



**International Convention on
the Elimination of All Forms
of Racial Discrimination**

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Summary record of the 1951st meeting

Held at the Palais Wilson, Geneva, on Friday, 14 August 2009, at 10 a.m.

Chairperson: Ms. Dah

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The meeting was called to order at 10.15 a.m.

Consideration of reports, comments and information submitted by States parties under article 9 of the Convention (*continued*)

Fifteenth to eighteenth periodic reports of Chile (continued) (CERD/C/CHL/15–18; written replies to the list of issues (document without symbol, distributed in the meeting room in Spanish only))

1. *At the invitation of the Chairperson, the members of the delegation of Chile took places at the Committee table.*
2. **The Chairperson** invited those members of the Committee who had not yet had the time to do so to put their questions to the Chilean delegation.
3. **Mr. Kemal** said that some of the considerable revenue derived from the sustained economic growth in Chile over recent years should be used to remedy the injustices committed against indigenous peoples in the past. The indigenous peoples had an inherent right to land which, although acknowledged by Chile, was not expressly codified by the law. He asked when the State party intended to adopt an anti-discrimination law for the prevention and punishment of racial discrimination and set up a national human rights body consistent with the Principles relating to the status of national institutions for the promotion and protection of human rights (the Paris Principles) (General Assembly resolution 48/134 of 20 December 1993, annex).
4. **Mr. Ewomsan** welcomed the specific measures adopted by Chile to improve the material standard of living of indigenous peoples. However, he noted that the indigenous peoples wished to be officially recognized at the civil and political level. He asked whether there was any forum for dialogue where traditional and Government authorities could debate the claims and grievances of indigenous peoples. Similarly, he asked whether there was, for example, a representative of the indigenous peoples in the Chilean delegation.
5. **Mr. Diaconu** noted that the definition of discrimination given in paragraph 104 of the report was not consistent with the Committee's own definition of racial discrimination, which was based on equality of rights. He was also surprised to see in the same paragraph the term "arbitrary discrimination", since any discrimination was intrinsically arbitrary in nature. He noted with concern that there was no law against incitement to hatred and racial discrimination consistent with the provisions of article 4 of the Convention, and that the law against terrorism was applied in order to suppress demonstrations by indigenous peoples when their rights were not respected. He stressed that the indigenous peoples demonstrated precisely because their land rights were not respected. The State party should create more effective consultation mechanisms and avoid any systematic recourse to repressive measures. According to the information provided by Chile, the lack of legal recognition of the indigenous peoples was mainly due to the reluctance of parliament. He asked whether the Government might not make a commitment before parliament to submit a bill officially recognizing the indigenous peoples, as had been done in other countries. Finally, he asked what efforts Chile was making to ensure political representation of indigenous peoples.
6. **Mr. Peter** noted that Chile had ratified the 1951 Convention relating to the Status of Refugees and its 1967 Protocol, but that it was the only country in its region which had not given effect to those instruments by drawing up a specific law on refugees. That omission meant that refugees were treated like all other migrants and did not enjoy any special protection because of their status. Since Chile attracted increasing numbers of refugees from Colombia and other Latin American countries, following the restoration of democracy and because of its flourishing economy, he asked whether the State party intended to adopt a law on refugees. He also wished to know whether Chile intended to ratify the 1954 Convention relating to the Status of Stateless Persons and the 1961 Convention on the

Reduction of Statelessness. He also asked why the bill to create a national, independent human rights institution, approved by the Senate in 2007, had been rejected by the Chamber of Deputies. Finally, he asked why the Chilean Government had still not accepted the offer of technical assistance from the Office of the High Commissioner for Human Rights in the establishment of such an institution.

7. **Mr. Opazo** (Chile) said that, on 7 April 2009, the Senate had approved the idea of revising the Constitution in order to recognize the indigenous peoples of Chile. That draft constitutional acknowledgement was a great step forward because it tackled a whole range of issues which were normally avoided: official recognition of the multicultural nature of Chilean society, the concept of a people in the Constitution, the collective and individual rights of indigenous peoples, especially the right to preserve, strengthen and develop their identity, culture, languages, institutions and traditions and participate in the economic, social, political and cultural life of the country; the recognition of their customs provided that the latter were not inconsistent with the Convention and Chilean legislation; and the obligation to protect the land and water rights of indigenous individuals and communities. Since 13 April 2009, consultations had been under way at national level to obtain comments from indigenous organizations on the draft approved by the Senate before it was submitted to the National Congress. A total of 121 workshops had been held, with 3,392 persons participating, the vast majority of whom were representatives of indigenous communities and organizations. The National Council of the National Indigenous Development Corporation (CONADI) had also been consulted on the draft of the revision.

