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Committee on the Elimination of Racial Discrimination**Concluding observations on the combined twenty-second and twenty-third reports of Chile***

1. The Committee considered the combined twenty-second and twenty-third periodic reports of Chile (CERD/C/CHL/22-23), submitted in one document, at its 2851st and 2852nd meetings (see CERD/C/SR.2851 and 2852), held on 24 and 25 November 2021. At its 2861st meeting, held on 1 December 2021, it adopted the present concluding observations.

A. Introduction

2. The Committee welcomes the thirteenth appearance of the State party before the Committee, to present its combined twenty-second and twenty-third periodic reports (CERD/C/CHL/22-23). The Committee expresses its appreciation for the constructive dialogue held with the State party's high-level delegation and for the information provided during the consideration of the report and for the additional written information submitted after the dialogue.

B. Positive aspects

3. The Committee welcomes the State party's ratification of, or accession to, the following international human rights instruments:

(a) The 1954 Convention relating to the Status of Stateless Persons and the 1961 Convention on the Reduction of Statelessness, both in 2018;

(b) International Labour Organization (ILO) Domestic Workers Convention, 2011 (No. 189), in 2016.

4. The Committee further welcomes the following legislative and institutional measures taken by the State party:

(a) Act No. 21.325, promulgated on 11 April 2021, and known as the Migration and Aliens Act; which recognizes the right to nationality as a fundamental right;

(b) Act No. 21.273, in 2020, which recognizes the Chango population as the tenth indigenous community in Chile;

(c) Act No. 21.151, in 2019, granting legal recognition to Chilean Afro descendent tribal people;

(d) The "Chile Recognizes" project of 2017, through which Chilean nationality was granted to children born in Chile to parents with an irregular migratory status, marking an important step forward in preventing and eradicating statelessness;

* Adopted by the Committee at its 105th session (15 November – 3 December 2021).



(e) Act No. 21.045, in 2017, which establishes the Ministry of Cultures, Arts and Heritage to promote cultural diversity;

(f) Act No. 20.885, in 2016, establishing the Office of the Undersecretary for Human Rights under the Ministry of Justice and Human Rights.

5. The Committee notes with satisfaction that the State party maintains a standing invitation to all special procedure mandate holders of the Human Rights Council to visit the country.

C. Concerns and recommendations

Statistics

6. The Committee acknowledges that the 2017 Socioeconomic Characterization Survey (CASEN), included questions that made it possible to collect statistics on the Indigenous Peoples recognized in the legislation (comprising 12.8 per cent of the population). The Committee is concerned however, that the measurement omitted questions on African descent which prevented ascertaining the number of people of African descent in the country and limits the potential for generating reliable data and indicators that would help to provide a clear and objective picture of the needs of minority groups in the population. In addition, the Committee regrets that it does not have accurate statistics on the Roma population and other ethnic minorities in the state party (art.1, 5).

7. The Committee recommends that the state party ensure that the 2023 census includes questions that will also generate statistics on people of African Descent and Roma in Chile. Furthermore, the Committee recommends that public institutions incorporate disaggregated data for people of African descent, indigenous peoples and migrants into their administrative record-keeping and data-collection methods on a systematic basis. It further recommends that the State party include socioeconomic indicators and statistics on its Roma population and other minorities and non-citizens in the State party. In this regard, it draws the State party's attention to the Committee's general recommendation No. 4 (1973) concerning reporting by States parties with regard to the demographic composition of the population.

Constitutional developments

8. The Committee takes note of information provided by the State party concerning the ongoing Constitutional Convention that is tasked with drafting a new Constitution, in particular in so far as the number of seats that have been reserved for members of indigenous communities and that the President of the Convention is a woman of Mapuche origin. The Committee also notes the establishment of a temporary Commission for consultation of Indigenous Peoples within the Constitutional Convention. This process presents a promising opportunity to enshrine the recognition of the Indigenous Peoples and their rights in the Constitution and to develop a constitutional framework suitable to address the claims of the Indigenous Peoples of Chile. The Committee is, however, concerned that there are no reserved seats for people of African descent and other minorities in the Constitutional Convention. It is also concerned about the insufficient funds allocated for the temporary Commission for consultation with Indigenous Peoples, which could have an impact on the reach of the consultations (art. 2, 5).

9. The Committee encourages the State party to fully address the concerns of minorities in the drafting process, including people of African descent, and to increase the allocated budget of the temporary Commission for consultation with Indigenous Peoples in order to have comprehensive consultations with all indigenous communities and concerned parties that can be then considered by the Constitutional Convention.

