

WRITTEN CONTRIBUTION

Referred to the examination of Chile by the
Committee on the Elimination of Racial
Discrimination (CERD) at its 105 Session

OFFICE AGAINST DISCRIMINATION AND
RACISM, AND TO THE RECOGNITION OF
INTERSECCIONALITY (ODRI)

October, 2021

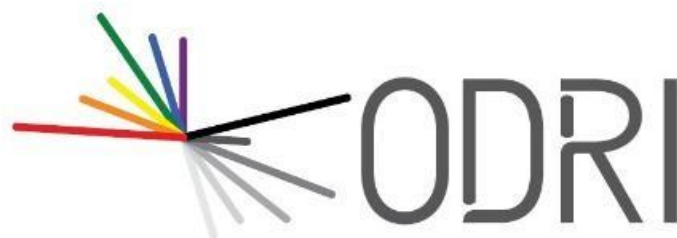


TABLE OF CONTENTS

Introduction	2
People with african descent and lack of race-based data in Chile	3
General situation of migrants with african descent/restrictive migratory measures	4
Criminalization of migration and its consequences on people of African descent	9

Introduction

ODRI "Intersectional rights"- Office for the Defense of Rights and Intersectionality appreciates the opportunity to address the Committee on the Elimination of Racial Discrimination. This written contribution describes the main concerns in Chile and reflects on the periodic report presented by the State Party (CERD/C/CHL/22-23) and the previous considerations by the Committee (CERD/C/CHL/Q/22.23).

The present written contribution is related to the situation of migrants living in Chile, with emphasis on the situation of Afro-descendant identities. We have noted the resurgence of racial discrimination against migrants in Chile and in general against racialized people as a challenge that the Committee should issue recommendations.

People with african descent and lack of disaggregated race-based data in Chile

The National Institute of Statistics¹ estimated an increase of the migrant population in Chile to 1,492.522 migrants, with 49% of migrant women. However, statistics lack indicators that include gender-sensitive and ethnic self-identification variables for people with African descent. As a result, public data cannot provide guidance related to the inequalities on the enjoyment of the rights enshrined by the Convention such as housing², physical and mental health, education, social protection, among others.

This data gap and the lack of information are results from structural racism and cycles of discrimination. Migrants with African descent are invisible from public policies, and their issues are not considered at the design and the implementation of such policies. The pandemic has shown the extent of the neglect of persons with African descent in Chile. Recognizing the identity of people with african descent in Chile goes beyond the concept of the laws regarding afro chilean tribal people in the northern regions of Arica y Parinacota and in order to highlight how structural racism works race based data must include migrants with african descent as well as nationals who recognized themselves as people with african descent. For this reason, more reflection and flexibility is required to understand the identification of said population and its needs in order to construct appropriate legal categories to protect and ensure the rights of people of African descent.

The 2023 population and housing census the National Institute of Statistics has included 45 organizations of the Chilean Afro-descendant people in their intercultural dialogue. Said dialogue has opened the possibility of applying two versions of the self-identification ethnic question for people who identify as of African descent which will include the possibility of nationals and non-nationals who consider themselves as people with African descent to be recognized. However, its inclusion will depend on the test results. Therefore there is no real guarantee that the Chilean state will start creating race-based data and research that could prevent the violation of human rights of people with African descent in Chile. We strongly believe there is a non delayable need to create empirical data that includes ethnic self-identification variables for people with african descent with a gender approach as soon as possible in order to highlight the situation in which people with african descent live in Chile, there is no other possible way to address racial discrimination and protect human rights of people with african descent.

¹ For further information please click on the attachment
https://www.ine.cl/docs/default-source/demografia-y-migracion/publicaciones-y-anuarios/migraci%C3%B3n-internacional/estimaci%C3%B3n-poblaci%C3%B3n-extranjera-en-chile-2018/estimaci%C3%B3n-poblaci%C3%B3n-extranjera-en-chile-2019-metodolog%C3%ADa.pdf?sfvrsn=5b145256_6

² For further information click here
<https://www.ciperchile.cl/2020/05/04/hacinamiento-precios-abusivos-y-los-problemas-de-habitabilidad-que-el-covid-19-deja-a-la-vista/>

Therefore ODRI respectfully requests the Committee to recommend to the State of Chile to:

- Collect race-based disaggregated data in order to enhance implementation of the Convention, and to provide reliable and comprehensive economic and social indicators based on African descent people which include migrants, refugees and asylum seekers, and irregular migrants with a gender approach. Making efforts to ensure that the self-identification question to be included in the population and housing census actually shows the diversity of people with African descent.

