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***Concluding Observations of the Committee on Economic, Social and Cultural Rights : Chile. 26/11/2004.
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COMMITTEE ON ECONOMIC, SOCIAL
AND CULTURAL RIGHTS

Thirty-third session
8-26 November 2004

CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES

UNDER ARTICLES 16 AND 17 OF THE COVENANT

Concluding observations of the Committee
on Economic, Social and Cultural Rights

CHILE

1. The Committee on Economic, Social and Cultural Rights considered the third periodic report of Chile on the implementation of the International Covenant on Economic, Social and Cultural Rights (see E/1994/104/Add.26) at its 44th to 46th meetings, held on 18 and 19 November 2004 (see E/C.12/2004/SR.44-46), and adopted, at its 56th meeting, held on 26 November 2004, the following

concluding observations.

A. Introduction

2. The Committee welcomes the submission of the third periodic report of the State party which was prepared in conformity with the Committee's guidelines. It also appreciates the comprehensive written replies to the list of issues.

3. The Committee welcomes the constructive dialogue with the high-level delegation of the State party, which included experts from relevant State institutions.

B. Positive aspects

4. The Committee notes with appreciation the improvements in various social indicators, such as the significant decrease in infant and maternal mortality, the improved coverage in primary and secondary education, and the progress made in the area of poverty reduction.

5. The Committee welcomes the "No tomorrow without yesterday" initiative, which contributes to cast light on human rights violations that took place between 11 September 1973 and 10 March 1990 and to improve the promotion and protection of human rights in the State party.

6. The Committee welcomes the adoption and implementation of targeted programmes to improve the situation of the poorest groups in society, such as the Chile Solidarity Plan (*Chile Solidario*) and the AUGE Plan (*Plan de Acceso Universal con Garantías Explícitas*).

7. The Committee welcomes measures taken to improve the situation of indigenous peoples, including the adoption of the Indigenous People Act (Act No. 19.253) of 1993, the establishment of the National Indigenous Development Corporation (CONADI) and the Indigenous Land and Water Fund, and the recently announced New Deal Policy (*Política de Nuevo Trato*) 2004-2010.

8. The Committee welcomes the entry into force in November 2004 of the new Law on Civil Marriage, which legalizes divorce.

9. The Committee welcomes the adoption in January 2004 of the Law on Crimes of Commercial Sexual Exploitation.

10. The Committee welcomes the extensive information on the health-care situation provided by the State party, which includes disaggregated data on an annual basis, thus enabling the Committee to assess the level of realization of the right to health.

C. Factors and difficulties impeding the implementation of the Covenant

11. The Committee notes the absence of any significant factors or difficulties impeding the effective implementation of the Covenant in the State party.

D. Principal subjects of concern

12. The Committee notes that the amendment of article 5 of the Constitution in 1989 extends the range of rights embodied in article 19 of the Constitution to include rights guaranteed by international treaties to which Chile is party. However, the Committee is concerned that some

economic, social and cultural rights, including the right to housing, are not considered justiciable in the State party. In this regard the Committee notes the scarcity of case law in which the rights of the Covenant have been invoked before and directly applied by domestic courts.

13. The Committee notes with concern the lack of constitutional recognition of indigenous peoples in the State party and that indigenous peoples, despite the existence of various programmes and policies to improve their situation, remain disadvantaged in the enjoyment of their rights guaranteed by the Covenant. It also regrets that the State party has not ratified ILO Convention No. 169 (1989) concerning indigenous and tribal peoples, and that unsettled claims over indigenous lands and national resources remain a source of conflict and confrontation.

14. The Committee is deeply concerned about the application of special laws, such as the Law of State Security (No. 12.927) and the anti-terrorism law (No. 18.314), in the context of the current tensions over the ancestral lands in the Mapuche areas.

15. The Committee is concerned that despite the efforts made by the State party to promote gender equality, cultural gender stereotypes continue to negatively affect the equal enjoyment of economic, social and cultural rights by men and women.

16. The Committee notes with concern that the labour-force participation of women remains among the lowest in Latin America (35 per cent in 2002). The Committee notes in this regard the range of barriers to the full integration of women in the labour force identified by the State party in its written replies to the Committee's list of issues.

17. The Committee notes that a number of the legislative decrees which granted vice-chancellors of universities to terminate the contracts of employment of academic and administrative personnel, albeit no longer applied, have not been explicitly repealed.

18. The Committee expresses concern at information that the minimum wage is still not sufficient to ensure a decent living for workers and their families and at the fact that some categories of workers, in particular domestic workers, are not covered by the minimum wage.

19. The Committee notes with concern that section 381 of the Labour Code provides for the possibility of the replacement of striking workers. Furthermore, the Committee is concerned that essential services in which strikes may be prohibited are too broadly defined in section 384.

