminatory elements vis-a-vis other Chilean citizens. Clarification was also requested with regard to the total number of Mapuches living in Chile. In addition, members of the Committee asked whether practices deriving from the debt bond and slavery system still survived in Chile and, if so, what specific measures the Government had taken to eradicate them and protect the indigenous population, whether literacy programmes for the Mapuches and other indigenous populations existed, whether they were organized in their own languages, whether they took into account the development of indigenous cultures, and what percentage of Mapuches went on to higher education. They also asked what measures had been taken to increase the economic independence of the indigenous populations, how questions of land tenure were resolved among the Mapuches, whether they had representatives in Parliament, whether they could work in the civil service and in the administration of their reservation and what percentage of them were teachers.

508. With regard to article 3 of the Convention, members of the Committee wished to know the precise extent of diplomatic and trade relations between Chile and South Africa, whether the Chilean Government had taken any steps to counter the South African diplomatic initiatives aimed at increasing ties with Latin American countries and what contribution it had made to international efforts aimed at dismantling South Africa's illegal rule in Namibia.

509. With reference to article 4 of the Convention, it was asked, in particular, what penalties were imposed on persons found guilty of racial discrimination against the indigenous population.

510. In connection with article 5 of the Convention, specific information was requested on the number of Chileans who had been deprived of their citizenship and the situation concerning the amnesty referred to in the sixth periodic report of Chile.

511. Regarding article 6 of the Convention, information was requested on effective recourse procedures available to victims of human rights violations and it was asked whether those victims had effective protection such as the right of habeas corpus or amparo.

512. With reference to article 7 of the Convention, it was asked what efforts were being made in Chile, through the media and the educational system, to promote public awareness of indigenous cultures and of the Convention and what educational and other measures were taken to counteract the emergence of extreme right-wing groups with racist attitudes.

513. In replying to comments made and questions raised by members of the Committee, the representative of Chile stated that his Government intended to co-operate with the Committee and

to give effect to the Convention. However, it could not agree with comments that it considered to be based on ideological positions and on subjective criteria. He recalled that on several occasions in the past his Government had expressed its disagreement with United Nations procedures for reporting on the situation of human rights in Chile and with what it considered to be the imposition of double standards.

514. With reference to article 2, paragraph 2, of the Convention, he stated that the current Mapuche population was approximately 200,000. However, it was extremely difficult to specify the exact number, because many people had at least some Mapuche blood and the Mapuche population lived not only in Chile but also in neighboring Argentina. With regard to the Mapuche system of land tenure in Chile, he explained that, currently, while there was common title of ownership for the reserve as a whole, land was held individually within the reserve. The situation had resulted in some anomalies, which it had been necessary to regulate in order to promote the overall economic and social development of the Mapuche people. The Mapuche people had retained its territory in the nineteenth century and had continued to live there ever since, but it was not confined to it. There had been much racial intermingling; however the Mapuche inhabiting the reserve had retained their racial purity.

515. As far as relations with South Africa were concerned, he stated that Chile took the view that it could not interfere in the internal affairs of other States and therefore restricted its action to measures at the international level.

516. Regarding article 4 of the Convention, the representative stated that racist organizations would be prohibited under the Chilean Constitution and persons belonging to them would commit a punishable offence in both criminal and civil law.

517. In conclusion, the representative of Chile stated that the comments made by members of the Committee and questions which had remained unanswered would be transmitted to his Government and replies would be given in its next periodic report.

CERD A/44/18 (1989)

344. The Committee considered the eighth periodic report of Chile (CERD/C/148/Add.4) at its 846th meeting, held on 17 August 1989 (CERD/C/SR.846).

345. In introducing the report, the representative of the State party reaffirmed the attachment of the Government of Chile to the values established in the Convention and its confidence in the dialogue with the Committee. Racial discrimination was totally unknown in Chile, where all the fundamental human rights were recognized for all the country's inhabitants without exception. In addition, the country's foreign policy was based on the principles of equality and Chile was a party to numerous instruments whose purpose was to guarantee the absence of racial discrimination and that condemned all forms of racism. Chile had always condemned racism, the apartheid regime, the bantustanization policy and discrimination in general.

