



# International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families

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**Committee on the Protection of the Rights of All  
Migrant Workers and Members of Their Families**  
**Fifteenth session**  
12–23 September 2011

## Consideration of reports submitted by States parties under article 74 of the Convention

### Concluding observations of the Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families

#### Chile

1. The Committee considered the initial report of Chile (CMW/C/CHL/1) at its 169th and 170th meetings (CMW/C/SR.169 and 170), held on 13 and 14 September 2011. At its 180th meeting, held on 21 September 2011, the Committee adopted the following concluding observations.

#### A. Introduction

2. The Committee welcomes the comprehensive initial report of the State party, its detailed replies to the list of issues, and the precise additional information provided by the delegation. The Committee appreciates the level of the delegation as well as the constructive dialogue that took place.

3. The Committee notes that some of the countries in which Chilean migrant workers are located are not yet parties to the Convention, which constitutes an obstacle to the enjoyment by those workers of the rights to which they are entitled under the Convention.

4. The Committee welcomes the numerous contributions made by non-governmental organizations in connection with the Committee's consideration of the initial report of Chile.

#### B. Positive aspects

5. The Committee welcomes the promulgation of Law No. 20.507 of 1 April 2011 on trafficking in persons.

6. The Committee also welcomes the signing of agreements related to migrant workers, including:

- (a) Intersectoral agreements to foster integration of the migrant population;
- (b) International social security agreements;
- (c) Agreements concluded by Chile as an associate member of the Southern Common Market (MERCOSUR);
- (d) The cooperation agreement signed between the Chilean Prison Service and the International Organization for Migration.

7. The Committee welcomes the ratification by the State party of:

- (a) The Second Optional Protocol to the International Covenant on Civil and Political Rights, in 2008;
- (b) The Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, in 2008;
- (c) The Convention on the Rights of Persons with Disabilities and its Optional Protocol, in 2008;
- (d) The International Convention for the Protection of All Persons from Enforced Disappearance, in 2009;
- (e) International Labour Organization (ILO) Conventions No. 105 (1957) concerning the Abolition of Forced Labour, in 1999, and No. 182 (1999) concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour, in 2000.

## C. Principal subjects of concern, suggestions and recommendations

### 1. General implementation measures (arts. 73 and 84)

#### **Legislation and application**

8. The Committee notes that a draft law on migration is under preparation in the State party.

9. **The Committee invites the State party to ensure that the draft law is passed into law and that it fully complies with international standards protecting the rights of migrant workers and members of their families and, in particular, with the provisions of the Convention.**

10. The Committee notes with concern that the State party made reservations to paragraph 5 of article 22 and paragraph 2 of article 48 of the Convention and that it is not reconsidering its decision on this matter.

11. **The Committee invites the State party to consider withdrawing its reservations to article 22, paragraph 5, and article 48, paragraph 2, of the Convention.**

12. The Committee notes that the State party has still not made the declarations provided for in articles 76 and 77 of the Convention, recognizing the competence of the Committee to receive communications from States parties and individuals.

13. **The Committee encourages the State party to make the declaration provided for in articles 76 and 77 of the Convention.**

14. While welcoming the establishment of the National Human Rights Institute in 2009, the Committee regrets that no assessment of its compliance with the principles relating to the status of national institutions for the promotion and protection of human rights (Paris Principles) has yet been made because the Institute is not yet accredited before the International Coordinating Committee of National Institutions for the Promotion and Protection of Human Rights.

**15. The Committee recommends that the State party take the necessary measures:**

- (a) To ensure the compliance of the National Human Rights Institute with the Paris Principles;**
- (b) To provide the Institute with sufficient resources and a specific mandate on migrant workers;**
- (c) To seek support from the Office of the United Nations High Commissioner for Human Rights in this process, if necessary.**

#### **Data collection**

16. While acknowledging the collection of data on migrant workers disaggregated by nationality and sex, the Committee notes the lack of data spanning over a period of time and the lack of estimates on the number of migrant workers and members of their families in an irregular situation in the country.

**17. The Committee recommends that the State party establish a national information system on migration. It also recommends that this centralized database take into account all aspects of the Convention and include detailed information on migrant workers present in the State party, those in transit, and Chilean migrant workers abroad, and encourages the State party to gather information and statistics differentiated by sex, age and work performed. Whenever it is not possible to obtain precise information, such as information on migrant workers in an irregular situation, the Committee would appreciate receiving data based on studies or estimates.**

#### **2. General principles (arts. 7 and 83)**

##### **Non-discrimination**

18. While welcoming the various initiatives taken to combat discrimination against migrant workers, the Committee is concerned about reports on the existence of discriminatory attitudes and social stigmatization of migrant workers and members of their families in the State party.