General situation of migrants with african descent/restrictive migratory measures

With the speech of “safe, orderly and regular migration” the Chilean government implemented restrictive measures to respond to the Covid health crisis without a multicultural approach which increased the complexities in managing a regular migratory status in Chile for people with African descent. The president issued a state of constitutional exception, the “State of Catastrophe” which accelerated the digitalization of all the administrative procedures to obtain a visa and created a digital gap that up to this day keeps on affecting the most vulnerable communities including migrants with African descent. The answers that the migration platform provides, when it is not failing, are depersonalized and automatic responses with predetermined answers by electronic mail to complex and diverse migratory situations without any context nor multicultural and gender approach. Therefore, misinformation about immigration procedures has increased since automatic responses do not solve the queries of many migrants, who do not know where to turn to to answer their queries. This situation affected the refugees³ applicants since they could not apply nor follow their refugee applications. Up to this date civil organizations are the ones taking over responsibilities of the Chilean government such as resolving doubts and providing precise and secure information to migrants according to their context, with an intercultural approach and in many languages. However, their actions are not enough to assure proper consultancies to all migrants that may require one.

In the midst of the health crisis due to Covid 19, lack of employment and the economic crisis the government failed to improve long delays in the analysis and resolution of visa applications, which despite the digitalization, has been maintained until this day violating the rights of migrants with african descent and other ethnic groups to obtain a response within a reasonable period of time. May we point out that in order to work, to have housing, health and education, or to receive a bonus during the health crisis migrants needed to have an unexpired Identity Card issued by the National Civil Registry. Said

³ For further information please click on the attachment
<https://www.indh.cl/ante-solicitud-indh-y-por-covid-19-corte-de-iquique-ordena-tramitacion-de-solicitud-de-refugio-via-correo-electronico/>

document has an expiration date of one year since its issuance, therefore many migrants with african descent have raise their voices denouncing the state of vulnerability that live through the whole long process of visa application which lasts almost a year thus the ID card was issued by Civil registry has an expiration date with that gives the document a validity of 3 days or a week, as shown here:



Picture taken from @comunidad_haitiana on instagram⁴

As we mentioned in our confidential report many migrants with african descent face not only racial profiling by police officers, and racial discrimination to obtain a job or in job interviews but due to the long waitings regarding their migratory status they cannot apply to regulated job oportunities, nor adequate housing. Taking this into consideration the government issued a legislative decree to delay the expiration date of expired ID cards but only applicable to migrants that had a regular migratory status or were in the middle of a new visa application, and extended the period to switch employers for immigrants on work visas up to 180 days. Nevertheless we have received information that many private and public institutions keep asking for a valid ID card without taking into account the current legislation. Indeed many african descent migrants have denounced this when having trouble to access the Covid vaccine⁵. As mentioned, due to the long waiting to access a valid ID card most migrants of African descent survive through street commerce, which has been heavily controlled by carabineros chile during Covid⁶ and this situation has been maintained until this day. Therefore some migrants with african descent can only pay the rent of overcrowded tenement-style housing called cités for which they pay an overvalued amount of money, others are living in camps where they have no access to adequate living conditions and are destroyed from time to time by

⁴ For further information, please click on the attachment:<https://www.fastcheck.cl/2021/01/12/emiten-cedulas-de-identidad-para-migrantes-haitianos-con-2-dias-de-validez-real/>

⁵ For further information, please click on the attachment [.https://radio.uchile.cl/2021/05/31/minsal-aclara-universalidad-de-la-vacuna-ante-denuncias-de-discriminacion-a-migrantes/](https://radio.uchile.cl/2021/05/31/minsal-aclara-universalidad-de-la-vacuna-ante-denuncias-de-discriminacion-a-migrantes/)

⁶ For further information, please click on the attachment <https://twitter.com/PiensaPrensa/status/1275906148449869826>

carabineros chile and the municipalities, and many others created camps outside their embassy's building. The Chilean government also implemented a "humanitarian" return plan⁷ that allowed migrants who were in a critical socioeconomic state to fly back to their country with the condition to sign a notarized declaration stating that they would have to agree to a 9 years prohibition of entry. This return plan is similar to the one initiated by the government in 2018 to repatriate Haitian migrants. This measure was stopped by The supreme court in the Amparo N°1402-2020⁸ that establishes the non-return clause contrary to the person's freedom of movement established in Article 19 No 7 of the Chilean Constitution (Corte Suprema de Chile, 2020).

