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POLITICAL RIGHTS**



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Sixth Session

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on Thursday, 12 April 1979, at 10 a.m.

Chairman: Mr. MAVROMMATIS

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

CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES UNDER ARTICLE 40 OF THE COVENANT: INITIAL REPORTS OF STATES PARTIES DUE IN 1977 and 1978 (continued)

Chile (continued) (CCPR/C/1/Add.25 and Add.40)

1. Mr. BOUZIRI expressed the hope that the Chilean delegation would convey to the Chilean Government how strongly it was universally condemned for its attitude towards the Covenant on Civil and Political Rights. As long as the democratic tradition was not restored and the present Government continued to disregard the elementary rights of the people, the General Assembly, the Commission on Human Rights and the Committee would continue to express their concern regarding the violation of human rights in Chile and to demand that they should be respected.
2. He drew attention to the discrepancy between the information contained in the comment on paragraph 1 of article 1 of the Covenant (CCPR/1/Add.25, p.9) to the effect that "sovereignty resides essentially in the nation, which delegates the exercise thereof to the authorities established by this Constitution" and the statement under the heading "General Legal Framework" (ibid., p.1) that the Governing Junta had promulgated decrees "in exercise of its constituent power", that is, powers which the Junta had arrogated to itself. The amendments to the 1925 Constitution were unacceptable because the present Government, which had come to power in a coup d'etat, had never been approved by the Chilean people in a democratic expression of will. That situation was incompatible with paragraph 1 of article 1 and with article 25 of the Covenant on Civil and Political Rights and led to the conclusion that all laws and regulations stemming from the constituent power of the Junta which violated or restricted the political and civil rights of the Chilean people were null and void, unconstitutional and wholly arbitrary.
3. Even conceding that there might be a valid basis for Chile's constitutional position, it was clear from the report that the Covenant was subordinated to the constituent power of the Junta, raising the question of the position it occupied in Chile's legal order since, under the state of emergency, restrictions were imposed specifically on the civil and political rights of Chilean citizens.
4. With specific reference to articles 6, 7 and 15 of the Covenant, he pointed out that the Chilean Government stated (ibid., p.20) that none of the exceptional provisions jeopardized those rights, whereas it had been reliably demonstrated in the report of the Working Group of the Commission on Human Rights inter alia that many people had disappeared after being detained by the security forces, some had been murdered in horrible circumstances and others had been tortured. With regard to Legislative Decree No. 1009 (ibid., p.15), he asked why a person could be detained as long as five days and then brought before the Ministry of the Interior and not an appropriate court. The reply to those questions was bound to be disturbing.

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(Mr. Bouziri)

5. He said that loss of nationality for political reasons was one of the worst cruelties imaginable and that it was likewise intolerable to expel Chilean citizens or prevent them from returning to their country by withholding the benefits of amnesty.

6. The scope of the term "unpatriotic propaganda" used in the report (p.17) should be defined. The question arose, for example, whether the act of condemning the military coup and the amnesty of 18 April 1978 clearing the security agencies of guilt for their crimes constituted unpatriotic propaganda. The term "latent subversion" was equally confusing as used in connexion with article 4 of the Covenant.

7. He went on to consider the section of the Chilean report dealing with political parties and, after quoting the provisions of Legislative Decree No. 78 of 1973 (ibid., p.46) under which the "other political parties" were suspended, he expressed the view that it was an ironic aberration to suspend those parties in order to end discrimination against the parties which had been dissolved when the Government itself had created that discrimination. The report went on to say that "the activities of political parties could not be included ... among the country's life forces ... since there was ample proof that they were a source of disunity among Chileans". He observed that throughout history, essentially authoritarian régimes used to suppress political parties and political organizations on the pretext that they created disunity among the people. In that respect, it should be noted that the Chilean Government showed no originality.