Measures to combat racial discrimination – the Anti-Discrimination Act (No. 20.609)

10. While noting the legislative advances made in the effort to combat racial discrimination the Committee remains concerned that the Anti-Discrimination Act is limited to “arbitrary” forms of discrimination (CERD/C/CHL/CO/19-21, para. 9), which could lead to

interpretations that would justify certain discriminatory actions and relieve the persons committing those actions of accountability (art. 1, 2).

11. The Committee reiterates its previous recommendation (CERD/C/CHL/CO/19-21, para. 9) to bring the Anti-Discrimination Act in line with the Convention. The Committee further recommends that the State party evaluates the impact of the Anti-Discrimination Act on the prevention and eradication of ethnic-racial discrimination, as well as of its anti-discrimination legislation in general, and include information on this evaluation in its next periodic report.

Multiple and intersecting forms of discrimination

12. The Committee is concerned about the multiple forms of discrimination that Indigenous Peoples, migrants and African-descendent women face in the State party, which is reflected in their limited access to employment, education, health and migration regulations. The Committee is also concerned by information that medical treatment to Haitian and African descendent women are at times affected by stereotypes of ability to endure pain and not delivered in timely fashion (art. 2).

13. The Committee urges the State party to apply a gender perspective in all policies and strategies for combating racial discrimination in order to put an end to the multiple, intersectional discrimination faced by Indigenous Peoples, migrants and African-descendent women. In addition, it recommends that the State party adopt measures based on an intercultural approach in order to guarantee access for women from minorities to education, employment and health; to train health professionals to ensure the non-discriminatory fulfilment of their obligations; and to include Kreyol-Spanish translators in hospitals and care institutions. The Committee encourages the State party to take into account its general recommendation No. 25 (2000) on gender-related dimensions of racial discrimination.

Institutional framework

14. While appreciative of the progress made by the State party in establishing and strengthening a network of public institutions for the promotion and protection of human rights, the Committee regrets that although the draft bills aimed at creating a National Council and Councils of Indigenous Peoples (Boletín N° 10526-06), and the Ministry of Indigenous Peoples (Boletín N° 10687-06) were sent to Congress in 2016, they are not yet adopted (art. 2).

15. The Committee recommends that the State party expedite the passing of these important laws and requests that the State party provide it with information on the competences and achievements of both institutions in its next periodic report.

National Human Rights Institution

16. The Committee welcomes the increase of funding for the National Institute on Human Rights acting upon the Committee's previous recommendations, which has allowed the Institute to increase its national presence; but it is concerned that this increase in funding is not sufficient to fully discharge the mandate of the National Institute for Human Rights. The Committee is concerned that its recommendation to establish an Ombudsman's Office, specialized in issues of racial discrimination, has not been met by the State party (art. 2).

17. The Committee recommends that the State party provide the National Institute on Human Rights with sufficient human, technical and financial resources, in a timely manner, to enable it to effectively promote and protect human rights. The Committee also reiterates its previous concluding observations (CERD/C/CHL/CO/19-21, para. 7) and urges the State party to establish an Ombudsman's Office with a section specializing in issues of racial discrimination whose staff would include intercultural facilitators at the local level and report on the Ombudsman's Office activities in its next periodic report.

Racist Hate Speech and hate crimes

18. The Committee is concerned at the lack of information on the measures taken to prevent xenophobia and hate speech from being directed against migrants and other minorities by public officials, including in social media. The Committee reiterates its concern about the absence of a national law that is fully in conformity with article 4 of the Convention and that defines as an offence punishable by law all dissemination of ideas based on racial superiority or hatred, incitement to racial discrimination, racially motivated violence, and participation in organizations or activities that incite racial discrimination (CERD/C/CHL/CO/19-21, para. 10). The Committee notes with concern reports about the rise in derogatory speech and hate speech, xenophobic manifestations of rejection of migration, and violence against migrants and refugees, including instances of excessive use of force by the police. (art. 4)

19. The Committee recommends that the State party to implement its obligations under article 4 of the Convention, in light of the Committee’s general recommendation No. 35 adopted in 2013 on Combating Racist Hate Speech by:

