



International Covenant on Civil and Political Rights

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Summary record of the 2445th meeting (closed)

Held at Headquarters, New York, on Monday, 26 March 2007, at 3 p.m.

Chairperson: Mr. Rivas Posada

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The meeting was called to order at 4.30 p.m.

Consideration of reports submitted by States parties under article 40 of the Covenant and of country situations (continued)

Draft concluding observations of the Human Rights Committee on the fifth periodic report of Chile (continued) (CCPR/C/CHL/CO/5/CRP.1)

1. **The Chairperson** invited the Committee to resume its consideration of the draft concluding observations, begun at the 2443rd meeting.

Paragraph 9 (continued)

2. **Mr. Johnson** (Country Rapporteur) said that his co-Rapporteur, Sir Nigel Rodley, who was unable to be present, was proposing the following revision of the recommendation part of paragraph 9:

“The State party should ensure that impunity for grave human rights violations committed during the military dictatorship does not prevail, in particular, by ensuring effective prosecution of suspected perpetrators. Additional measures of establishing individual responsibility and accountability should be pursued, such as barring the perpetrators of such violations from holding public office. The State party should ensure that all documentation collected by the National Commission on Truth and Reconciliation and the National Commission on Political Prisoners and Torture, and capable of contributing to the identification of those responsible for extrajudicial killings, enforced disappearances and torture, should be made public, or at least be made available to the Public Prosecutor’s Office.”

3. **Ms. Chanet**, deploring the absence of a French translation of the text, observed that it was not for the Committee to lay down a specific code of conduct for the State party in areas that were properly governed by domestic law. She would delete the recommendation relating to the Public Prosecutor’s Office. The State party, once the documentation was made public, would find itself in a position that demanded appropriate action.

4. **Ms. Wedgwood** said that she would be loathe to call for making public all documentation from the National Commission on Truth and Reconciliation, remembering that it had been established over great

political opposition and that thus, in the process, promises of confidentiality had no doubt been made to both victims and perpetrators. Also, she recalled Guatemala’s experience in a similar situation, where the release of documentation that named so many names had paradoxically sparked a public reaction that had actually undercut the authority of its Truth Commission. In the third sentence, by deleting the word “all” before the word “documentation”, the Committee would allow Chile some leeway in what it made public.

5. **Ms. Chanet** agreed that material compromising to the Government and possibly pointing to the involvement of another country in past events would best not be made public in Chile, but simply documentation relating to human rights violations.

6. **Mr. Johnson** (Country Rapporteur) agreed that the third sentence of the recommendation should be amended by replacing the words “all documentation” by the phrase “documentation relating to human rights violations”; and by deleting the final phrase “, or at least be made available to the Public Prosecutor’s Office”.

7. *It was so decided.*

8. **Mr. Amor**, also regretting that Sir Nigel’s revisions had not been translated into French, said he thought that the revised second sentence of the recommendation part went too far as well. Barring the perpetrators of human rights violations, and even perhaps alleged perpetrators, could lead to witch-hunts similar to the mid-twentieth century anti-communist witch-hunts. It was possible that in Chile, as in some other countries, proven human rights violations automatically disqualified the perpetrators from public office; but it was out of place for the Committee to suggest that without even knowing the legislation.

9. **Ms. Wedgwood**, observing that there had been situations in which criminal proceedings had been pursued to the abandonment of any process of disqualification from public office, thus leaving notorious criminals in high public posts, recalled also Mr. O’Flaherty’s due-process scruples regarding lustration, which he had raised during the previous discussion of paragraph 9. Accordingly, the second sentence of the revised text could be softened to refer not to barring perpetrators from office but to a fair process for qualification of candidates for public office.

10. **The Chairperson** observed, in his personal capacity, that as worded, the reference to barring the perpetrators of human rights violations from holding public office seemed to imply barring them in perpetuity, whereas most States parties to the Covenant would understand such disqualification to be limited to the period during which a criminal sentence was being served. He therefore suggested deleting the reference and ending the second sentence with the word “pursued”.