8. After noting that he shared the opinion of Mr. Prado Vallejo concerning the phrase "image of the fatherland", he asked the Chilean delegation to explain the meaning of the concept of political parties "as currents of opinion". What would be their status or function and how, under article 25 of the Covenant, could citizens "take part in the conduct of public affairs, directly or through freely chosen representatives, vote and be elected at genuine periodic elections which shall be by universal and equal suffrage and shall be held by secret ballot, guaranteeing the free expression of the will of the electors"? If the Chilean Government genuinely planned to re-establish the noble democratic traditions of the country and abide by the Covenant, the Chilean delegation must pledge itself to implement that provision in future; only then could the Committee be convinced that there was genuine progress in Chile.

9. Mr. HANGA pointed out that although the official documents of the United Nations showed consistent violations of human rights and fundamental freedoms in Chile, the presence of representatives of Chile in the Committee indicated the willingness of the Chilean Government to co-operate with the Committee with regard to restoring the rights provided in the Covenant.

10. Chile's report did not contain any legal evidence that the provisions of the Covenant had been incorporated in Chile's organic law. Moreover, under the state of emergency or the state of siege, the applicability of a number of provisions of the Covenant was restricted or suspended. In that context, he inquired whether the text of the Covenant had been published and disseminated in Chile so that the entire

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(Mr. Hanga)

population could be made aware of the rights to which they were entitled as a result of Chile's ratification of the instrument.

11. With regard to recourse to habeas corpus (amparo), he wanted to know what were the real prospects for applying it, considering that the General Assembly in its resolution 33/175 of 20 December 1978, had urged the Chilean authorities to give it full effect.

12. The Chilean report stated (CCPR/C/1/Add.25, p.7) that the right of petition, "although it is not a procedural remedy as such ..., is a juridical device of an administrative nature enabling anyone to petition the authorities ... without any limitation other than the requirement to proceed in respectful and appropriate terms". He asked whether the word "appropriate" referred to the form or the content of the petition.

13. He observed that the state of emergency was still in force and that, according to the Chilean reply in document A/33/293 (p.8), the state of siege had been terminated. On the other hand, the report of the Working Group (E/CN.4/1310, para. 322) indicated that the state of siege was still being applied to one region. Since all political activity was suspended during the state of emergency, he wanted to know what measures the Chilean Government had taken to implement the General Assembly's request (resolution A/33/175) that it re-establish the democratic institutions and constitutional safeguards which the Chilean people had previously enjoyed.

14. With regard to the comment on paragraph 2 of article 1 of the Covenant indicating that the 1925 Constitution established that the law should promote the appropriate distribution of property and the creation of family property, he inquired what steps had been taken to that end and what criteria had been applied, in view of the fact that, under that Constitution, there was no privileged class in Chile.

15. With regard to article 6 of the Covenant, concerning the right to life, he asked what efforts were being made by the Chilean judiciary to identify and try those guilty of detaining persons illegally and what had been the results.

16. With regard to article 7 of the Covenant, he observed that the statement in the report by Chile that Chilean constitutional, criminal and military law categorically prohibited the use of torture and cruel and degrading punishment was belied by the fact that the General Assembly had appealed to the Chilean authorities in resolution 33/175 to "ensure an immediate end to torture and other forms of inhuman or degrading treatment and prosecute and punish those responsible for such practices".

17. With regard to article 8 of the Covenant, it was indicated in the report that under a law enacted in 1954 anti-social individuals could be committed to a work-house or agricultural colony, and he asked in that connexion which authority had

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(Mr. Hanga)

the power to decide in such cases and whether there were any judicial or administrative appeal proceedings available to the individuals affected. He also asked whether Chile had ratified the ILO Convention concerning the Abolition of Forced Labour.

18. As to the implementation of various other articles of the Covenant, he asked what remedies were available in practice to interested parties in cases of undue delay in judicial proceedings (art. 9), to what extent the competent authorities were required to ensure that life in prison approximated the general standard of living and to correct harmful prison conditions (art. 10), and what legislative or administrative provisions existed to facilitate the return of Chileans currently in exile (art. 12).