8. **Mr. Durán** (Chile) said that the conclusions of the first consultation by the indigenous councils on constitutional recognition of indigenous peoples would be included in a report to be submitted to the Senate Constitutional, Legislative and Justice Committee (CERD/C/CHL/15-18, para. 48).

9. **Mr. Marifil** (Chile) said that problems of indigenous land title could only be resolved if the negotiations were not subject to pressure and if a programme was created to draw up long-term solutions.

10. The Indigenous Act (see document CERD/C/CHL/15-18, para. 114) was the principal body of law providing for the rights of the indigenous peoples. Chilean society, the Government and the indigenous peoples had made significant progress since the entry into force of the Act, which had established public institutions specifically for that population group and implemented policies on the restitution and protection of land and waters, development of production and the affirmation of indigenous culture and education. The return of land, the very source of their culture and development, to the indigenous communities constituted recognition of the land rights of which they had been deprived, often in painful and abusive circumstances.

11. Article 20 of the Indigenous Act provided for various mechanisms for reclaiming indigenous heritage, including a financial assistance scheme for land purchases which gave access to subsidies for the purchase of additional land by families and communities whose existing land holdings were too small for subsistence purposes.

12. Article 20 also provided for a mechanism for the purchase of disputed land, which provided financing for efforts to solve land-related problems arising as a result of legal disputes over some historical act that had led to the illegal loss of indigenous land (squating, erection of fences, fraudulent sales, expropriation during agrarian counter-reform, etc.). Article 20 of the Act further provided for the transfer of State property to indigenous communities giving the National Indigenous Development Corporation (see document CERD/C/CHL/15-18, para. 7) the power to take possession of State lands, buildings, land holdings and water rights, for transfer to indigenous communities or individuals. Finally, the law provided for upgrading and regularization of indigenous land,

which conferred legal certainty in cases where no such certainty had previously existed and consolidated the indigenous heritage.

13. The application of article 20 of the Indigenous Act had resolved various land title problems, including the difference between the original area of land occupied by the Mapuche indigenous communities and the area currently occupied; the issue of land transferred to indigenous families and communities during the agrarian reform and subsequently awarded to others or sold by the military regime; the problem of land lost to indigenous families and communities following assignment or cessation by the State by virtue of legal or extrajudicial solutions or transactions; and, finally, the issue of land occupied by indigenous people, either over a long period or only recently, and requests from small farmers to increase their land holdings.

14. **Mr. Durán** (Chile) said that the law establishing the indigenous peoples' marine and coastal zone (see document CERD/C/CHL/15–18, para. 143) had been published in the Official Gazette on 16 February 2008 and the decree by which it entered into force on 26 May 2009. A bill amending the law on fishing was currently under consideration by the Senate, but it would not amend the indigenous peoples' marine and coastal zone in any way.

15. **Mr. Muñoz** (Chile) said that the intercultural health programmes (see document CERD/C/CHL/15–18, para. 125) had first been implemented in 1992. At first, the programmes had consisted of appointing bilingual mediators in indigenous areas. Since then, centres had been set up for information about and promotion of ancestral health practices, and educational material with a strong cultural bias had been prepared. A training programme had also been conducted for biomedical professionals to enable them to practise in areas inhabited by nine legally recognized indigenous peoples. Thanks to the programmes, it had been possible to hold training workshops for 25 health services.

16. Since Chile's ratification of the ILO Convention concerning Indigenous and Tribal Peoples in Independent Countries (No. 169), new strategies from the Ministry of Health aimed, for example, to train 500 health professionals and indigenous leaders in six regions of the country. The authorities had also revised food safety standards in order to bring the nutrition practices of indigenous culture into line with public health and nutrition strategies.

17. A great many studies had been required to increase understanding of the differences between the majority population and the indigenous peoples in the area of health and disease. Those studies had revealed the significant deficiencies in nutrition among the indigenous peoples.

18. **Mr. Vasquez** (Chile) said that, under the Chilean Constitution, primary and secondary education were compulsory and free of charge, without distinction as to race, religion, language or any other factor.

19. **Mr. Opazo** (Chile) said that the Antiterrorist Act (see document CERD/C/CHL/15–18, para. 49) had been invoked 16 times between 1999 and 2009, but never in situations involving indigenous peoples. The current Chilean Government had invoked the law only twice, in connection with offences of violence which had disturbed public order.