- (a) Adopting legislation that fully conforms to article 4 of the Convention;**
- (b) Urgently enacting and implementing the bills on hate speech and incitement to racial discrimination, currently under discussion in Congress.**
- (c) Including statistics and other information in its next periodic report on investigations, judicial proceedings and judicial decisions concerning acts of incitement to racial discrimination, to racial hatred and to racially motivated violence**
- (d) Developing measures to combat xenophobia and discriminatory stereotypes in respect of migrants, including in media and social media with education and training and through campaigns targeting public servants and the general public;**
- (e) Applying promptly and without exception the penalties in force for various acts of discrimination, in particular when committed by the *Carabineros* or public officials.**

Racial discrimination and law enforcement

20. The Committee is concerned about the continuation of the “state of constitutional emergency” and the militarization of the conflict with the Mapuche which has already lead to the death and bodily harm of members of this community. It is also concerned about numerous reports of excessive use of force by *Carabineros* against members of Mapuche communities, in particular in the context of demonstrations in defence of their rights. The Committee is also concerned about reports that law enforcement officials are not always held accountable for their acts, despite the administrative measures and institutions set up to address such instances (art. 2, 4, 5).

21. The Committee urges the State party:

- (a) Ensure that the actions of law enforcement officials comply fully with human rights in particular during mass demonstrations, and refrain from violence against indigenous communities;**
- (b) Investigate allegations of acts of violence committed by law enforcement officials, prosecute and punish those found guilty , with appropriate penalties, while granting adequate reparations to victims and their families;**
- (c) Intensify and expand the human rights training provided to law enforcement and judicial officials to ensure the proper performance of their duties;**
- (d) Design public policies in consultation with the Mapuche people that promote intercultural dialogue and foster peace in conflict zones.**

Racial profiling

22. The Committee observes that there is no information from the State party on instances of racial profiling and of measures taken to combat such practices. The Committee however takes note of reports that members of the Mapuche, migrant and African descendant

communities in particular are regularly subjected to racial profiling by the police and other law enforcement agencies (art. 4).

23. The Committee recommends that the State party enact regulations and implement policies to combat racial profiling taking into consideration general recommendation No. 36 (2020), on preventing and combating racial profiling.

Counter-terrorism legislation

24. The Committee remains concerned by reports that Act No. 18.314 (the Counter-Terrorism Act) has been applied in a disproportionate manner to members of the Mapuche community. The Committee is further concerned by the lack of objective criteria for the application and enforcement of this law and that its invocation allows for serious measures against alleged perpetrators, in particular with regard to pre-trial detention and restrictions of due process rights (art. 6).

25. The Committee reiterates its preceding concluding observations (CERD/C/CHL/CO/19-21, para. 14) and urges the State party to:

(a) Revise the Counter-Terrorism Act so that it specifies exactly what terrorist offences it covers, and adapt it to international standards;

(b) Ensure that the Counter-Terrorism Act is not applied to members of the Mapuche community for acts that take place in connection with the expression of social needs;

(c) Monitor the application of the Counter-Terrorism Act and related practices in order to identify any discriminatory effect on indigenous peoples.

Situation of human rights defenders

26. The Committee is concerned by allegations according to which human rights defenders, in particular of minority groups, have been intimidated by the police, profiled and threatened by arrests in the exercise of their activities. The Committee notes that Police Protocols do not adequately address the situation of human rights defenders and is concerned by information related to the alleged disproportionate use of force against an environmental human rights defender (art. 5).

27. The Committee recommends that the State party take specific, adequate and effective measures to prevent and protect human rights defenders in particular those belonging to minority groups from any forms of violence or abuse by the police, investigate them, prosecute and punish perpetrators.

Situation of Indigenous Peoples

28. The Committee is concerned that ineffective or absent consultation with Indigenous Peoples on issues affecting land and territory has led to conflicts. The Committee notes with concern that indigenous languages are less visible in the mainstream media and that alternative media, including indigenous community radio stations used for language revitalization, are not being appropriately supported and facilitated by the government, despite the CERD previous recommendations (CERD/C/CHL/CO/19-21, para. 15). The Committee remains deeply concerned by the desecration of sacred sites such as “Marta Cayulef” in Pucón, Coñaripe (Los Ríos) and Chinay (Villarica), and the negative impact on the environment, health, and traditional ways of life of indigenous communities owing to the installation of waste disposal sites on their territories in different parts of the State party such as in Collipulli and Lautaro. Furthermore, the Committee regrets that insufficient attention has been paid, and insufficient resources have been allocated to the issue of the restitution of ancestral lands raised by the Committee (CERD/C/CHL/CO/19-21, para. 13) which continues to represent the main source of tension between the State party and Indigenous Peoples (art. 5).

