



CIVIL AND POLITICAL RIGHTS OF MIGRANTS AND REFUGEES IN CHILE

ICCPR List of Issues Submission: Chile

Submission to the UN Human Rights Committee
Adoption of the List of Issues for Chile
108th session, Geneva, 8-26 July 2013

About Franciscans International (FI)

FI is an international NGO founded in 1989 and in General Consultative Status with ECOSOC since 1995. With offices in New York, Geneva, and Bangkok, FI supports Franciscans and partners working to promote human rights at the local and national levels and assists in bringing their concerns and expertise to the UN. FI has prepared this submission in consultation with partners serving immigrant populations in and around Santiago.

Contact information:

FI New York
Americas Program

newyork@fiop.org

www.franciscansinternational.org

211 East 43rd Street
Suite #1803
New York, NY 10017
+1 (917) 675-1075

Issue Summary

The review of Chile's fifth periodic report under the ICCPR in 2007 did not explicitly consider the effective implementation of the Covenant as applied to migrants. However, since 2007, treaty bodies have given increased attention the civil and political rights of migrants and refugees in Chile (see below).

For Articles 12, Chile's Sixth Periodic Report, presents a summary of its intentions for a proposed reform of the migration law that was expected to be submitted for parliamentary debate by the end of 2012. The Law of Migration currently in force is Law 1094 from 1975, adopted during the Pinochet dictatorship with a clear national security approach to migration. A new legal framework is needed to respond to the current dynamic of immigration in the country and to ensure compliance with human-rights obligations assumed.¹ To this end, FI proposes the following requests for further information from the Chilean government.

¹ See, e.g., Instituto Nacional de Derechos Humanos, *Informe anual 2012: Situación de los derechos humanos en Chile*, Derechos de las personas migrantes y víctimas de trata, available at <http://www.indh.cl/informe2012/Inf%20Anual%20INDH12%20WEB.pdf>.

Proposed Requests for the List of Issues

- ❖ Please provide up-to-date information on the proposed reform of the migration law, the possibilities for public debate and commentary, and steps taken to ensure the proposed law guarantees the civil and political rights of foreigners in Chile, with special consideration for women and children migrants.
- ❖ Please provide information on the steps taken to prevent and punish discrimination against the migrant population, including through the criminalization of discriminatory acts and the application of Law 20.609 to this population.
- ❖ Please provide information on steps taken to reduce statelessness of persons that exist in Chilean territory and measures taken to expedite the regularization of the status of migrants, refugees, and asylum-seekers as a means to reduce discrimination in all areas and reduce risk of exploitation and abuse in the informal sectors.

Selected Relevant UN Treaty Body Concluding Observations and Recommendations

Concluding observations of the Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families: Chile, UN Doc. CMW/C/CHL/CO/1 (21 Sept. 2011)

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.

Concluding observations of the Committee on the Elimination of Discrimination against Women: Chile, UN Doc. CEDAW/C/CHL/CO/5-6 (24 Oct. 2012)

26. The Committee is concerned that the exception to the jus soli principle relating to foreigners in transit is systematically applied to migrant women in irregular situation, irrespective of the length of their stay in the State party, and that, as a result, their children cannot receive Chilean nationality at birth and can only opt for Chilean nationality within a period of one year immediately following their twenty-first birthday.

27. The Committee encourages the State party to:

(a) Review and amend its legislation to ensure that children of migrant women in irregular situation, who are born in the State party, can acquire Chilean nationality at birth, whenever they are unable to transfer their nationality to the children, as recommended by the Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families (CMW/C/CHL/CO/1, para. 33);

(b) Consider acceding to the international instruments addressing the situation of stateless persons, namely the Convention on the reduction of statelessness (1961) and the Convention relating to the status of stateless persons (1954).

Concluding observations of the Committee on the Elimination of Racial Discrimination: Chile, UN Doc. CERD/C/CHL/CO/15-18 (7 Sept. 2009)

18. The Committee notes with concern that, as pointed out by the State party, in recent years Chile has seen incidents of discrimination against and violent attacks on indigenous people and migrants, among others, by totalitarian groups. The Committee is concerned that racism, discrimination and xenophobia are not classed as criminal offences in Chilean law (art. 4).

The Committee recommends that the State party should: (a) speed up the adoption of the anti-discrimination bill that would make discriminatory acts punishable by law; (b) step up its efforts to prevent and combat xenophobia and racial prejudice among the various groups in society, and also to promote tolerance among all ethnic groups; and (c) present in its next periodic report further information on investigations, indictments and sentences related to racially-motivated offences, as well as on compensation obtained by the victims of such acts.

Committee on the Rights of the Child, Concluding observations: Chile, UN Doc. CRC/C/CHL/CO/3 (23 April 2007)

63. The Committee welcomes the amendments to the Constitution which seek to eliminate statelessness for children born to Chileans abroad, however remains concerned that children of foreigners without legal residence in Chile may remain exposed to statelessness. Furthermore, the Committee regrets that the State party has still not adopted adequate legislation in accordance with international obligations for refugee protection. The Committee is also concerned that refugee, asylum-seeking and migrant children lack adequate access to health services while their applications to the national registry system are being processed, and that they face de facto discrimination in exercising their right to education. Furthermore, the Committee regrets the paucity of information on the situation of refugee, asylum-seeking and migrant children in the State party report and the State party reply to the list of issues.

64. The Committee recommends that the State party:

- (a) Ratify the 1954 Convention relating to the Status of Stateless Persons and the 1961 Convention on the Reduction of Statelessness;
- (b) Ensure prompt adoption and implementation of adequate legislation in accordance with international obligations for refugee protection;
- (c) Ensure that refugee, asylum-seeking and migrant children are guaranteed speedy processing of their registration and identity documents and that they not be denied access to health services and education during this period;
- (d) Take all measures to guarantee protection of refugee children in line with international human rights and refugee law, while taking into account the Committee's general comment No. 6 (2005) on the treatment of unaccompanied and separated children outside their country of origin;
- (e) Provide adequate information on the situation of refugee, asylum-seeking and migrant children in its next periodic report under the Convention...