**19. The Committee recommends that the State party take positive measures and strengthen the measures already taken to combat discriminatory attitudes and social stigmatization, in particular through awareness-raising campaigns for the general public, teachers, migration officials and professionals of the media.**

20. The Committee is concerned that, according to the Alien Act, if a migrant worker violates migration laws, his or her identity documents are confiscated and replaced by an Alien Offender Card until the Ministry of the Interior rules on the offence.

**21. The Committee encourages the State party to eliminate the practice of replacing migrant workers' identity documents by an Alien Offender Card in case of infringement of migration laws.**

22. The Committee is concerned about reports that some border officials arbitrarily refuse to stamp passports upon entry into the State party, often resulting in problems with regularizing the immigration status later on.

23. **The Committee urges the State party to ensure that practices used by officers monitoring the borders are in conformity with the provisions of the Convention.**

**3. Human rights of all migrant workers and members of their families (arts. 8–35)**

24. The Committee is concerned that migrant workers need an authorization to leave the country if they have been subject to sanctions imposed by the administrative authority for infringement of Decree-Law No. 1.094 of 1975 on foreigners.

25. **The Committee urges the State party to review its legal provisions to ensure that all migrant workers, including those who have been subject to sanctions imposed by the administrative authority for infringement of Decree-Law No. 1.094, are free to leave the State party, except if the restriction is necessary to protect national security, public order, public health or morals or the rights and freedoms of others, in accordance with article 8 of the Convention.**

26. While noting that migrant workers detained for infringement of migration laws are placed in administrative custody, the Committee is concerned about the lack of information received on the length and conditions of their detention.

**27. The Committee recommends that the State party:**

**(a) Provide detailed information in its next periodic report on the number of migrants held in custody for violations of migration laws, as well as on the conditions and length of their detention;**

**(b) Ensure that the conditions of detention in migrant holding centres are in accordance with international standards.**

28. The Committee is concerned about information according to which the procedure of appeal against decisions of expulsion is insufficiently accessible, as illustrated by the short time limit for migrant workers to lodge appeals against decisions on their expulsion.

**29. The Committee recommends that the State party take the necessary measures to ensure that the procedure of appeal against decisions of expulsion is accessible to migrant workers, including by extending the time limit for lodging appeals against decisions on expulsion, and that the legal framework which regulates expulsion/deportation procedures is adequately implemented.**

30. While the Committee welcomes the issuance by the Ministry of Health of communication No. 3229 of 11 June 2008 on access to emergency medical care for migrants in an irregular situation, and access to health care for pregnant women and children in an irregular situation, it remains concerned about information received on the lack of implementation of the communication as well as the lack of awareness among health personnel of the rights of migrant workers with regard to access to health.

**31. The Committee recommends that the State party ensure the effective implementation of communication No. 3229 of 11 June 2008 on access to health for migrant workers, including by disseminating the provisions of the communication among health personnel and by establishing a monitoring mechanism for the implementation of the Communication.**

32. The Committee notes that children of parents in an irregular situation are recorded in the official register as “children of foreign nationals in transit” and can opt for Chilean nationality within a period of one year immediately following their twenty-first birthday. However, the Committee is concerned about cases of children of parents in an irregular situation who can find themselves on the Chilean territory without a nationality.

33. **The Committee encourages the State party to grant nationality to children who are born in Chile and whose parents are in an irregular situation, whenever parents are unable to transfer their nationality to the children. The Committee also encourages the State party to accede to the 1954 Convention relating to the Status of Stateless Persons and the 1961 Convention on the Reduction of Statelessness.**

34. While the Committee welcomes the issuance by the Ministry of Education of communication No. 07/1008 (1531) of 2005 on the enrolment and presence in schools of migrant children in an irregular situation, it remains concerned about information received that, in some cases, migrant children in an irregular situation do not receive a diploma because of their inability to provide required documents, that their grades and diploma are not entered into the national registry system, and that some schools refuse the re-enrolment of migrant children who have not regularized their immigration status.

35. **The Committee recommends that the State party ensure the effective implementation of communication No. 07/1008 (1531) of 2005 on the enrolment and presence of immigrant children in education, including by ensuring the dissemination of the communication in all educational institutions and by establishing a monitoring mechanism for its implementation.**

36. The Committee is concerned about information received on the vulnerability of women migrant domestic workers, particularly those in an irregular situation, who are often victims of ill-treatment, exploitation or abusive working conditions.