Piñera's administration declared the "urgency" to discuss a new Migration and Foreigners Bill (Boletín No 8.970-06). Civil society organizations issued warnings about several aspects of the bill, and despite all the calls to stop it due to the vulnerability of the migrant population the bill was approved by the Senate in December 2020. In the meantime the government issued the "Protected Borders Plan" that did not allow any people to enter Chile by its borders only by plane and with special requirements such as being Chilean, among others. However restrictive measures create more irregular migration due to economic crisis in Venezuela and other Latin American countries up to 200 migrants have entered Chile each day⁹. All migrants that enter the border in order to access a visa in the future must report themselves for "illegal entry", however many of them do not want to report their entry since they fear it could be used to justify collective expulsion orders and reject requests for asylum. In fact, during the sanitary crisis until a week ago hundreds of migrants were being expelled from Chile.



picture taken from newsmidia¹⁰

⁷ You can find more information here <https://www.chileatiende.gob.cl/fichas/74492/2/pdf>

⁸ For further information, please click on the attachment <https://www.migracionchile.cl/wp-content/uploads/2020/08/3.-CA-Stgo-Amparo-1402-2020.pdf>

⁹ For further information, please click on the attachment <https://www.ciperchile.cl/2021/02/05/a-pie-por-colchane-como-la-politica-de-gobierno-forzo-un-ingreso-desesperado-de-migrantes-a-chile/>

¹⁰ For further information, please click on the attachment https://www.tellerreport.com/news/2021-04-27-chile--collective-expulsion-of-venezuelan-migrants_rkQldYZUDu.html

There is an absence of a genuine evaluation of each case with an intercultural approach, migrants have no possibility to apply for protection under international human rights and refugee law and the state party does not provide information since all communications are online. Prior to their expulsion, some of these migrants were reportedly detained incommunicado and without access to legal assistance¹¹. Chile has implemented an “extraordinary regularization, process for migrants who entered before march 18th 2020 for all ‘irregular’ migrants (those who never had documents, who entered clandestinely, who have expired documents or lack adequate documents) however the first phase of the process is paying ninety dollars and registering migrants (meaning collecting data on individuals, including children, with expired or no documents) to conduct and gather background checks and deport those who fail to meet requirements. This regulatory process is quite similar to the 2018 regularization that included inclusive language with exclusive policies.



Picture taken from La tercera¹²

Therefore ODRI respectfully requests the Committee to recommend to the State of Chile to:

- Comply with the integration of relevant national legislation to international human rights norms;
- Take concrete measures to collect information disaggregated by ethnic or racial origin with migrants with a gender approach;
- Take concrete measures to institutionalize dialogues with migrant women with African descent, and indigenous women for the development of public policies on migration
- The effective protection of the rights of children of African descent as contained within the Convention on the Rights of the Child

¹¹ For further information please see the annex page, item 24

¹² For further information please click on the attachment

<https://www.latercera.com/nacional/noticia/chile-facilita-la-llegada-inmigrantes-venezuela-poner-difcultades-los-haiti/129829/>

- Take effective measures to avoid racial profiling in visa applications,
- Revise with a race based approach bills that target only just one nationality (as happened with Decree 776 for haitian migrants)
- Ensure awareness and training in racial discrimination matters to all public officials involved in receiving visa applications, asylum applications, so that they are aware of and put into rigorous practice the provisions of international law on asylum and refugee applications.
- Ensure awareness and training of all public officials who patrol the Chilean borders in racial discrimination matters and gender approach.
- Create an institutionalized office to grant contextualized help and information regarding all types of visa applications, with gender and race based approach
- Ensure timely processing of visa applications, refugee claims, to reduce the waiting time.
- Promote clear and objective information with a race based approach to all migrants and Chilean citizens without criminalizing migrants.
- Compromise to give effect to the Durban Declaration and Programme of Action ,and include in its next periodic report specific information on action plans that include African descent people in all its diversity and other measures taken to implement the Durban Declaration and Programme of Action at the national level.

