

**COMMENTS AND CONTRIBUTIONS TO THE LIST
OF PREVIOUS ISSUES AND QUESTIONS
RELATING TO THE REVIEW OF THE SECOND
PERIODIC REPORT OF THE STATE OF CHILE
WITHIN THE COMMITTEE ON THE PROTECTION
OF THE RIGHTS OF ALL MIGRANT WORKERS
AND THEIR FAMILIES**

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I. GENERAL MEASURES IN MATTERS OF APPLICATION (articles 73 and 84)

The Committee on the Protection of the Rights of All Migrant Workers and their Families highlighted at the beginning of the Final Observations made to the State of Chile in its last periodic review, carried out in 2011, its main concerns: current legislation and its application, and the limited data collection.

With regard to the first, the Committee encouraged the State party to ensure that the migration bill, which the State mentioned was under preparation, was adopted in the near future and that such adoption was in accordance with international standards of the protection of the rights of migrant workers and their families and, in particular, with the dispositions of the Convention.

Regarding this point, it should be noted that this bill was sent to parliament in August 2013 and did not comply with any legislative procedure. Subsequently, the administration of President Michelle Bachelet (period 2014-2018) presented a new immigration bill near the end of its mandate, which was harshly criticized by migrant and human rights organizations for not adapting to the international human rights standards in the field.

We ask the Committee to consult the State on the priority of legislation in this area in accordance with international human rights standards and on the incorporation of a participatory mechanism of civil society and specialized organizations in order to formulate indications for the project of law, that allow the adaptation to human rights standards, in particular, with the provisions of the Convention.

The Committee also expressed its concern about the State's reservations to the Convention, article 22, paragraph 5, and article 48, paragraph 2, and the lack of 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.

We request to ask the State whether it will withdraw the reservations to articles 22, paragraph 5, and 48, paragraph 2 of the Convention and whether it will formulate the declarations provided for in articles 76 and 77 of the Convention, in the short term.

Regarding data collection, the Committee acknowledges the collection of data, disaggregated by nationality and sex, on migrant workers, but notes the lack of time series of data and the absence of estimates on the number of migrant workers and their relatives who are in an irregular situation in the country, for which 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, on those in transit and on migrants, and encourages the State party to collect information and statistics disaggregated by sex, age and work performed.

We ask the Committee to ask the State whether it currently has a national information system on migration, what are the statistical variables that have been incorporated into the data collection, the periodicity of measurement and publication of data, sources and data of the estimates respect to immigrants in irregular situation, in transit and emigrants.

II. GENERAL PRINCIPLES OF THE CONVENTION (ARTICLES 7 AND 83)

Nondiscrimination

In 2012, Law No. 20,609 was enacted that establishes measures against discrimination, since then the deficiencies of this legal framework have become evident. Hence the importance of the government's commitment to modify the law and replace its objective of establishing a judicial mechanism, extremely limited and insufficient for the prevention, elimination and eradication of all types of discrimination against migrants, and the reparation of victims, in accordance with the international obligations assumed by the State of Chile.

We ask the Committee to consult the State on the following situations:

- 1. Advances in the modification of Law No. 20,609, both in its content and in its entry into the National Congress.**
- 2. Quantitative and qualitative information on the application of Law 20,609, so that it may report on how many cases the anti-discrimination law has been invoked on grounds of discrimination against migrants, how many of them have ended in convictions and acquittals, and the average time of processing of these causes.**
- 3. If the courts of justice have invoked the Convention on the rights of all migrant workers and their families.**

In September of 2017, former President Michelle Bachelet sent a bill to Congress that typifies the crime of incitement to violence, this before the growing hate speech that has managed to position itself in public opinion, in which stereotypes based on beliefs predominate religious, of national origin, gender, choice or sexual identity and skin color, and in the face of increasing cases of physical and verbal aggressions directed towards migrants, mainly of Haitian origin.

We request to ask the State about the following situations:

- 1. Impulse that will be given to the bill that typifies the crime of incitement to violence and if it will make indications of improvement with respect to it, in accordance with international human rights standards.**

2. Adoption and reinforcement of positive measures to combat discriminatory attitudes and social stigmatization towards certain migrant communities, specifically with respect to the Haitian, Colombian and Dominican communities.

3. Awareness campaigns implemented towards the general public, professors, immigration officers, police officers, public officials and media professionals.