20. The Committee is deeply concerned that the private pension system, based on individual contributions, does not guarantee adequate social security for a large segment of the population that does not work in the formal economy or is unable to contribute sufficiently to the system, such as the large group of seasonal and temporary workers. The Committee notes that women are particularly affected in this regard: "housewives" and about 40 per cent of working women do not contribute to the social security scheme and are consequently not entitled to old-age benefits. Moreover, the Committee is concerned at the fact that working women are left with a much lower average pension than men as their retirement age is five years earlier than that of men.

21. The Committee is concerned that the legislative progress started 10 years ago to include sexual harassment as a specific punishable offence has still not been completed.

22. The Committee notes that section 349 of the Commercial Code discriminates against women who are not covered by the marital regime of the individual ownership of property.

23. The Committee is concerned about the high number of children working in the sex industry in the State party.

24. Despite the significant progress made over the past years and measures taken under the Chile Solidarity (*Chile Solidario*) programme, which targets families living in extreme poverty, the Committee remains concerned about poverty in the State party, especially among indigenous peoples.

25. Despite the construction of many housing units, the Committee is concerned at the large number of people living in illegal settlements in the State party who are, consequently, liable to forced evictions.

26. The Committee is concerned about the consequences for women's health of the legal prohibition on abortion, without exceptions, in the State party. While there are no official statistics on the number of abortions performed annually, the large number of women who are hospitalized for abortion complications every year (34,479 in 2001) gives an indication of the extent of this problem.

27. The Committee is concerned that, despite the progress made in controlling the spread of HIV/AIDS infections in the State party, HIV/AIDS is still on the increase. It also notes with concern the high rates of sexually transmitted infections (STIs) among young women.

28. The Committee is concerned about the scope of the planned law (*Sobre racionalización de subsidios de incapacidad laboral y licencias médicas*) which would involve a legislative restriction of the current law, permitting parents a subsidized leave from work to care for children under the age of 1 in the case of serious illness. It notes that this planned law, on the face of it, represents a violation of article 12, as a retrogressive measure affecting the minimum standards of the right to health protection, as outlined in General Comment No. 14 of the Committee.

29. While noting the progress made in increasing education coverage, the Committee is concerned at the disparity in the quality of education offered in municipal and private schools. The Committee is also concerned about the relatively high drop-out rates, especially among teenage girls.

E. Suggestions and recommendations

30. The Committee recommends that the State party continue its efforts to give full effect to the Covenant in domestic law and to provide further clarification as to the direct applicability of the Covenant by domestic courts, providing relevant case law, in its next periodic report. In this respect, the Committee draws the attention of the State party to its General Comment No. 9 on domestic application of the Covenant. The State party should ensure that judicial training take full account of the justiciability of Covenant rights and take measures to increase awareness of the possibility of invoking its provisions before the courts.

31. The Committee recommends that the State party ensure the existence of an effective legal and institutional framework for the promotion and protection of all the rights of the Covenant.

32. The Committee encourages the State party to continue with its plans to establish an independent national human rights institution, in accordance with the Principles relating to the status of national institutions for the promotion and protection of human rights (Paris Principles), annexed to General Assembly resolution 48/134, mandated with the promotion and protection of all human rights, including economic, social and cultural rights.

33. The Committee recommends that the State party include recognition of its indigenous peoples in the Constitution, ratify ILO Convention No. 169, and continue to strengthen its efforts to ensure the effective enjoyment by indigenous people of their economic, social and cultural rights.

34. The Committee recommends that the State party fully take into consideration the recommendations made by the Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous people (E/CN.4/2004/80/Add.3) on the implementation of the New Deal Policy 2004-2010, namely that the Land Fund be substantially increased; that efforts to recover indigenous lands be strengthened, especially in Mapuche areas; and conditions of rural indigenous people be improved, especially in the health and educational sectors.

35. The Committee recommends that the State party not apply special laws, such as the Law of State Security (No. 12.927) and the anti-terrorism law (No. 18.314), to acts related to the social struggle for land and legitimate indigenous complaints.

36. The Committee recommends that the State party further strengthen efforts to promote gender equality in all spheres of society, including by providing the National Women's Service (SERNAM) with adequate support and resources.

37. The Committee urges the State party to take effective measures to address the many barriers to women's participation in the labour market. In particular, the State party should promote family-friendly working conditions and provide adequate funding and support to programmes to enable parents to reconcile family life and work, such as the blueprint for childcare being prepared by the National Women's Service. It also recommends that the State party incorporate the principle of equal remuneration for men and women workers for work of equal value in its legislation.

38. The Committee recommends, in line with the observations made by the ILO Committee of Experts in 2003 concerning the Discrimination (Employment and Occupation) Convention (No. 111), that the State party explicitly repeal provisions in labour legislation which are no longer applied.