346. Chile had no social categories based on ethnic origin, culture or religion. The descendants of the indigenous populations today enjoyed the same rights as all the citizens of the Republic and were also given special assistance by the Government, which had already been described in detail. In that context, he informed the Committee about the relevant legislation and the institutions and associations aimed at promoting the development of the indigenous populations.

347. During the transitional period provided for in the 1980 Constitution, the Government had striven to create the institutions required for the full restoration of a democratic and pluralist regime, in preparation for the presidential and legislative elections scheduled for 11 March 1990.

348. He informed the committee of the arrangements for and results of the plebiscite that had taken place under the best possible conditions of openness in October 1988. He also drew attention to the visits, beginning in 1985, of the Special Rapporteur of the Commission on Human Rights, which had marked the resumption of the Chilean Government's co-operation with the United Nations. Mr. Volio Jimenez's seven reports showed that real progress had been made and that the situation had improved appreciably, although much still remained to be done both by the Government and by the opposition.

349. The state of emergency and the state of alert had been lifted once and for all throughout the country by supreme decrees of the Ministry of the Interior dated 27 August 1988. With the end of the states of emergency, the country had entered a phase of legal normalization in which all the constitutional provisions concerning human rights and fundamental freedoms were fully applied.

350. Members of the Committee, after thanking the Government of Chile and its representative for the eighth periodic report and the additional information provided, drew attention to the position repeatedly adopted by the United Nations bodies with respect to violations of human rights by the military Government during the last decade and pointed out that this situation had also been a source of serious concern for members of CERD since they felt that the violations of human rights had affected the implementation of the Convention by the Government. In this regard, members recalled Commission on Human Rights resolution 1989/62 of 8 March 1989, in which the Commission had once again expressed concern over the serious violation of human rights and had requested the Government of Chile to put an end to this situation and to take appropriate measures for the

restoration of the rule of law in Chile as well as for the protection and promotion of human rights and fundamental freedoms. It was also remarked that, in view of the consequences of the situation that had prevailed in Chile some years previously, there was reason to doubt the veracity of the information furnished by the Government of Chile concerning the protection of human rights. At the same time it was said that some improvement had been noticeable in the past few months.

351. Concerning article 2 of the Convention and referring to the latest report of the Special Rapporteur of the Commission on Human Rights, members asked for more detailed information on the real land-ownership situation of the Mapuche. With respect to the free legal assistance granted to indigenous populations, they requested more detailed information on the type and number of cases dealt with by the lawyers who defended such persons and on the question whether those lawyers would defend the indigenous populations free of charge in cases other than the land case mentioned in paragraph 20 of the report. They also asked for information on the participation of the Mapuches, the Aymaras and other indigenous minorities in the two plebiscites held in 1988. Members requested that the Government of Chile should provide in its next periodic report complete information on the demographic composition of the country in general and of the indigenous population in particular.

352. With respect to the application of article 3 of the Convention, members observed that paragraphs 34 to 37 of the report were rather vague and did not address earlier questions of the Committee; that Chile was the South American country with the closest links with South Africa; and that Chile had diplomatic, commercial and even military relations with that country. They wished to know whether the Government of Chile had, since its previous report, made any effort to prevent or eliminate apartheid practices in South Africa and whether it intended to curtail or perhaps even to abandon its relations with South Africa.

353. Concerning article 4 of the Convention, members again asked the Government of Chile for information on the legislative, judicial, administrative and other measures that it had taken to implement the provisions of article 4, especially with a view to repressing any incitement to racial discrimination and all dissemination of ideas based on racial superiority or hatred. It was pointed out that a bill intended to give effect to the article had been under study for 16 years, despite which the Government of Chile continued to assert that it had fulfilled all the obligations that it had contracted under the Convention.

354. With respect to article 5 of the Convention, members expressed the hope that the new Government that was expected to be appointed in December 1990 would explain in the ninth report what measures the country had taken to ensure the enjoyment without discrimination of the civil and political rights mentioned in the article.