29. Recalling its general recommendation No. 23 (1997) on the rights of Indigenous Peoples, the Committee reiterates its preceding concluding observations (CERD/C/CHL/CO/19-21, para. 13, 15, 16) and urges the State party to:

(a) **Take the necessary steps to provide Indigenous Peoples with effective protection from racial discrimination;**

(b) **Undertake environmental impact assessments on a systematic basis and fulfil its obligation to ensure that consultations are held with Indigenous Peoples before authorizing any investment project that could negatively impact their rights to the land and resources that they possess or that they have traditionally used, with a view to obtaining their free, prior and informed consent, as established in the relevant international instruments;**

(c) **Expedite the establishment of the Ministry of Indigenous Peoples and the National Council of Indigenous Peoples in accordance with international standards, and speed up the implementation of Act. No. 19.253, which sets out rules on the protection, advancement and development of Indigenous Peoples and the establishment of a historical cadastre of indigenous lands and water resources;**

(d) **Allocate sufficient resources to revive indigenous languages and ensure that Indigenous Peoples have access to education and promote the involvement of indigenous teachers and adopt the necessary legislative and other measures to reduce the constraints faced by Indigenous Peoples with regard to the use of community-based media in order to promote the use of indigenous languages;**

(e) **Expedite the restitution of ancestral lands and furnish effective and sufficient means of protecting Indigenous Peoples' rights to their ancestral lands and resources in accordance with the Convention, other relevant international instruments and the treaties signed by the State party with Indigenous Peoples.**

Situation of people of African descent

30. The Committee takes note of Act No. 21.151 (2019), which grants legal recognition to Chilean Afro descendent tribal people and the inclusion of questions on people of African descent in the upcoming 2023 census. However, the Committee is concerned by the lack of statistics to assess the situation of the African-descendant population of the country (art. 2, 5).

31. The Committee recommends that the State party adopt and implement policies, programmes and measures, including special measures under article. 2 para. 2 of the Convention, to guarantee equality in the enjoyment and exercise of the rights of people of African descent, in light of general recommendation No. 34 (2011) on racial discrimination against people of African descent.

Situation of migrants, asylum seekers and refugees

32. The Committee takes note of the adoption of a new Migration Law (Law 21.325), which represent progress with regard to decriminalization of irregular migration, as well as of efforts made to accommodate migrants, asylum seekers and refugees, in particular from Venezuela and Haiti. However, it is concerned that, in practice, these migrants are victims of prejudice, stereotypes and discriminatory acts and face major difficulties accessing basic services, especially employment, health services and education, including due to the lack of identity documents (art. 5).

33. Taking into account its general recommendation No. 30 (2004) on discrimination against non-citizens, the Committee recommends that the State party take the necessary action to ensure the protection of foreign nationals. In particular, the Committee urges the State party to:

(a) **Design and implement measures to enhance the full participation and integration of migrants into the society;**

(b) **Conduct awareness-raising, information and educational campaigns designed to dispel negative stereotypes of migrants and avoid using negative representation of migrants in the general migration policy;**

(c) **Remove barriers that, in practice, impede access to health services, education and employment by ensuring the timely issuance of identity documents;**

(d) Adopt urgent measures to provide a timely response to the residency applications submitted by migrants who find themselves without any official identification, and to make sure that migrants have access to the necessary information with regard to procedures concerning the regularization of their status.

Racial stereotypes of people of African descent, indigenous peoples and migrants

34. The Committee is concerned by reports that, in particular within educational texts, representation of indigenous peoples, migrants and people of African descent is based on stereotypes and there is a lack of diversity as students are portrayed mainly with white phenotypic features, while migrants are excessively racialized (art. 2, 5).

35. The Committee recommends that the State party revise and amend the curriculum with regard to ethnic stereotyping and specifically in school text books dealing with the history of Chile.

Access to justice

36. The Committee takes note of the State Party's measures to ensure specialized legal counsel to Indigenous Peoples involved in criminal cases; the availability of interpreters and the use of intercultural facilitators; and officials who are familiar with the indigenous language and culture of the region where they work. However, the Committee is concerned about allegations of violations of due process and instances of mistreatment in prisons, affecting several prisoners belonging to the Mapuche people, as well as lack of effective regulation that complies with the indigenous peoples' needs and allows for the possibility to practice traditions, customs and rituals. The Committee is further concerned by information about detainees being held in detention centres far from their local communities (art. 6).