20. **Mr. Vasquez** (Chile) said that the Chilean authorities had been deeply distressed at the death on 12 August 2009 of Jaime Mendoza Collio in violent exchanges between demonstrators and police. The member of the carabineros [uniformed police] involved in the murder was now in detention and would be tried by the competent court. However, he wished to point out that nothing could justify the chronic political violence which raged in La Araucanía region (see document CERD/C/CHL/15–18, para. 48) and that the only way to resolve the historic and legitimate demands of the Mapuche people was to enter into a dialogue.

21. He explained that Aucán Huilcamán Paillama was being prosecuted for assaulting one of the carabineros. The military prosecutor investigating the case had allowed him to be released on bail. However, the bail money had not been paid and Aucán Huilcamán Paillama had therefore not been allowed to leave the country.

22. **Mr. Opazo** (Chile) said that a number of laws adopted in recent years limited the competence of military courts, particularly by removing from them the power to investigate acts of terrorism when the perpetrator of the acts in question was a member of the armed forces or the carabineros. In future, the competence of the military justice system would be further reduced and it would apply to military personnel only. To that end, the Chilean Government had presented a bill to Congress in June 2007, which made major amendments to the Code of Military Justice and restricted the competence of military courts to military offences only. That bill was currently under consideration by the Senate Defence Committee.

23. **Mr. Zanzi** (Chile) said that approximately 3,000 Chilean citizens of African descent had been recorded, plus many immigrants from Africa, most of whom lived in the north of the country, near the border with Peru. A pilot project based on the principle of voluntary self-identification was currently under way in order to identify the population of African descent. On 1 August 2009, a bill was submitted to the Chamber of Deputies on the recognition of persons of African descent as an ethnic group and the right of members of that group to preserve, develop and strengthen their cultural identity, institutions and traditions.

24. The bill against discrimination was currently under consideration by the Senate. It forebade agents of the State and private individuals to practise any form of distinction, exclusion, restriction or preference based on race or ethnic origin, or to deprive anyone of his constitutional rights or any other rights granted under domestic legislation or international treaties ratified by Chile. Further, the bill defined aggravating circumstances related to offences motivated by arbitrary discrimination and established incitement to hatred on the grounds of race, gender, religion or nationality as a criminal offence. The provisions of the bill would apply also to malicious acts committed against indigenous persons because of their origin or culture. The Chilean Government firmly intended to ensure that the law was adopted before the end of its term of office.

25. Every three years, Chile conducted a survey of the national socio-economic situation, the National Socioeconomic Characterization Survey (CASEN) which, since 1996, had allowed indigenous persons to declare themselves members of one of the country's ethnic groups. The percentage of persons making that declaration had risen from 4.4 per cent in 1996 to 6.6 per cent in 2006, an increase which reflected the positive image which indigenous culture now enjoyed in Chile and which indigenous persons were proud to claim as their own.

26. Between 2000 and 2006, the Aymara population had risen from approximately 60,000 to approximately 82,000, while the Mapuche population had experienced the greatest demographic increase in both absolute and relative terms, rising from 576,000 to 925,000. The CASEN survey had shown that poverty had decreased considerably at national level over the previous 10 years, the decrease being particularly marked among the indigenous population. The poverty gap between the general and indigenous populations had been 10 per cent in 1996 but only 4.9 points in 2006.

27. **Ms. Hertz** (Chile) said that there were two bills which were intended to create an independent Chilean institution for the promotion and protection of human rights which would be consistent with the standards and principles of international law. The first, submitted to Congress in 2005, was intended to create an autonomous national institute under public law, in conformity with the Principles relating to the Status of National

Institutions (Paris Principles), which would mainly be entrusted with promoting and protecting fundamental rights. On 29 July 2009, the Chamber of Deputies had approved the draft, on condition that the Government undertook to submit an improved version to Congress without delay. The Chilean Government had undertaken, in particular, to define precisely the sphere of competence of the institute vis-à-vis the international treaties ratified by Chile and the general principles of international human rights law; to authorize the institute explicitly to report annually to bodies of the United Nations and Organization of American States and other bodies and organizations operating in the field of human rights and to prosecute cases of genocide, war crimes and crimes against humanity; to strengthen the institute's independence and accept in full the statute adopted by the governing body of the institute; and, finally, to improve the welfare benefits granted to individuals who had suffered human rights violations under the dictatorship.