355. Regarding article 6 of the Convention, members, after noting the inefficacy of the procedure of amparo, remarked that a new administrative procedure had been adopted for reviewing the ban on the return of numerous Chilean exiles to their country and requested additional information about it. It was suggested that specific information should be given in the ninth periodic report on the new measures taken better to ensure the application of the provisions of article 6.

356. Members, referring to article 14 of the Convention, suggested that the new Government could inform the Committee whether it would recognize the Committee's competence to consider

communications from individuals or groups claiming to be victims of acts of racial discrimination.

357. Replying to members' questions and comments, the representative of the State party admitted that it would be better not to assert that no racial discrimination existed in Chile and that his Government should gradually take measures to combat such discrimination.

358. He provided the Committee with additional information concerning land ownership by the indigenous populations, mentioning in particular that 100,000 hectares of land had been distributed to Mapuche families in recent years. Measures had been taken to improve the situation and they had been approved by all the members of the Mapuche reserve. Those various measures had not changed the farming system in any way but had enable the Mapuches to receive 71, 000 individual titles of ownership in 1988, as a result of which they were now able to obtain various forms of assistance. Between 1983 and 1989 such assistance had amounted to 270 million Chilean pesos. With regard to the participation of the indigenous populations in elections, they could vote under the same conditions as other Chileans. In the latest elections, there had been a very low rate of abstentionism, which proved that the majority of the population was interested in the elections and prepared to take part in them.

359. In response to questions about the application of article 3 of the Convention, he explained that diplomatic relations between Chile and South Africa were normal. As for the alleged joint military exercises between the two countries, he had never heard of them. No doubt there were cultural and tourism exchanges organized by private agencies, but the Government had no connection with their activities.

360. With respect to the application of article 6 of the Convention, it was indeed unfortunate that the law was silent on the subject of incommunicado detention and the Government should examine the matter with a view to taking measures to rectify the situation.

361. In conclusion, the representative of the State party said the he would convey all the questions raised by the members of the Committee to his Government so that it could reply to them in its next periodic report.

CERD A/47/18 (1992)

200. The Committee considered the ninth and tenth periodic reports of Chile (CERD/C/196/Add.1) at its 945th, 947th, 948th and 951st meetings, on 6, 7, 10 and 11 August 1992 (see CERD/C/SR.945, 947, 948 and 951).

201. In his introductory statement, the representative of Chile provided the Committee with additional information concerning the implementation of the provisions of the Convention. New draft legislation on the protection and advancement of indigenous peoples, which was to be adopted in the course of 1992, would mark an important change in relations between the Chilean State and the indigenous peoples and would constitute a major step forward in the process of elimination of discrimination in Chile.

202. At the same time, the representative recognized that there had in fact been some cases of discrimination against indigenous people, particularly with regard to enjoyment by the latter of the right to own property and the right to education. In order to remedy that situation, in 1992 the Government launched a major scholarship programme under which 4,500 scholarships were awarded at all educational levels. With regard to the right to own property and the disputes to which it had given rise, the Government had set up a special commission on indigenous peoples with a legal section which employed 14 lawyers assigned to the principal indigenous areas.

203. The representative indicated that development of the indigenous communities was one of the current Government's priorities. A loan fund of US\$ 3 million had been set up to meet the needs of those communities, and 124 projects were in the process of implementation; 200 others would be launched within the next few months. Despite the current difficulties, Chile's democratic Government had undertaken to eliminate all the forms of discrimination that still existed in practice and the measures taken to that end showed the determination of the Government in the performance of the task.

204. Members of the Committee took note with satisfaction of the report of Chile which showed the profound changes that were taking place in that country and observed that the democratic Government of Chile had undertaken a very innovative policy in dealing with the indigenous populations. The report was most satisfactory from two standpoints: on the one hand it had provided the Committee with a considerable amount of basic information which the Committee had previously lacked; in addition, it recognized that racial discrimination against the indigenous peoples did exist, particularly with reference to their right to factors as vital to their existence as land and water. The praiseworthy attitude of the current authorities was indicative of an entirely new phase which gave reason to hope that there would be full and undeviating implementation of the Convention. However, the report did not conform to the Committee's general guidelines for the preparation of reports and it was recommended that the next report should be prepared on the basis of those guidelines.