37. **The Committee recommends that the State party protect women domestic workers, by ensuring a greater and more systematic involvement of labour inspectors in monitoring the working conditions of such women, in accordance with the Committee's general comment No. 1 (2010) on domestic migrant workers. The Committee also urges the State party to ensure that those migrant workers have effective access to mechanisms for bringing complaints against employers and that all abuses, including ill-treatment, are investigated and sanctioned when appropriate.**

#### **4. Other rights of migrant workers and members of their families who are documented or in a regular situation (arts. 36–56)**

38. The Committee is concerned about information received that, in practice, some migrant workers face obstacles to family reunification and about the absence of a legal framework regulating family reunification.

39. **The Committee recommends that the State party ensure that legal provisions regulating family reunification are incorporated in the migration law, in line with article 44 of the Convention.**

40. The Committee notes the lack of information on measures adopted by the State party to facilitate the transfer of migrant workers' earnings and savings.

41. **The Committee encourages the State party to take the necessary measures to enable the transfer of migrant workers' earnings and savings from Chile to their State of origin or any other State.**

42. While noting the explanation given by the delegation on the assistance provided to family members in case of death or dissolution of marriage of a migrant worker, the Committee remains concerned about the lack of legal provisions ensuring the granting of temporary residence permits to family members of migrant workers in such situations.

43. **The Committee recommends that the State party adopt a legal framework ensuring the granting of temporary residence permits to family members in case of**

**death or dissolution of marriage of a migrant worker, in accordance with article 50 of the Convention.**

44. The Committee notes with concern that, according to the Labour Code, at least 85 per cent of the employees working in companies with more than 25 employees must be Chilean nationals.

45. **The Committee recommends that restrictions on the employment of migrant workers in a regular situation be applied only:** (a) to migrant workers whose work permit is valid for less than five years; or (b) to limited categories of employment, functions, services or activities where this is necessary in the interest of the State party, in accordance with article 52 of the Convention.

**5. Promotion of sound, equitable, humane and lawful conditions in connection with the international migration of workers and members of their families (arts. 64–71)**

46. While welcoming the adoption of Law No. 20.507 of 1 April 2011 on trafficking in persons and other measures taken to combat trafficking, the Committee notes that there are still cases of human trafficking in the State party.

47. **The Committee recommends that the State:**

- (a) Systematically collect disaggregated data on trafficking in persons;
- (b) Ensure the enforcement of the law on trafficking in persons, including by allocating sufficient financial and human resources, and establishing a monitoring mechanism for the implementation of the law;
- (c) Continue its campaigns for the prevention of trafficking in persons;
- (d) Continue to provide systematic training for the police, law enforcement officers, judges, prosecutors, labour inspectors, teachers, health professionals and officials of Chilean embassies and consulates;
- (e) Ensure that traffickers are tried and appropriately punished;
- (f) Continue to provide all victims of trafficking with protection, as well as legal and medical assistance, including temporary residence permits, protection shelters and development of projects to help victims of trafficking rebuild their lives.

**6. Chilean migrant workers living abroad**

48. While taking note of the constraints faced by the State party regarding the participation in elections of Chilean migrants working abroad, the Committee is concerned that those migrants are unable to exercise their right to vote in elections organized in the State party.

49. **The Committee encourages the State party to resume the efforts undertaken in view of enabling Chilean migrants working abroad to exercise their right to vote in elections organized in the State party.**

50. While welcoming the measures taken in the past to assist the return of Chilean nationals, the Committee notes information received by migrant workers who complained about the lack of a specific policy on this matter.

51. **The Committee encourages the State party to revitalize its measures to facilitate the voluntary return of migrant workers and members of their families as well as their durable social and cultural reintegration.**

## **7. Follow-up and dissemination**

### **Follow-up**

52. The Committee requests that the State party include in its second periodic report detailed information on measures taken to follow up the recommendations made in the present concluding observations. The Committee also recommends that the State party take all appropriate measures to ensure that these recommendations are implemented by, inter alia, transmitting them for consideration and action to members of the Government, Parliament and the judiciary, as well as to local authorities.

### **Dissemination**

53. The Committee likewise requests that the State party disseminate the present concluding observations widely to, inter alia, public agencies and the judiciary, universities, non-governmental organizations and other members of civil society. It also recommends that the State party establish a formal mechanism to ensure that foreign migrant workers in transit or residing in Chile, Chilean migrants abroad and Chilean consular and diplomatic officials are informed of the rights that migrant workers and members of their families enjoy under the Convention.

## **8. Next periodic report**

54. The Committee requests the State party to submit its second periodic report by 1 October 2016 and include in it information on follow-up to the present concluding observations.

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