Being aware that if a migrant worker violates the immigration laws, their identity documents are confiscated and replaced by an Infringing Foreigner Card until the Ministry of the Interior adopts a decision on the infraction.

We ask the Committee to consult the State about the measures adopted to eliminate the practice and if it is foreseen to modify the procedure in the short term.

III. HUMAN RIGHTS OF ALL MIGRANT WORKERS AND THEIR FAMILIES (Articles 8 to 35)

Legislation on Migration in Chile is one of the oldest at the regional level, forged during the dictatorial period between 1973 and 1990, whose focus is on national security and protection of the external enemy's borders.

It is known that these regulations have given rise to a series of arbitrariness in the detention of migrants, given the wide margin of discretion that the law grants to immigration police.

Bearing in mind the recent case of 167 Haitian migrant workers who were detained by the Chilean Investigative Police at the Santiago Airport during the month of March 2018, for up to five days, without food, without water, without being allowed to clean up or change their clothes. clothing, then be re-embarked in groups to your country¹.

We ask the Committee to ask the State about the following topics:

1. Recognition and protection of the right to migrate as a human right and the administrative restrictions that exist with respect to it.

2. Number of immigrants detained by the immigration police in air, land and sea border areas; reasons, conditions and duration of the retention.

3. Number of immigrants detained for violating the migration law, reasons for detention, the conditions and length of detention.

¹ See: <http://www.cnnchile.com/noticia/2018/03/07/el-indh-estudia-acciones-legales-por-haitianos-que-fueron-devueltos-su-pais-de>

4. If the police and the administrative authority have translators at all border points and places of detention, spoken languages and translated documents in various languages that inform the rights of detainees.

5. How the State will guarantee the right to Chilean nationality of the children of immigrant persons regardless of the migratory status of their parents.

Having knowledge of cases of psychological and physical abuse that affects migrant women-indigenous people deprived of their liberty, by members of the Investigative Police of Chile, hospital staff (in the case of ovoid carriers), Carabineros of Chile, officials of Gendarmerie and agents of the criminal justice system².

We ask the Committee to ask the State the following situations:

1. Number of complaints of unlawful coercion, torture and ill-treatment inflicted on migrant workers from 2011 to 2017.

2. Indicate if there is a protocol that includes the prevention of torture and ill treatment with cultural relevance or taking into account issues such as immigration.

3. What are the mechanisms of labor inspection and training of public officials to detect cases of torture or cruelty, or inhuman and degrading treatment or punishment.

4. To inform about the public entity in charge of providing advice, legal representation and reparation to the victims of Torture, cruel, inhuman and degrading treatment, if it has training or continuous training in human rights, gender and interculturality and the number of actions judicial proceedings in cases of torture or unlawful coercion against migrant workers from 2011 to 2017.

Having knowledge of cases in which migrant workers are deprived of their liberty, they are not given access to a translator in the framework of criminal proceedings, remaining for long hours in detainees without information regarding the criminal accusations that fall on their person, and in some cases, manifesting the ignorance of their rights when being imprisoned.

We ask the committee to ask the State about the following situations:

1. Indicate the existence of protocols for access to interpreters in police stations, courts and penitentiaries, and the year in which they were created. If there is no Interpreter Access Protocol, please indicate the usual procedure in the three mentioned spaces.

² Public Criminal Defense. "Sociocultural profile of foreign indigenous women deprived of liberty in the regions of Arica-Parinacota, Tarapacá and Antofagasta". Specialized Criminal Defense Unit. December 2017. Page. 31

2. Indicate the number of translations used in procedures in police stations, court hearings and prisons from 2011 to 2017.

3. Please indicate the actions presented by the National Institute of Human Rights and other State bodies in the case of Haitian citizen Joane Florvil.

Being aware that the number of female migrant workers deprived of their liberty represents 17% of the total number of women in prison, while the total foreign population in Chile stands at around 3% (reaching 37% of women deprived of liberty in the north of the country).

Being aware that the Regulation of Penitentiary Establishments does not establish any particularity regarding the visits of relatives of migrant workers deprived of liberty.

We ask the committee to consult the State about the following situations:

1. Indicate the number of migrant workers who have been deprived of their liberty between 2011 and 2017, and the reasons for their detention.

2. Indicate how many of them have access to penitentiary benefits and how many of them have intimate visits.

Bearing in mind that by 2017, the average number of migrant workers expelled was eight people per day in the State party, and that there are migrant workers expelled without it having been carried out, leaving these people in a "legal limbo".