19. In view of the increased importance of judicial institutions for the protection of human rights when other institutional and social mechanisms safeguarding the full enjoyment of those rights were no longer functioning, he asked how the independence of the Judiciary was guaranteed, especially in the light of the statement in the report of the Working Group that "the judiciary continues to comply with, or at least to give its passive consent to, the steps and measures taken by the Executive, even when such measures are clearly contrary to laws in force" (E/CN.4/1310, para. 60).

20. With regard to freedom of opinion (art. 19 of the Covenant), he would like to know whether the State had a monopoly of opinion and whether the mass media were structured in an equitable manner so that all social groups were represented; he also noted that the section of the report dealing with article 20 of the Covenant did not adhere to that provision and did not indicate the relevant legislation. With regard to the right of freedom of association provided for in article 22 of the Covenant, he noted that Legislative Decree No. 198 of December 1973 temporarily suspended the right of collective bargaining and the right to strike and that other provisions directly affecting labour questions, such as Legislative Decrees Nos. 2345, 2346 and 2347 of October 1978, had been enacted subsequently. He therefore wondered how the workers were able to make up for the absence of various trade-union activities and bring about improvements in their economic and social conditions. He also had doubts and reservations concerning the statements made in document CCPR/C/1/Add.25 with regard to articles 23 (marriage and the family), 24 (protection of the child) and 25 (access to public service) of the Covenant.

21. Finally, he noted that there were conflicts between the facts established by the Working Group and the statements in the report submitted by Chile; those conflicts must be fully and frankly resolved, reconciling the relevant norms and their implementation with the constantly changing needs of society and life.

22. Mr. LALLAH said that he fully shared the views of Mr. Bouziri, Mr. Graefrath, Mr. Movcham and Sir Vincent Evans concerning the discrepancies between the provisions of the relevant General Assembly resolutions and the information in the report submitted by Chile.

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(Mr. Lallah)

23. After noting that Chile had become a party to the Covenant in 1972 and raising the question of whether it could be complying with that instrument at the present time, he observed that since 1973, because of the events that had led to the suspension of all democratic institutions, executive and legislative powers had been exercised by self-appointed authorities of the armed forces and the police. Hence, although the report claimed to have been prepared and compiled in accordance with the guidelines provided by the Committee, it must be remembered that those guidelines were addressed to States which observed fundamental rights and freedoms and not to those which, like Chile, flouted them.

24. In his opinion, the report that had been submitted did not permit an evaluation to be made of the situation and the Chilean Government must therefore be asked to prepare another report drawing attention to the state of emergency in that country and analysing the articles of the Covenant one by one in the light of existing conditions and the legislation in force. In connexion with article 6 of the Covenant, for example, it was essential to know the present state of legislation, the extent to which there had been derogation from it and the justification that existed for such derogation.

25. With reference to the report of the Working Group which, with the consent of the Chilean Government, had visited that country with the objective aim of ascertaining the past, present and future situation with regard to human rights, he was particularly concerned at the indication given in paragraph 73 of document E/CN.4/1310 that there would be no elections until 1985, and he wondered whether any democratic institutions would be restored before that date.

26. In conclusion, he said that the welfare of the Chilean people made it essential to ensure that Chile did not denounce the Covenant, so that the Committee could continue to make a clear assessment of the situation in that country until the democratic tradition was re-established.

27. Mr. KOULICHEV said that normally, in considering a report by a State, the Committee centred its attention on the text of the report and on the relevant documentation that had been submitted. The present situation was different, since it involved large-scale, flagrant, systematic violations of rights set out in the Covenant, and the Committee therefore could not confine itself to considering the report of the Chilean Government and disregard the fact that competent United Nations bodies had found those violations to have been committed.

28. The human rights situation in Chile had aroused concern in the international community since September 1973. In recent years, the United Nations had adopted numerous resolutions expressing concern at the constant, flagrant violations of human rights in Chile and calling for them to stop. In spite of the repeated efforts of the international community, the Chilean authorities had not yet restored respect for human rights and fundamental freedoms. Violations of human rights continued to be committed in Chile, and that was a situation calling for unceasing vigilance on the part of the international community.