Hate speech and criminalization of migration and its consequences on people of African descent

It is necessary to point out that language can be used to promote negative prejudices and reinforce the rejection or mockery of the majority towards people with African descent and other oppressed groups. It constitutes a serious violation of the Convention especially when they come from state authorities, such as the president, or public authorities. In Chile 2020 during the sanitary crisis hate speech spread through social media, newspapers and television were Chilean media, citizens and public authorities created the narrative that “illegal” migrants and specifically Haitian migrants were causing the increase of Covid infections we could see the information that was been spread showed:

- The image of an Haitian woman and her child on the frontpage of the newspaper “La segunda”¹³ regarding news of Covid in Chile,
- The president Sebastian Piñera said in a televised statement on April 10th 2020 that the borders needed to be strengthened to “prevent “illegal” immigration from bringing the infection with the virus into our country”,
- The Municipality of Quilicura¹⁴ posted on its Facebook page that 14 migrants from Haiti were positive Covid cases in the district, which generated discriminatory speech in social media.
- The mayor of Las Condes said in a national tv program referring to the migrants from Haiti that they did not want to move to a sanitary residence “it is difficult for them in the Caribbean scheme to dance to jump to understand that an asymptomatic person can infect others¹⁵” showing an infantilized image of people of African descent and reinforcing the idea that since they come from the Caribbean they are irresponsible.
- Many television programs visited the cités were Haitian migrants who tested positive to covid lived and instigated them asking them questions directed to show them as violent and unintelligent people, with poor hygiene. Journalists even interviewed neighbours who helped reinforce the discriminatory speech and said neighbours mentioned “we as neighbors want to take care of each other because they are violent”. Media coverage degraded people with African descent without addressing the real problem since cité residents were reluctant to move due to fears that some may steal their belongings, or that they could lose their migratory status.

¹³ For further information, please refer to the annex page item 11

¹⁴For further information, please refer to the annex page item 12

¹⁵ for further information, please refer to the appendix page, item 13

- In the line of an office of the Severance Funds Administrator (hereinafter AFC) an Haitian migrant who was proceeding to withdraw his unemployment fund was part of a preventive control that showed he had been diagnosed with coronavirus. Instead of checking the date of the diagnosis that proved he had completed the quarantine period the security officer kicked this Haitian citizen in front of a Carabineros Chile officer who did nothing to protect him and after the aggression proceeded to isolate him in an ambulance. This event was made visible in the national press, highlighting the nationality of the person and alleging he represented a danger to the public health of all Chileans in the country. Later it was demonstrated that the victim had completed his quarantine and he just needed to collect his funds, since he had been fired from his job.

As mentioned in other submissions, before the Covid sanitary crisis, many African descent migrants deal daily with hate speech as shown in the fliers or handouts asking them to leave Chile. The pandemic aggravated this issue reinforcing stereotypes where migrants are criminals, diseased and disordered individuals, and a burden to the social and health system. Some examples verify this issue:

- The Chief of the Migration Department mentioned that the opposition were trying to flexibilize legislation towards migrants because “they loved seeing Haitians on the streets selling wafers¹⁶” reinforcing the stereotype that all Haitians only perform those jobs in Chilean society, denying the responsibility of the Migration Department in the long delays on visa applications that forced migrants with African descent to unregulated jobs. In another interview he mentioned false information “migrants think they will get a house” “Chile could not accept five millions migrants, they ask for five million visas”¹⁷ Which created the fear of a big migratory crisis with no reasonable source.
- The Mayor of Providencia who started talking about a migrant invasion and that borders must be closed to protect nationals, to protect their jobs and safety, because other countries were less stable than Chile.
- The media shows in daily news at least one crime or a robbery committed by migrants, and it has created the perception that all migrants might be potential criminals which includes a race based linkage with people of African descent¹⁸. Which leads to justify racial profiling.
- In La Ligua Valparaíso Region an African Descent man was shot by a police officer. The man had carried a sharp object, therefore he was treated like a threat and shot without following proper procedure to be detained. Later on that day a