37. The Committee, in light of its general recommendation No. 31 (2005) on the prevention of racial discrimination in the administration and functioning of the criminal justice system, urges the State party to:

(a) Ensure that Indigenous Peoples have their fundamental rights and due process safeguards upheld at all times;

(b) Ensure that detainees are held in detention centres close to their local community;

(c) Implement effective regulations that promote respect for the culture and traditions of Indigenous Peoples in all detention centres and prisons;

(d) Organize trainings to sensitize law enforcement officers and prison officials on Indigenous Peoples' rights, customs, rituals and traditions.

D. Other recommendations

Ratification of other treaties

38. Bearing in mind the indivisibility of all human rights, the Committee encourages the State party to consider ratifying those international human rights treaties that it has not yet ratified, in particular treaties with provisions that have direct relevance to communities that may be subjected to racial discrimination, including the Optional Protocol to the International Covenant on Economic, Social and Cultural Rights. Lastly, the Committee recommends that the State party consider ratifying the 2013 Inter-American Convention against Racism, Racial Discrimination and Related Forms of Intolerance and the 2013 Inter American Convention against All Forms of Discrimination and Intolerance.

Amendment to article 8 of the Convention

39. The Committee recommends that the State party ratify the amendment to article 8 (6) of the Convention adopted on 15 January 1992 at the fourteenth meeting of States

parties to the Convention and endorsed by the General Assembly in its resolution 47/111.

Follow-up to the Durban Declaration and Programme of Action

40. In light of its general recommendation No. 33 (2009) on the follow-up to the Durban Review Conference, the Committee recommends that, when implementing the Convention in its domestic legal order, the State party give effect to the Durban Declaration and Programme of Action, adopted in September 2001 by the World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance, taking into account the outcome document of the Durban Review Conference, held in Geneva in April 2009. The Committee requests that the State party include in its next periodic report specific information on action plans and other measures taken to implement the Durban Declaration and Programme of Action at the national level.

International Decade for People of African Descent

41. In light of General Assembly resolution 68/237, in which the Assembly proclaimed 2015-2024 the International Decade for People of African Descent, and Assembly resolution 69/16 on the programme of activities for the implementation of the Decade, the Committee recommends that the State party prepare and implement a suitable programme of measures and policies in collaboration with organizations and peoples of African descent. The Committee requests that the State party include in its next report precise information on the concrete measures adopted in that framework, taking into account its general recommendation No. 34 (2011) on racial discrimination against people of African descent.

Consultations with civil society

42. The Committee recommends that the State party continue consulting and increasing its dialogue with civil society organizations working in the area of human rights protection, in particular those working to combat racial discrimination, in connection with the preparation of the next periodic report and in follow-up to the present concluding observations.

Dissemination of information

43. The Committee recommends that the State party's reports be made available and accessible to the public at the time of their submission and that the concluding observations of the Committee with respect to those reports be made readily available to all State bodies entrusted with the implementation of the Convention, including in regions and municipalities and disseminated to the public in the official and other commonly used languages, as appropriate.

Common core document

44. The Committee encourages the State party to update its common core document, which dates to October 2013, in accordance with the harmonized guidelines on reporting under the international human rights treaties, in particular those on the common core document, as adopted at the fifth inter-committee meeting of the human rights treaty bodies held in June 2006 (HRI/GEN/2/Rev.6, chap. I). In the light of General Assembly resolution 68/268, the Committee urges the State party to observe the limit of 42,400 words for such documents.

Follow-up to the present concluding observations

45. In accordance with article 9 (1) of the Convention and rule 65 of its rules of procedure, the Committee requests the State party to provide, within one year of the adoption of the present concluding observations, information on its implementation of the recommendations contained in paragraphs 19 (a) and (b) (racist hate speech and

hate crimes), 29 (d) (situation of Indigenous Peoples) and 33 (d) (situation of migrants, asylum seekers and refugees) above.

Paragraphs of particular importance

46. The Committee wishes to draw the attention of the State party to the particular importance of the recommendations contained in paragraphs 17 (NHRI), 21 (law enforcement), 29 (indigenous peoples) and 35 (racial stereotypes) above and requests the State party to provide detailed information in its next periodic report on the concrete measures taken to implement those recommendations.

Preparation of the next periodic report

47. The Committee recommends that the State party submit its combined twenty-fourth to twenty-eight periodic reports, as a single document, by 19 November 2026, taking into account the reporting guidelines adopted by the Committee during its seventy-first session (CERD/C/2007/1) and addressing all the points raised in the present concluding observations. In the light of General Assembly resolution 68/268, the Committee urges the State party to observe the limit of 21,200 words for periodic reports.