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(Mr. Koulichev)

29. The report of the Ad Hoc Working Group stated that civil and political rights had been suspended in Chile and that the total suspension of the exercise of those rights continued to be one of the basic features of that country's national life (E/CN.4/1310, paras. 71 and 72). The state of siege and state of emergency remained in force. New restrictions had recently been imposed on trade-union organizations and the right to form trade unions. The Junta sought to give the impression that it was offering a ray of hope by adopting a new Constitution. However, the new Constitution prepared by the present régime was apparently not to be applied in the immediate future and was intended merely to conceal the actual facts in Chile in the field of human rights.

30. It was difficult not to compare the report submitted by the Government of Chile with the report of the Ad Hoc Working Group. Anyone examining the former could not forget the Working Group's findings on the increase in detentions for political reasons or for reasons of national security and the growing number of cases of intimidation, torture and missing persons. The Chilean provisions for protection of the right to life, liberty and security of person were obviously inoperative so that it could not be said that Chilean citizens enjoyed the rights prescribed by the International Covenant on Civil and Political Rights.

31. The Committee's discussions had done much to clarify the universally known fact that the provisions of the Covenant were not being fulfilled in Chile. Accordingly, the Committee should ask the Chilean Government to submit another report, a truthful one this time, and should join the efforts of the international community with a view to ending violations of rights and freedoms in Chile.

32. Mr. DIEYE said that the Government of Chile deserved praise for the spirit of co-operation it had shown in the Commission on Human Rights and in its relations with the Working Group that had visited that country. Despite what was happening there, it was only fair to point out the importance of the fact that a Government had agreed to receive a group entrusted with the task of investigating the human rights situation. Public opinion should view that as a precedent on the basis of which the international community could help to improve or restore human rights in any country.

33. It was also important that the statements made by members of the Committee should be based on the results of the Working Group's fact-finding mission to Chile, which provided a faithful picture of what was happening there. The Working Group had emphasized its desire to contribute to the development and improvement of human rights. The Committee, in turn, appeared to be thoroughly familiar with the situation in Chile. The Government of Chile would no doubt continue to co-operate in the future, thus facilitating the restoration of human rights in that country.

34. He pointed out that civil and political rights, and human rights in general, were respected only when there was an independent judicial power. That was especially important in the case of Chile, a country with a very old democratic tradition in which the independence of the magistracy had always been unquestioned; he seriously doubted the credibility of any country's report that insisted that the

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(Mr. Dieye)

system of justice was independent without providing any evidence to that effect. The independence of the judicial power in a country was reflected in its ability to take decisions without external pressure. It would have to be determined whether judges appointed at the discretion of the political powers could be independent. The opinion of the President of the Supreme Court of Chile notwithstanding, it could not be said that judges named by the Junta were independent, in the absence of the right to appeal to a higher court. The interference of the administrative power, through the Ministry of the Interior, in the jurisdiction of the courts was obvious.

35. Provisions limiting a person's right to enter or leave a country also shed light on the question of the lack of independence of the judicial power. In Chile, a person who represented a threat to the régime or to public order was issued a passport which was valid only for leaving the country. That practice was a very serious matter, and since it was contrary to the Covenant, the Government of Chile should take steps to end it.

36. Furthermore, implementation of the measure, repeatedly announced publicly, whereby the people would not be allowed to participate in public affairs for 10 years, would constitute an ongoing, premeditated violation of the Covenant.

37. The Working Group had stressed the torture being committed in Chile; it had identified the guilty persons and had provided exact descriptions of the types of torture being used. The Chilean Government should now indicate whether it had taken steps to arrest and punish those persons.