11. **Ms. Chanet**, supported by **Mr. Johnson** (Country Rapporteur), said that the Committee could recommend that, after prosecution, the State party should take appropriate action in the case of convicted perpetrators, by, for instance, examining their fitness to hold public office.

12. **Mr. Amor** concurred, but pointed out that appropriate action could in some circumstances mean reconciliation or some other course of action.

13. *Paragraph 9, as amended and subject to agreed redrafting, was adopted.*

Paragraph 10

14. *Paragraph 10 was adopted.*

Paragraph 11

15. **The Chairperson** said that Sir Nigel had revised the first sentence by inserting the words “judicially authorized” before the word “incommunicado detention”.

16. **Mr. Kälin** proposed deleting the clause at the end of that sentence: “even though it notes that the detainee may have access to a lawyer”. That statement was confusing to a reader unfamiliar with the legal system of Chile, and was unnecessary.

17. **Ms. Wedgwood** proposed the deletion of the word “fully” after the word “eliminate” in the recommendation part of paragraph 11, because it was redundant.

18. *Paragraph 11, as amended, was adopted.*

Paragraph 12

19. **The Chairperson** read out the following revision by Sir Nigel of the second sentence: “... may lend itself to an interpretation that could allow the use of

‘unnecessary violence’ (articles 7 and 14 of the Covenant)”.

20. **Ms. Wedgwood**, referring to the first sentence of paragraph 12, suggested the insertion of the word “wide” before the phrase “jurisdiction to try civilians”, to allow for the possibility that occasionally, in circumstances different from those in Chile, some form of respectable concurrent military jurisdiction might be desirable. The question had come up in the Committee’s intricate discussion of its draft general comment on article 14.

21. **Ms. Chanet** said that an expression of concern about wide military jurisdiction could be taken to mean that a lesser military jurisdiction was in fact acceptable. The issue that concerned the Committee — in the context of the draft general comment and also the relevant communications — was that the military tribunals in Chile continued to have jurisdiction over civilian matters.

22. **Ms. Wedgwood** said that Ms. Chanet had offered the solution: the phrase “for civilian matters” should be inserted after the words “jurisdiction to try civilians”.

23. *It was so decided.*

24. **Mr. Kälin** observed that in terms of the draft general comment on article 14, the matter of jurisdiction was as yet unresolved, but those particular concerns did not have to enter in. He would, for the reason cited by Ms. Chanet, prefer not to modify the word “jurisdiction” in the first sentence of paragraph 12. What he found unclear, instead, was the meaning of “ambiguous provisions” in the recommendation section of the paragraph: it could refer either to broad jurisdiction, to jurisdiction over civilians, or to the article 330 issue.

25. **Mr. Amor**, agreeing that the word “jurisdiction” should not be modified, said that in any case the Committee would not be bound by its new general comment on article 14 until it was adopted in final form.

26. **The Chairperson** said that the recommendation section would be clear if the words “any ambiguous” before the word “provisions” were deleted.

27. *It was so decided.*

28. *Paragraph 12, as amended, was adopted.*

Paragraph 13

29. **Mr. Kälin** said that he was concerned about the notion of an actual right to conscientious objection to military service. In its concluding observations on the report of the Republic of Korea at the eighty-eighth session, the Committee had maintained that to deny conscientious objectors the right to be exempted from military service was a violation of article 18. It was one thing to speak of the effects of article 18, but quite another to create a free-standing right, which the text of paragraph 13 seemed to do.

30. **The Chairperson** said that Mr. Kälin's point was valid and could be satisfied by deleting the words "the right to" before the words "conscientious objection" and replacing the words "this right" by the words "conscientious objection" in the first sentence. In the recommendation section of paragraph 13, the words "the right to" before the words "conscientious objection" would also be deleted.