We ask the Committee to consult the State on the following situations:

1. Report statistics disaggregated by nationality, sex and age on migrant workers and their family members expelled from Chile between 2011 and 2017.

2. Indicate the time elapsed between the expulsion decision and the moment when it becomes effective.

3. What are the measures that have been adopted so that migrant workers have the opportunity to file appeals against expulsion decisions, in particular the extension of the deadline for submitting appeals and for the legal framework that regulates the procedures of expulsion / deportation is applied properly.

4. Indicate the number of migrant workers detained for having violated migration legislation. Please also indicate the average length of your detention and whether the current legislation provides for a maximum duration of detention. Also describe the detention conditions of migrant workers.

According to the Economic juncture report in Latin America and the Caribbean, of the ECLAC and the International Labor Organization (ILO), published in May of 2017, between 2010 and 2015, the immigrant population in Chile increased, on average, 4.9 % by year.

According to data from the Immigration and Migration Directorate of the Ministry of Interior, during the last years in Chile, the migration of countries from Latin America and the Caribbean has increased, highlighting among them the migration from Haiti, the Dominican Republic and recently Venezuela, despite the imposition of a consular visa in the year 2012 for people from the Dominican Republic³.

Regarding this point, we ask the Committee to ask the following situations to the State:

- 1. What are the measures that have been implemented to ensure the cultural identity of the different migrant communities that today live in the country?**
- 2. What are the measures that have been implemented so that migrant workers and their families have access to timely health care?**
- 3. Regarding work and residence permits, which are the means through which migrants are informed of the processes and requirements for obtaining them, the existence of interpreters, documents and information translated into different languages, periods in which it takes the obtaining of these permits and if this one is equal all the migratory workers and their families.**
- 4. What are the measures that the State has implemented to guarantee the protection of the fundamental right to education of the children of migrant workers on equal terms with Chilean children, regardless of the irregular situation of their children? parents.**
- 5. What are the measures that the State has implemented for the supervision and monitoring of the working conditions of women employed in domestic work, in rural and agricultural sectors.**

IV OTHER RIGHTS OF MIGRANT WORKERS AND THEIR FAMILIES WHO ARE DOCUMENTED OR ARE IN A REGULAR SITUATION (Articles 36 to 56)

In a study carried out in 2008 by the Ministry of Interior, more than 70% of the migrant population surveyed indicated that the motivation to choose Chile as a destination for their migration was due to economic-labor issues; In the same study, the motivation for family reunification only reaches 9.9% of the total inclinations.

We ask the Committee to ask the State about the following situations:

- 1. What are the measures you have adopted to incorporate the legal provisions that regulate family reunification to the migration law, in accordance with Article 44 of the Convention.**

³ Department of Immigration and Migration, Newsletter No. 1 on Haitian Migration in Chile and Newsletter No. 2 on Dominican Migration in Chile.

2. What are the measures that have been adopted to guarantee that migrant workers can transfer their income and savings from Chile to their States of origin or to others of their choice?

3. What are the mechanisms for consultation and participation of migrant workers and their families in decisions regarding the life and administration of local communities.

4. What are the measures that the State has implemented for the granting of temporary residence permits to family members in case of death or dissolution of the marriage?

V. PROMOTION OF SATISFACTORY, EQUITABLE, LEGAL AND LAWFUL CONDITIONS IN RELATION TO INTERNATIONAL MIGRATION OF WORKERS AND THEIR FAMILIES (Articles 64 to 71).

With regard to the regulations on trafficking and smuggling of persons, Law No. 20,507 of 2011 governs, which defines the crimes of smuggling of migrants and trafficking in persons and establishes norms for their prevention and more effective criminal prosecution.

We ask the Committee to ask the following questions to the State:

1. Number of cases that have been investigated by the Human Trafficking Brigade of the Investigative Police of Chile and how many of them have been prosecuted by the Public Ministry since the enactment of the law.

2. How many sentences exist to date in cases of Trafficking in Persons and Illegal Trafficking of Migrants.

3. In how many cases have victims of the crime of Illicit Trafficking of Migrants been deported.

4. With how many shelters at the national level the State counts for victims of the crimes of Trafficking in Persons and Illicit Trafficking of Migrants, conditions and capacity of these, differentiation by sex, age and type of crime.