38. The prevailing situation in Chile stemmed from the perpetuation of the state of siege, and until such time as that state of siege and its consequences had disappeared, violations of human rights would undoubtedly continue. He asked whether the current situation legally justified a state of siege in one region and a state of emergency in the rest of the country; he pointed out that although Chilean law provided for the declaration of those two states the case of a national disaster or of a threat to internal security, there was no justification whatever for perpetuating them.

39. In any event it should be recognized that there had been favorable developments in the human rights situation in Chile; while there were still violations, the relations between the Government and the United Nations should be a source of inspiration for the international community and constituted a very important precedent.

40. Mr. JANCA^V agreed with most of the questions and observations made by members of the Committee thus far. The report submitted by the Chilean Government undoubtedly did not satisfy the requirements set forth in article 40, paragraph 2, of the Covenant and merely provided an idealized, abstract picture of the general legal framework which should ensure the protection of civil and political rights in Chile. But even in that idealized description there were logical contradictions and legal formulations that were not very clear.

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41. Moreover, the report of the Chilean Government did not refer to the practical implementation of the legal norms for the protection of human rights and fundamental freedoms and gave the impression that Chile had no problems whatsoever in that respect. For example, it stated that "Chilean law accords wider protection to the civil and political rights set out in the Covenant than is provided by the Covenant itself" (CCPR/C/1/Add.25, p. 2) and that Chilean law "respects acquired rights, both in the letter and in the spirit, since such rights have always been entitled to the necessary and effective protection, whatever changes may occur in the legal and social structure of the country" (*ibid.*, p.1). Those two statements were totally contradicted by the report of the Ad Hoc Working Group and by the facts presented to numerous international bodies, which had expressed their indignation at the Chilean Government's flagrant violations of human rights and fundamental freedoms.

42. The report it had submitted to the Human Rights Committee had provided the Chilean Government with another opportunity to express its views on the fulfilment of its obligations under the Covenant; yet the report did not mention factors or difficulties affecting the implementation of the Covenant, nor did it make reference to the statements and findings contained in the Report of the Ad Hoc Working Group, which were relevant to the evaluation of the current situation in Chile. That seemed to indicate that the Government of Chile was not prepared to enter into a constructive dialogue on the implementation of the Covenant in that country. The report it had submitted was inadequate, incomplete and untrustworthy, so that the members of the Committee had had to ask many questions, which could not be answered by a mere addition to that report. Consequently, it might be advisable for the Committee to ask the Government of Chile to prepare a completely new report which would adequately reflect the situation, would conform to the requirements of article 40, paragraph 2, of the Covenant and rule 66 of the Human Rights Committee's provisional rules of procedure, and would take into account the observations made and the questions raised during the current debate.

43. Mr. SADI said that civil and political rights undoubtedly constituted an important part of human rights but did not exhaust them. Accordingly, the Committee's task was not to examine the general human rights situation in a country, but only to examine the situation relating to civil and political rights. In his view, the Committee's mandate was, unfortunately, rather limited, since, according to article 40 of the Covenant and rule 70 of the rules of procedure, the Committee's task did not go beyond ascertaining whether countries' reports furnished all the necessary data in accordance with rule 66 of the rules of procedure. It was difficult to determine whether those data were correct, since the rules of procedure did not establish any machinery for verifying the information received. That was a serious defect, and perhaps the Committee should eventually consider the possibility of amending the rules of procedure.

44. Those facts indicated that the Committee was not a tribunal with the power to condemn but rather a body responsible for constructive criticism that would help countries to fulfil their obligations under the Covenant. Therefore the presence of a country's representatives was a bridge between the Committee and the Government of that country across which the Committee could convey its suggestions on the report submitted. That approach seemed to him more practical than the one of merely raising questions.

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(Mr. Sadi)

45. Accordingly, since other members of the Committee had analysed Chile's report in detail, raising questions concerning inter alia the constitutional structure, the separation of powers, the independence of the judicial power, and torture, he wished to convey to the Government of Chile his view on certain elements peculiar to the Chilean situation.