¹⁶ For further information please click on the attachment <https://radio.uchile.cl/2021/01/19/jefe-de-extranjeria-critica-al-frente-amplio-estaban-contentos-de-que-haitianos-quedaran-vendiendo-obleas/>

¹⁷ For further information please click on the attachment <https://www.infogate.cl/2021/09/29/alvaro-bellolio-chile-que-recibio-un-millon-de-inmigrantes-en-tres-anos-medio-no-aguanta-recibir-uno-o-dos-millones-mas-en-tan-poco-tiempo/>

¹⁸ For further information please click on the attachment <https://publications.iadb.org/en/immigration-crime-and-crime-misperceptions>

lot of news talked about the fact without a race based approach and fake news started flooding social media¹⁹.

- The authorities have accepted several protests against illegal migrants in Antofagasta 2018 against migrants mainly from Colombia; in Santiago 2019 against unregulated migrants, criminalizing people who enter the country in such vulnerable conditions, and again in 2020 Santiago, but the worse one was approved in Iquique this september by the major of colchane and it ended with angry protesters burning migrants belongings after that they chased migrants, threatening them with kill them unless they return to their countries²⁰. Many of them, as pictures all over the media show, are people with African descent. However, many other protests against the government are easily banned, while extremist and racist campaigns are tolerated. In Santiago a man was attacked with a knife after the anti migration protest²¹. We have received confidential information that migrants were mistreated in public spaces by racist protesters and bystanders.
- Today in the electoral space called “Franja electoral” an extremist right wing candidate that leads in electoral polls²² showed the image of african descent migrants begging for money on the streets, followed by an indirect speech that it is supposed to create empathy but proposes more restrictive measures. The candidate even mentions Joanne Florvil case to deliberately trigger discrimination since the message that follows is not human at all: “at any moment this situation of misunderstanding and anger can get out of control and turn into an explosion that will be impossible to manage” spreading fear of a supposedly uncontrol migration to justify the expand of more the restrictive meassures. In fact one of his proposals is to build a border ditch. Indeed in the presidential debate a journalist does not question the border ditch and asks the candidate which size and how much it will cost²³.

Human rights are not reserved for Chilean citizens only, and migrants are treated as if they have a sub human category, in Chile nobody questions any restrictive measure nor wonders how it impacts in the everyday life of people who are always seen as non citizens (People with African descent). It is imperative to create mechanisms to debate and dialogue about migration that exceed or go beyond negative prejudice with a race-based approach. Therefore ODRI respectfully requests the Committee to recommend to the State of Chile to:

¹⁹ For further information please click on the attachment <https://www.fastcheck.cl/2021/09/07/imagen-antecedentes-del-delincuente-muerto-chequeado/>

²⁰ For further information please click on the attachment https://www.instagram.com/p/CUQXXuKJN1Q/?utm_source=ig_web_copy_link

²¹ For further information please click on the attachment https://www.instagram.com/reel/CUmV_rLFKx/?utm_source=ig_web_copy_link

²² For further information please click on the attachment <https://cadem.cl/estudios/kast-sube-2pts-a-23-y-se-consolida-en-el-primer-lugar-seguido-por-boric-que-se-mantiene-en-20/>

²³ For further information please click on the attachment https://www.youtube.com/watch?v=hkh6Hg8xuuw&ab_channel=LaTercera