39. The Committee recommends that the State party take measures to ensure that the minimum wage is sufficient to ensure a decent living for all workers and their families and provide more detailed information in its next periodic report on how the minimum wage relates to the basic consumer basket.

40. The Committee encourages the State party to ratify the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families.

41. The Committee encourages the State party to ratify ILO Conventions Nos. 81, 102, 117 and 118.

42. The Committee encourages the State party to ensure that judicial authorities and members of political parties are not restricted in their trade union rights under article 8 of the Covenant. The State party is also encouraged to review section 381 of the Labour Code, which provides for the possibility of the replacement of striking workers, and section 384, and gives a too broad definition of essential services in which strikes may be prohibited.

43. The Committee recommends that the State party take effective measures to ensure that all workers are entitled to adequate social security benefits, including special measures to assist those groups who are currently not able to pay into the private social security system, paying special attention to the disadvantaged position of women and the large number of temporary and seasonal

workers and workers in the informal economy.

44. The Committee encourages the State party to expedite the adoption of the proposed amendments to Act No. 19.325 on domestic violence currently under consideration.

45. The Committee recommends that the State party accelerate the adoption of the draft bill making sexual harassment a punishable offence.

46. The Committee recommends that the State party amend section 349 of the Commercial Code to ensure that women can exercise their commercial activities under equal conditions with men.

47. The Committee recommends that the State party strengthen measures to combat sexual abuse and commercial sexual exploitation of children and provide victims of such abuse with adequate care.

48. The Committee recommends that the State party undertake studies into the situation of street children with a view to formulating effective policies to deal with this problem.

49. The Committee encourages the State party to ratify the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, and the Protocol against the Smuggling of Migrants by Land, Air and Sea, supplementing the United Nations Convention against Transnational Organized Crime.

50. The Committee recommends that the State party continue to strengthen its efforts to reduce poverty, especially among indigenous peoples, and to integrate economic, social and cultural rights in all its poverty alleviation programmes. In this regard, it refers the State party to the Committee's statement on poverty, adopted on 4 May 2001. It also recommends that the State party ensure that adequate resources are allocated towards meeting the goals and targets set under the Chile Solidarity (*Chile Solidario*) and the Chile Neighbourhood (*Chile-barrio*) programmes.

51. The Committee urges the State party to take effective measures to promote the right to housing, especially among the disadvantaged and marginalized groups, and to ensure that adequate protection is afforded to people living in illegal settlements who are liable to forced evictions. The Committee recalls in this connection its General Comments No. 4 (on the right to adequate housing) and No. 7 (on adequate housing: forced evictions), and requests the State party to provide further information on the number and nature of forced evictions in its next periodic report.

52. The Committee requests the State party to provide in its next periodic report information about the nature and extent of homelessness in the State party.

53. The Committee recommends that the State party revise its legislation and decriminalize abortion in cases of therapeutic abortions and when the pregnancy is the result of rape or incest.

54. The Committee recommends that the State party strengthen measures to promote education programmes on sexual and reproductive health and to raise awareness about and access to safe contraception methods. It also recommends that the State party intensify its efforts, including through public information campaigns, to control the spread of STIs.

55. The Committee recommends that the State party intensify its efforts, including through public information campaigns, to control the spread of HIV/AIDS and other STIs, and provide, in its next periodic report, information on the effect of measures taken, including the effects of television and

media campaigns, as well as the role played by the civil society and by religious groups in this respect.

56. The Committee recommends that the State party review its proposed legislation on the reduction in the parental medical leave benefit system, with a view to ensuring that it will not represent a retrogressive measure affecting the minimum standards of the right to health, as outlined in the Committee's General Comment No. 14.

57. The Committee recommends that the State party ensure that women in the reproductive age are not discriminated against in the private health-care system.

58. The Committee requests the State party to provide, in its next periodic report, benchmarks regarding efforts to reduce waste and to recycle more of it.

59. The Committee recommends that the State party continue to strengthen efforts to improve the quality of education in municipal schools and to address the issue of dropouts, especially among teenage girls, including by securing adequate support for teenage mothers to continue their education.

60. The Committee encourages the State party to provide greater access to generic medicine making use of the flexibility clauses permitted in the World Trade Organization Agreement on Trade-related Aspects of Intellectual Property Rights (the TRIPS Agreement).

61. The Committee encourages the State party to provide human rights education in schools at all levels and to raise awareness about human rights, in particular economic, social and cultural rights, among State officials, including the armed forces, law enforcement personnel and the judiciary.

62. The Committee requests the State party to disseminate its concluding observations widely to all levels of society, including among State officials and the judiciary, and to inform the Committee on all steps taken to implement them in its next periodic report. It also encourages the State party to continue to consult with non-governmental organizations and other members of civil society in the preparation of its fourth periodic report.

63. The Committee requests the State party to submit its fourth periodic report by 30 June 2009.



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