28. The second bill provided for the creation of the institution of Ombudsman and its promotion to the level of a constitutional body. The institution's purpose would be to protect individuals against the acts, or failure to act, of public bodies and State-approved juridical persons under private law. The draft had made good progress through Congress.

29. **Mr. Portales** (Chile) recalled with reference to the situation of the Aymara people in the Arica and Parinacota region on the border between Chile, Peru and Bolivia that the border between Chile and Peru had been fixed by the Treaty of Lima of 1929, recognized by both countries. Chile and Peru had defined their maritime frontier by approving the Declaration on the Maritime Zone (Declaration of Santiago) on 18 August 1952 and the Agreement on the Special Maritime Frontier Zone, approved at Lima on 4 December 1954 (see Law of the Sea Information Circular, United Nations Division for Ocean Affairs and the Law of the Sea, 2002). In respect of the maritime frontier, the Peruvian Government had lodged an appeal with the International Court of Justice at The Hague to settle the dispute. There could be no better guarantee for the population, Aymara or otherwise, than a peaceful settlement to the dispute in accordance with international law.

31. **Mr. Avtonomov** (Country Rapporteur), noted the statements in paragraphs 110 and 111 of the report under consideration (CERD/C/CHL/15-18) that case law regarding the hierarchy of international treaties dealing with human rights had oscillated between according those treaties the rank of a law and a rank above that of a law, but beneath that of the Constitution. He asked about the exact position of the Convention in domestic legislation. Which law would prevail in the case of a conflict between the Constitution and an international human rights instrument?

32. He wondered whether a kind of "environmental racism" prevailed in the State party. He asked whether communities which would potentially be affected by major land-use projects, such as hydroelectric or thermal power projects, were consulted and provided with all useful information, particularly about the environmental impact of the project, for instance water pollution, so that they could give an informed opinion. Chile had ratified ILO Convention No. 169 and must now do everything in its power to promote the common interest, and particularly the interests of indigenous peoples. He would welcome more information on that point.

33. **Mr. Murillo Martínez** said that the Committee would continue to study the issue of application of the Antiterrorist Act. It was not clear to him whether the Act was applied more often to members of the indigenous population than to other groups. He welcomed the bill recognizing persons of African descent as an ethnic group, although the number of individuals involved was small.

34. He asked whether the police officer who had caused the death of a member of the Mapuche community would be tried by a civil or a military court.

35. Finally, he asked about the status of ILO Convention No. 169 in Chile's domestic law.

36. **Mr. Cali Tzay** asked what percentage of the US\$ 200 million grant Chile had received from the Inter-American Development Bank would be transferred to the indigenous communities. What were the various projects launched by the Chilean Government to combat "environmental racism" and, in particular, to install sewerage systems in indigenous territories?

37. He asked the delegation to provide information, where appropriate, about its intercultural policy and state whether teaching in the Mapuche language was provided in schools. Did Chile recognize indigenous medicine, and had it extended the practice of indigenous medicine to the rest of the population, as had been done in other countries?

38. **Mr. Prosper**, referring to the death of an indigenous person which had just occurred, said that it was not the type of jurisdiction — civil or military — which mattered, but the assurance that the due process of law would be respected. He asked about the level of legal training of judges in the military courts, and whether it was equivalent to that of judges in the mainstream justice system.

39. **Mr. de Gouttes**, noting with satisfaction that a bill to combat all forms of racial discrimination was due to be promulgated soon by the State party, hoped that statistics on the number of cases prosecuted under the new law would be included in the next periodic report. He was also pleased to hear that Chile intended to improve its antiterrorist legislation and take measures to ensure that military courts no longer had the competence to try civilians.

40. **Mr. Lahiri** asked whether the State party had a mechanism for resolving the impasse which would arise if the legislative and executive powers did not manage to reach agreement on a bill after a lengthy period.

41. **Mr. Sicilianos**, noting that, according to the information before the Committee, the vast majority of individuals convicted under the Antiterrorist Act were from the indigenous community, drew the attention of the Chilean delegation to the Committee's general recommendation XXXI on the prevention of racial discrimination in the administration and functioning of the criminal justice system (A/60/18). He further noted with satisfaction that a bill to establish an independent national human rights institution and a bill on the Ombudsman (*Defensor del pueblo*) had been prepared and hoped that they would be promulgated soon.