205. Members of the Committee pointed out that there were some inconsistencies in the figures quoted in the report that were related to the demographic composition of the various ethnic groups and they requested clarification in that regard. They also wished to know whether, in the Chilean censuses, the term "ethnic groups" had the same meaning as the term "indigenous populations";

whether there were any people of African origin in Chile; whether there were still any Yamanas in Chile; how ILO Convention No. 169 was being implemented in Chile; and whether the Supreme Court's decision of July 1990 would shortly be carried out. Referring to the conflicts caused by the Aymara people being deprived of communal property rights, the members of the Committee asked whether those conflicts had been settled, how they had been settled and whether the newly established national corporation for indigenous development took part in resolving such conflicts. Noting that the land problem had still not been resolved as far as the indigenous peoples were concerned, they asked how the Government of Chile planned to find practical solutions to such fundamental problems as land distribution, enjoyment of water resources and communal lands.

206. Referring to article 3 of the Convention, some members regretted the fact that the report contained no information on that subject and they requested information on the state of relations between Chile and South Africa at the trade and diplomatic levels.

207. Concerning article 4 of the Convention, members of the Committee expressed a desire for information concerning the measures taken to counter racist propaganda and racist organizations.

208. With regard to article 5 of the Convention, some explanation was requested concerning the representation of indigenous people at the national level, given that the total population of 13 million included 1 million indigenous people.

209. In connection with article 6 of the Convention, members of the Committee pointed out that information requested during the consideration of the previous report had still not been furnished. They requested clarification in that regard.

210. Regarding article 7 of the Convention, members of the Committee wished to know what action was being taken in the field of education and training to make teachers, the police, the judiciary and the military services aware of the problems of discrimination.

211. Members of the Committee expressed the hope that the new democratic Government of Chile would make the declaration provided for in article 14, paragraph 1, of the Convention, as that would help to strengthen the procedures for eliminating racial discrimination.

212. Replying to the questions raised and comments made by members of the Committee, the representative of the reporting State said that discrimination was a complex phenomenon in Chile and was as yet not governed by legislation, although the Government was making efforts to combat it. The 1980 Constitution had been amended following a plebiscite in 1989 and it was that amended Constitution that was now in force. As far as demographic composition was concerned, it was difficult to obtain reliable figures and thus the report might contain some contradictions. In the population census taken on 2 April 1992, Chileans had been asked for the first time to state their ethnic origin. The results of that census would be available in a few months and would be transmitted to the Committee. With reference to minorities, the representative stated that practically no groups were discriminated against on purely ethnic or racial grounds; neither Europeans, nor immigrant groups suffered from such treatment, nor did the small black population. There was a long-standing tradition in Chile of welcoming immigrants, who were regarded as enriching Chilean society and who were rapidly assimilated.

213. The representative provided the Committee with detailed information on the situation, both

in law and practice, of Mapuches, Aymara, Rapani and Easter Island people, indicating in particular that the draft Indigenous Peoples Act, currently before Parliament, provided for the granting of special fishing rights, and other rights to indigenous peoples, and it was hoped that such measures would help to halt the process whereby indigenous peoples were gradually becoming extinct. It was true that many Mapuche organizations had opposed the parcelling out of communal land. Under the military regime, more than 60,000 land titles had been allocated with the result that 2,000 existing community holdings had been abolished. With the advent of a democratic government in May 1990, those land allocations had been declared invalid, and consultations had been held with the various communities on how best to regulate the situation from the legal point of view. A bill, currently under consideration, provided for a combined system of individually owned and communally owned land. It also was proposed to set up an Indigenous Land and Water Fund, which would enable the communities to acquire further resources. There had been serious problems in regard to land disputes and other conflicts over the construction of hydroelectric and other projects, but there was hope that they would be resolved harmoniously, given the Government's firm political will to find solutions to such problems by peaceful means. In June 1992, an Act had been passed amending the Water Code to prohibit exploitation of water resources on which indigenous communities depended.