46. In the first place, concerning the state of emergency, the Government of Chile should be informed that the Committee gave the strictest interpretation to article 4 of the Covenant and rejected its arbitrary implementation and the criteria according to which the state of emergency or the state of siege had been declared in Chile. Another important question concerned latent subversion, adduced by the Government of Chile as justification for suspending the fulfilment of its obligations under the Covenant. The argument of latent subversion, real or imaginary, could be applied in any country, but the Committee could not accept it as a justification. In the third place, a message should be sent to the Government of Chile making clear the gravity of the problem of missing persons and the fact that the disappearance of a person, in whatever circumstances, involved State responsibility. Lastly, the Committee should point out that it rejected any justification given for denying a citizen the right to return to his country or for depriving him of his nationality.

47. With regard to the report in general, he hoped that the next one would be more direct and would answer clearly and concretely the questions raised by the Committee.

48. The CHAIRMAN said that the Committee's specific mandate under article 40 of the Covenant had been the subject of considerable debate, which was reflected in its records.

49. Mr. OPSAHL recalled that it was the Committee's task to review the implementation of the Covenant and make such comments as it found appropriate, including severely critical ones. In so doing, it could draw upon whatever additional information it deemed useful. That made the task easier, but it did not relieve the Committee of its obligations under article 40 of the Covenant, nor change its function, which differed from that of other bodies operating in the same area. As in the case of any other country, it should call for a report that reflected the real situation in Chile, but at the same time it should continue to restrict itself to studying the implementation of the International Covenant on Civil and Political Rights.

50. The Committee should deal with the situation in Chile, which was rather peculiar, by following its normal procedures, that is, by giving the Government the usual opportunity to reply and provide additional information. Before the Committee had taken up its functions, there had already been investigations in progress, both within and outside of the United Nations, on the situation in Chile. However, in 1976, when the Covenant, ratified by the legitimate Government of Chile in 1972, had entered into force, a new legal situation had come into existence. The Junta had inherited the obligations under the Covenant from the preceding Government, and the fact that it had recognized them was to be welcomed. When studying reports, the Committee could not set up distinctions between the various types of governments, but it should clarify the crucial issues concerning implementation of the Covenant. For example, one might ask in the case of Chile

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(Mr. Opsahl)

whether the Covenant allowed for derogation of its obligations on the grounds of "latent subversion", whether a state of emergency could be invoked as justification by the very régime that had created it, or whether the Covenant authorized the imposition of political unity through suppression of all parties or allowed an amnesty for torturers.

51. The Committee should not be too conciliatory when examining dictatorships which, on various pretexts, declared that they did not accept or restricted fundamental civil and political rights. In 1978, referring to another Government, he had already expressed his doubts on the possibility of fully implementing such rights without fundamental political change. What was needed was not reports conforming to article 40 of the Covenant but Governments conforming to its article 25.

52. Whether or not there was any ground for optimism in the case of Chile, hope for a peaceful change on the basis of respect for human rights must not be abandoned. Since the rulers of Chile said that political rights would be implemented in the future by a return to civilian Government through elected bodies, he wanted answers as to when the new Constitution would be presented to the people and how and when it would be put to referendum, whether new electoral rolls would be prepared and how they would be checked, whether political parties or their equivalents would be allowed to take part in the preparations for the referendum, whether there would be any opportunity to consider alternative proposals, and how soon after such a Constitution was adopted, assuming that it would provide for an elected Parliament, the elections would take place.

53. Mr. KELANI said that, on the basis of the documents the Committee had before it, there was no question that the Junta had violated the civil and political rights of the Chilean people. He would therefore limit himself to asking the representatives of Chile whether their Government intended to put an end to such violations, in particular to the state of emergency, re-establish democratic institutions and constitutional guarantees, put an end to torture and other inhuman treatment and to arbitrary detention, immediately free political prisoners and guarantee freedom of speech and other fundamental freedoms. If the reply was affirmative, he wanted to know when and how that would be done.

The meeting rose at 12.05 p.m.