31. *Paragraph 13, as amended, was adopted.*

Paragraph 14

32. **Ms. Wedgwood** said that for the sake of brevity the words "received which indicates" after the word "information" in the first sentence should be deleted.

33. *It was so decided.*

34. *Paragraph 14, as amended, was adopted.*

Paragraph 15

35. **Mr. Johnson** (Country Rapporteur) drew Committee members' attention to the proposal to replace the words "majority political groups" with "the main minority group" in the last sentence of the expression of concern.

36. **Ms. Wedgwood** said that it was one thing to say the political groups had been excluded because of the electoral system; however, the reference to the over-representation of political groups implied that the right of exact proportional representation was guaranteed under the Covenant. To avoid giving that impression, she suggested ending the sentence after the words "parliamentary representation" and deleting the words which followed. The point about over-representation would still be implicit.

37. **The Chairperson** said that the paragraph attempted to convey that the main minority group was

more highly represented than it should be, as it was automatically entitled to a seat in the Parliament. The main minority party was over-represented because its representation did not reflect the number of votes received.

38. **Mr. Johnson** (Country Rapporteur) concurred with the Chairperson's interpretation of the paragraph.

39. **Mr. Amor** questioned the extent to which the paragraph was necessary or useful. He said that the issue of the choice of electoral system was not covered by the Covenant. Each State was entitled to choose the system which it considered to be appropriate. Among the main objectives of article 25 was to ensure that elections were genuine and that suffrage was universal and equal, held by secret ballot and guaranteed the free expression of the will of the electors. Whether or not the system was binominal had very little bearing on those objectives. The Committee should confine its observations to matters relating to article 25. He therefore proposed deleting the entire paragraph.

40. **The Chairperson** said that while he understood the concerns raised, it was important to take into account the direct impact of the electoral system on the human rights situation in Chile, as it had prevented the reform of the Constitution and the passage of many bills relating to human rights. The State party had repeatedly said that it could not approve reforms to increase the protection of human rights because of the system of representation in the Congress, which enabled the main opposition party to oppose any such reform. That was the reason for which it was important to mention the electoral system, without specifying the system in question.

41. **Ms. Chanet** said that the problem lay in the wording of the paragraph, which emphasized the type of electoral system. It was not within the scope of the Committee to discuss the merits of electoral systems. The Committee was hindered by the fact that article 25 established a right to be elected and to vote as an individual right and did not recognize a collective right to democracy. She recalled that in response to her question concerning the failure to enact reform of the matrimonial regime, the Chilean delegation had informed the Committee that for 10 years a minority had succeeded in blocking it. The problem was not the electoral system, but rather that citizens were denied the rights guaranteed under article 25, because they voted for a specific number of representatives who

subsequently found themselves devoid of real authority. The expression of concern should therefore be based on general comment No. 25 (CCPR/C/21/Rev.1/Add.7), which stated that the rights protected by article 25 could be asserted only within a specific context.

42. **Ms. Wedgwood** proposed adding after the words “the binominal electoral system prevailing in Chile” the phrase “has impeded the adoption of human rights reforms and kept some political groups from having parliamentary representation”. The expression of concern related to articles 2 and 3 as well as article 25.

43. **Mr. Amor** said that the problem under consideration had resulted from factors which did not fall within the scope of the Committee. There were many instances in which political leaders elected by a very slim majority were able to block reforms aimed at the protection of human rights or did not respect human rights. Nevertheless, the Committee should be cautious when addressing such situations, as they inevitably gave rise to various possible interpretations.

44. **Ms. Chanet** said that the paragraph should not be deleted, as the issue raised had been discussed at length and constituted a major problem. The Committee could assist the Chilean Government in addressing it. To delete the paragraph would run counter to the discussion between the Committee and the delegation. She read out paragraph 7 of general comment No. 25. In keeping with that paragraph, the Committee should express its deep concern, not over the binominal electoral system as such, but rather over the fact that the conduct of public affairs through freely chosen representatives prevented those representatives from exercising governmental power in accordance with article 25 of the Covenant.