214. With respect to article 3 of the Convention, the representative stated that while relations with South Africa had been encouraged under the military regime, they had been played down under the new Government. Recently, however, a Chilean ambassador had been accredited to South Africa in recognition of that country's progress towards a united, multiracial and democratic regime. Chile had complied with all resolutions of the Security Council and the General Assembly in that regard. The Government's policy was to support all efforts to eliminate apartheid in South Africa.

215. With regard to article 4 of the Convention, the representative stated that he was not aware of any organization or group in his country that would promote racial discrimination.

216. As for article 5 of the Convention, the representative said that the participation of indigenous peoples in the country's political life would be regulated under the bill now before Parliament. One significant measure under the bill would be the establishment of an Indigenous Development Corporation, half of whose members would be appointed by the Government, and half by indigenous groups. He pointed out that, in keeping with the country's liberal tradition, there was no "quota" for elections to Parliament or for local elections; members of those bodies were elected by universal suffrage, on their own merits, and not in their capacity as representatives of particular indigenous groups.

217. With regard to article 7 of the Convention, the representative said that frequent public discussions on the subject of discrimination were held on television and radio, and the Ministry of Education had launched a programme designed to increase public awareness of the issue.

218. Chile was emerging from a long period of human rights violations, and the actual democratic Government was determined that such an era in its history should never be repeated. Its wish was to collaborate with the Committee. The representative assured the Committee that his delegation would transmit to the President the view expressed by members of the Committee that Chile should make the declaration provided for under article 14 of the Convention, and that Chile's next report should comply fully with the Committee's guidelines.

Concluding observations

219. The Committee took note of the revision of the Chilean Constitution and the changes to the legal system resulting from the return to the rule of law. The Committee expected such development to benefit the ethnic groups in Chile, especially the indigenous peoples.

220. The Committee welcomed the frankness with which the Government of Chile acknowledged the history of discrimination against the indigenous peoples. It took note of the measures being taken to improve the situation of indigenous peoples and expects that policy to continued so as to improve the economic, social and educational status of those peoples and their enjoyment of human rights in accordance with article 5 of the Convention.

221. Recalling its General Recommendation I, the Committee reiterated the importance of enacting legislation in accordance with article 4. The Penal Code and the Code of Criminal Procedure also needed reconsideration.

222. The Committee welcomed the statement of the Chilean delegation concerning the possibility that the Government of Chile might make the declaration under article 14.

223. While appreciating the new policies being developed, the Committee expressed the hope that the next periodic report would contain further information and would follow the Committee's general guidelines.

CERD A/54/18 (1999)

365. The Committee considered the eleventh to fourteenth periodic reports of Chile (CERD/C/337/Add.2) at its 1346th and 1347th meetings (see CERD/C/SR.1346 and 1347), on 10 and 11 August 1999. At its 1361st meeting (see CERD/C/SR.1361), on 20 August 1999, it adopted the following concluding observations.

A. Introduction

366. The Committee welcomes the submission of the State party's periodic report, prepared in accordance with the Committee's guidelines, and it appreciates the opportunity to resume a dialogue with the country. The Committee commends, in particular, the frank and transparent spirit which characterized both the written report and the manner in which the delegation presented additional information and responded orally to the wide range of questions raised by the members of the Committee during the consideration of the report.

B. Positive aspects

367. The Committee commends the State party for openly recognizing the existence of racial discrimination on its territory and its historical links with conquest and colonialism. In this context, the Committee also welcomes article 1 of the Act No. 19.253 relating to the Protection, Advancement and Development of the Indigenous Inhabitants of Chile (1993 Indigenous Act) which "recognizes that Chile's indigenous inhabitants are the descendants of the human groups which have existed on the national territory since pre-Colombian times and which conserve their own ethnic manifestations, the land being for them the principal foundation of their existence and their culture".

368. The Committee welcomes the information from the State party that, according to article 5 of the Constitution, international treaties on human rights and fundamental freedoms such as the Convention which are ratified, promulgated and made effective by the State party are directly applicable by the courts.