- Create an independent institution lead by and for people with african descent specialized in racial discrimination and xenophobia not only to generate race based data but for attending racial discrimination matters which include law enforcement, assement on mechanisms to complain on hate speech, racial profiling, and arbitrary treatment as well as promote models of cooperation between the state and civil organizations. Improve its systems for recording racist hate crimes and hate speech and for data collection, while facilitating the identification of specific cases of ethno hatred and other cases involving intersectional motivations.
- Amend legislation to declare illegal and prohibit organizations that incite racial discrimination. Include in its legislation a provision banning parties that seek to curtail freedoms.
- Take meassures to verify whether the small number of complaints on racial discrmination matters are the result of victims' lack of awareness of their rights, fear of reprisals (including migratory reprisals), limited access to the police, lack of confidence in the police or judicial authorities or the authorities lack of attention or sensitivity to cases of racial discrimination.
- Take measures to implement a legal framework that allows repair and compensations methods to the victims of hate speech for the damage they face due to the state inaction.
- Ensure that racist hate crimes and hate speech are thoroughly investigated and prosecuted, perpetrators are appropriately punished and victims are provided with effective remedies and adequate reparation. Take measures to sanction effectively the use of hate speech in the media and encourage prosecutors to initiate proceedings ex officio in cases of racial discrimination.
- Prevent and firmly combat racist hate crimes and hate speech and to protect the groups most at risk of racial discrimination, including in the context of the COVID-19 pandemic
- Evaluate and continue its targeted awareness-raising campaigns to combat racist hate crimes and hate speech, confront prejudices and negative attitudes towards ethno minorities, migrants, refugees and asylum seekers and promote tolerance and understanding with respect to these groups
- Continue its efforts to monitor the spread of racist hate speech on the Internet and social media, in close cooperation with Internet service providers and social media platforms and the communities most affected by racist hate speech.

Situation of women and children with African descent

As mentioned in our previous report most migrants in Chile are women however there is no disaggregated data with a race-based and gender approach, we do not know for certain how many women with african descent are mothers if they live in chile with their children, o if they have experienced gender violence, if they have access to mental health, if they are professionals and their work in chile relates with said studies. In that context when analyzing the situation of women with african descent who migrated to chile we need to take into account gender conditions, the struggle with the everyday care of their families and children, if they are mothers, the necessity to obtain a regular job opportunity plus racism that hipersexualization of their bodies, as well as cultural differences since the afrodiaspora is diverse.

The high precariousness that women with african descent face has been seized by some Chilean women with the excuse to help with childcare of kids while the children's mother tries to get a job or goes to work they call police officers to denounce child abandonment and try to keep the children under their custody. This situation is happening among migrants from Haiti with an obvious racial fetish towards black children. There is even one case where the mother has a favorable ruling to recover the child but the Chilean woman fled with the child and no measure has been made to help reunite the mother with her child. This is just one of the documented cases on this matter since more women appeared denouncing the same pattern behavior²⁴. However justice operators and child protection entities lack a race-based and multicultural approach which has created fear among women with African descent.

As mentioned in other submissions most migrant and refugee women fear denouncing since they fear their migratory status might be at stake and have no information regarding their rights since public administration offices lack qualified personnel to listen and provide the service they need. Before the Covid 19 sanitary crisis most women with African descent feared the public health service in Chile due to cases like Joanne Florvil, Rebeca Pierre and Monise Joseph that proved how structural racism works and the disparities in medical treatment. However racism has not been recognized as a key driver of racial/ethnic disparities in Chilean healthcare, there are no statics on the subject nor studies that analyse how many African descent women have suffered from racial discrimination in medical procedures.

The Chilean government has demonstrated that inclusive speeches without real actions prove weak political will to address racism. This shows also in programs directed at children that lack a race-based approach that keeps reinforcing colonialism and the usual prejudices on people with African descent in children's books. Curricula invisibilizing the contributions of Afro-descendants in Chilean history. May we point out that children with African descent have multiple cultural expressions that are not taken

²⁴ For further information please click on the attachment <https://www.elmostrador.cl/braga/2020/10/20/oficina-de-proteccion-de-derechos-de-infancia-arrebatada-hijos-de-mujer-haitiana-con-informe-falso-y-sin-apoyo-de-traductores/>

into consideration in the curricula which helps the normalization of a unique speech on what it means to be part of the African diaspora. Public and private schools lack protocols against racism and xenophobia and due to covid 19 and the speech that criminalize migration we can presume that cases of racial discrimination in schools have raised. It is also important to highlight that there is no dialogue with children with African descent and the Chilean state to generate public policies that address them.

Therefore ODRI respectfully requests the Committee to recommend to the State of Chile to:

- Take measures to verify whether the legal frameworks really protect women of African descent and the best interests of their children with a race-based system instead of criminalizing their vulnerable state.
- Take measures to remove any images from school textbooks that perpetuate prejudices or discrimination against people of African descent and any other affected minority groups, and adequate school curricula and textbooks to show the cultural heritage and history of African descent people through history including migrants and their contribution to Chilean society and culture.