45. **Mr. Amor** said that there was a need to take into account the possibility of situations in which persons were elected improperly and exercised the authority obtained through the electoral process to undermine human rights. He was uncomfortable with the paragraph and wished to note his reservation thereto.

46. **The Chairperson** said that the majority of the members wished to maintain the paragraph. Noting that general comment No. 25 clearly referred to the matter under consideration and that an explanation of the “binominal electoral” system was requested in the list of issues (CCPR/C/CHL/Q/5, para. 16) and constituted an important factor in the human rights situation in Chile, he proposed that appropriate wording should be

found, making a reference to article 25 and the general comment.

47. **Mr. Shearer** suggested that the following wording of the expression of concern might resolve the issues raised by Ms. Chanet and Ms. Wedgwood: “Although the reference to the binominal system was removed from the Constitution, the Committee observes with concern that, as the State party indicated, the electoral system prevailing in Chile can prevent some political groups from having appropriate parliamentary representation.” The phrase “universal and equal suffrage established under article 25 of the Covenant” might be added to the recommendation after “in order to guarantee the”.

48. **The Chairperson** said that he was concerned about the reference to political groups, as article 25 dealt with individual rights. The phrase “political groups” should therefore be avoided.

49. **Mr. Shearer** suggested, in the light of the Chairperson’s comment on political groups, that the words “some political groups” in his proposed amended text should be changed to “all individuals”.

50. **Ms. Wedgwood** suggested replacing the words “all individuals” with “individuals” and “appropriate” with “effective”. She wished thereby to set aside the notion of proportional representation.

51. **Mr. Iwasawa** agreed that “all” should be dropped from the phrase “all individuals”.

52. **The Chairperson** took it that the Committee wished to adopt paragraph 15, as amended by Mr. Shearer and Ms. Wedgwood.

53. *It was so decided.*

Paragraphs 16 and 17

54. *Paragraphs 16 and 17 were adopted.*

Paragraph 18

55. **Mr. Johnson** (Country Rapporteur) drew Committee members’ attention to a suggestion by Sir Nigel to delete the word “including” in the recommendation and to add the following words at the end of the sentence: “so as to require the employer to give a satisfactory explanation of the existence of lower levels of employment, lower levels of responsibility and lower levels of pay in respect of women”.

56. *Paragraph 18, as amended, was adopted .*

Paragraph 19

57. **Mr. Kälin** proposed deleting subparagraph h (e) of the recommendation , since the Committee did not normally advocate the implementation of recommendations by special procedures. The Committee should be consistent in that respect in order to avoid the appearance of discriminating against special procedures in other instances .

58. **Ms. Wedgwood** proposed deleting “sufficiently ” in the expression of concern, as it implied that the Committee could provide an exact measure of the demands of indigenous peoples. To say simply that their demands had not been met would be less provocative.

59. **Ms. Chanet** said that in the expression of concern, article 1, paragraph 2, of the Covenant should be specified, as the concern did not involve the right of self-determination of the Mapuche people. Furthermore, she saw no difference between subparagraphs (a) and (d). The two could be combined by inserting the following words from subparagraph (d) at the beginning of subparagraph (a): “The State party should expedite procedures to ensure that the right of indigenous communities to their ancestral lands is recognized and”.

60. *Paragraph 19, as amended, was adopted.*

Paragraph 20

61. **Mr. Amor** proposed that the State party should include information on the remaining recommendations and the Covenant before five years.

62. **The Chairperson** took it that the Committee agreed with the proposed time frame for the forthcoming periodic report of Chile and wished to adopt paragraph 20 as amended.

63. *It was so decided .*

64. *The draft concluding observations of the Human Rights Committee on the fifth periodic report of Chile as a whole, as amended, were adopted .*

The meeting rose at 6 p.m.