42. **Ms. Hertz** (Chile) said, with reference to the status of the Convention in Chilean law, that there were two opposing opinions in the country: the Chilean Government considered that the international instruments to which Chile was party took precedence over domestic law, whereas the Constitutional Court was of the opinion that they occupied an intermediate rank between domestic legislation and the Constitution. The Government did not agree, considering that the Constitutional Court was authorized only to rule on the constitutionality of legislation and was not competent to pronounce on the hierarchy of laws. The case law of the domestic courts showed that courts dealing with serious human rights violations by State officials during the military dictatorship had consistently concluded that international human rights legislation took precedence over domestic legislation and had directly invoked the relevant international instruments in their decisions. Following the same logic, ILO Convention No. 169, recently ratified by Chile, took precedence over international law.

43. The pending issue of military justice was one of the priorities of the project to reform the legal system. The Chilean Government would do everything in its power to ensure that the required amendments were incorporated into the Code of Military Justice so

that military courts would no longer be able to try civilians or deal with any cases but military ones.

44. **Mr. Muñoz** (Chile) said that, under the law on the environment, all investment projects had to have an environmental impact statement or — in the case of potentially dangerous projects — an environmental impact study. That kind of study had to be drawn up in collaboration with the communities concerned and should include an analysis of the specific characteristics, particularly sociocultural characteristics, of those populations. When the impact study was complete, the investment project was examined by the competent regional environment committee for the area concerned, and subsequently by the National Commission on the Environment. All stakeholders, including the indigenous communities which might be affected by the project, could lodge objections.

45. On the subject of the grievances of the non-governmental organization *Red de acción para los derechos ambientales* [Action Network for Environmental Rights], he said that, following a loan of US\$ 200 million granted to the Chilean Government by the Inter-American Development Bank, a five-year project for the creation of a comprehensive solid-waste treatment and management system would be launched throughout the country. In particular, in the La Araucanía region, it was planned to establish a viable waste management system for solid household waste and to consult local communities in order to ensure that impact studies were systematically conducted in respect of all sewage treatment projects. The Committee would be informed in due course of the number of sewage treatment plants built on indigenous territories.

46. Finally, on the subject of intercultural health, he said that public programmes aimed, initially, to ensure that mainstream medical services recognized the effectiveness of indigenous medical practices and, subsequently, to ensure that physicians working in the areas where indigenous people lived were able to incorporate certain traditional treatment methods into their own practice.

47. **Ms. Quintana** (Chile) informed the Committee with regret that, very recently, a member of the Mapuche community had been killed in clashes with law enforcement personnel in the south of Chile. The President of the Republic, Michelle Bachelet, had expressed her condolences to the family of the victim and sent a ministerial commission of inquiry to the scene of the incident. The police officer presumed responsible for the death had been arrested and would be tried by a military court, as stipulated by the current legislation. The President of the Republic and the Chilean Government remained convinced that the problems of indigenous land title could only be resolved through dialogue with the communities concerned. To that end, and to overcome its difficulties in implementing the Convention, Chile intended to continue its collaboration with the Committee and civil society organizations.

48. **Mr. Avtonomov** (Country Rapporteur) noted with satisfaction that the State party had made remarkable progress in its fight against poverty, particularly among indigenous peoples, and that the gap between the socio-economic situation of indigenous people and that of the rest of the Chilean people had narrowed. He further noted with satisfaction that bills intended, respectively, to combat all forms of racial discrimination and to establish the institution of Ombudsman were currently under consideration, and welcomed Chile's ratification of ILO Convention No. 169 and the progress made by the Government in recognizing the rights of persons of African descent and indigenous people. Finally, he welcomed Chile's resumption of its dialogue with the Committee and the frank and open debate which had taken place between the two sides.

49. **The Chairperson**, endorsing the Country Rapporteur's remarks, noted that the Chilean delegation had answered almost all the Committee's questions and had undertaken to provide further information at a later date in respect of those questions it had not had the

time to answer. Chile had been a particularly active participant in the Durban Review Conference: in particular, it had come out strongly in defence of the rights of people of African descent. In the light of these facts, she called upon the Chilean delegation to do everything in its power to ensure that the Chilean Government asked the General Assembly to consider the possibility of declaring a decade to commemorate the rights of persons of African descent. The Committee would give the State party all the assistance it might need to make that initiative into a reality, since it was a matter close to the Committee's heart.

50. **Ms. Quintana** (Chile) said that the Chilean delegation accepted with gratitude the Chairperson's request and would do everything it could to justify the confidence which the Committee had placed in it by entrusting it with that task.

51. The Chilean delegation withdrew.

The meeting rose at 1 p.m.