369. The Committee welcomes the initiatives taken by the State party to promote the rights of its indigenous population: including the enactment of the 1993 Indigenous Act; the subsequent setting up and activities of the Indigenous Development Corporation; the important steps taken by the State party to ensure the right to land of the indigenous population through land purchase and transfer to indigenous communities, and the setting up of a special judicial system for the indigenous population which recognizes custom as a mode of proof and which allows for legal conciliation of, in particular, land disputes.

370. The Committee notes that further steps have been taken towards reform of the domestic legislation, in particular the proposed amendments to the Constitution to strengthen the legal status of the indigenous population, and the draft reform of the Penal Code which is currently under discussion in the Congress and which is designed to penalize acts of discrimination on the grounds of race, or national or ethnic origin. In this context the Committee also welcomes the intention of the State party to ratify ILO Convention No. 169 on Indigenous and Tribal Peoples (169).

371. The Committee notes with satisfaction that the State party, following the previous concluding observations of the Committee, has made the declaration under article 14 of the Convention recognizing the Committee's competence to examine complaints of persons who claim to be victims of violations by the State party of the rights set forth in the Convention.

372. In relation to article 7 of the Convention, the Committee notes the 1997 educational reform and the efforts of the State party to introduce teaching about human rights and their implementation in the school curriculum. The Committee also welcomes the State party's cooperation with the Office of the United Nations High Commissioner for Human Rights and the hosting of a workshop in 1997 on the possible establishment of a permanent forum for indigenous peoples in the United Nations system.

C. Principal subjects of concern

373. The Committee is concerned about the reported findings of research showing that a considerable part of the Chilean population demonstrates intolerant and racist tendencies.

374. The Committee expresses its concern at the absence of specific legislation to enforce some of the provisions of the Convention. The Committee, taking note that the 1993 Indigenous Act contains a specific article declaring intentional discrimination against indigenous persons an offence punishable by law, and that the National Security Act prohibits fascist organizations, recalls the proposals for reform of the Constitution and the Penal Code, but remains concerned about the current absence of a comprehensive legislation in full accordance with articles 2, paragraph 1 (d) and 4, of the Convention.

375. The Committee is concerned about land disputes which occurred during the period under examination between the Mapuche population and national and multinational private companies, resulting in tension, violence, clashes with law enforcement officials and, allegedly led to arbitrary arrests of members of the indigenous population.

376. The Committee expresses its concern about the situation of migrant workers, in particular of Peruvian nationality.

D. Suggestions and recommendations

377. The Committee commends the State party for having recognized its part in the discrimination experienced by the indigenous population, recalls its general recommendation XXIII and requests that the State party consider the issue of a formal apology, as well as ways to ensure compensation to all those concerned, a policy which, inter alia, will significantly contribute to the process of reconciliation in the society as a whole.

378. As part of the ongoing legislation reform process, the Committee recommends that the Constitution be amended to incorporate a prohibition of racial discrimination and that the scope of the Indigenous Act be extended to cover discrimination in effect in accordance with article 1, paragraph 1, of the Convention.

379. The Committee recommends that the State party take appropriate measures, within its ongoing

legislative reform, to bring its legislation into full conformity with article 4 of the Convention, in accordance with the State party's obligations under article 2, paragraph 1 (d).

380. The Committee recommends that the State party use all effective means to raise the awareness of its people about the rights of indigenous peoples and national or ethnic minorities. It encourages the State party to continue to provide instruction on human rights standards in schools and organize training programmes for, in particular, law enforcement officials, in the light of general recommendation XIII.

381. In its forthcoming report, the State party should include detailed information relating to the following: the work and activities of the Indigenous Development Corporation; the system of land distribution; the judicial system in place for the indigenous population; the situation of migrant workers, the implementation of articles 4 and 5 of the Convention and, ongoing legislative reforms.

382. The Committee recommends that the State party ratify the amendments to article 8, paragraph 6, of the Convention adopted on 15 January 1992 during the fourteenth meeting of States parties to the Convention.

383. The Committee recommends that the State party's next periodic report, due on 19 November 2000, be an updating report, taking into account the points raised in the present observations.