



Economic and Social Council

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Committee on Economic, Social and Cultural Rights

Concluding observations on the fourth periodic report of Chile

1. The Committee on Economic, Social and Cultural Rights considered the fourth periodic report of Chile on the implementation of the International Covenant on Economic, Social and Cultural Rights (E/C.12/CHL/4) at its 34th and 35th meetings, held on 9 and 10 June 2015 (E/C.12/2015/SR.34 and 35), and adopted the following concluding observations at its 50th meeting, held on 19 June 2015.

A. Introduction

2. The Committee welcomes the fourth periodic report of Chile, the core document (HRI/CORE/CHL/2013) and the replies to the list of issues (E/C.12/CHL/Q/4/Add.1). The Committee also welcomes the constructive dialogue that it enjoyed with the high-level delegation of the State party, which comprised experts from various ministries.

B. Positive aspects

3. The Committee notes with satisfaction that the State party has ratified the following international instruments:

(a) International Convention for the Protection of All Persons from Enforced Disappearance, on 8 December 2009;

(b) Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, on 12 December 2008;

(c) Second Optional Protocol to the International Covenant on Civil and Political Rights, aiming at the abolition of the death penalty, on 26 September 2008;

(d) Convention on the Rights of Persons with Disabilities and its Optional Protocol, on 29 July 2008;

(e) International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, on 21 March 2005.

4. The Committee welcomes the adoption of:

(a) Inclusive Education Act No. 20845, of 29 May 2015;

(b) Civil Union Act No. 20830, of 28 January 2015;



(c) Act No. 20786, amending the working hours, rest periods and remuneration to which domestic workers are entitled, of 19 October 2014;

(d) Act No. 20545, amending the regulations on maternity protection and incorporating postnatal parental leave, of 6 October 2011.

5. The Committee welcomes the action taken by the State party to integrate a human rights-based approach into the planning, design, implementation, monitoring and evaluation of social programmes and policies. In particular, the Committee welcomes the establishment of:

(a) Ministry of Women and Gender Equity in 2015;

(b) National Council for Children in 2014;

(c) National Human Rights Institute in 2009.

6. The Committee welcomes the fact that the State party's is considering ratifying the Optional Protocol to the International Covenant on Economic, Social and Cultural Rights.

C. Principal subjects of concern and recommendations

Justiciability of the rights contained in the Covenant

7. Although the Committee notes with satisfaction the information provided by the State party concerning the implementation of the Covenant by domestic courts and the process of constitutional reform that is to be undertaken, it wishes to reiterate its concern (E/C.12/1/Add.105, para. 12) that some economic, social and cultural rights are not accorded recognition in the Constitution. It is also concerned that the remedy of protection stipulated in the Constitution excludes from legal protection some of the rights contained in the Covenant, thereby limiting their direct applicability by domestic courts (art. 2, para. 1).

In the light of its previous recommendation (E/C.12/1/Add.105, para. 29), the Committee recommends that the State party should guarantee the comprehensive recognition and necessary legal protection of economic, social and cultural rights in the new text of the Constitution, while ensuring that the constitutional reform process is conducted in a transparent and participatory manner. The Committee also draws the attention of the State party to its general comment No. 9 (1998) concerning the domestic application of the Covenant.

Rights of indigenous peoples

8. The Committee remains concerned by the lack of recognition in the Constitution of the rights of indigenous peoples and the absence of a legal mechanism guaranteeing that the free and informed prior consent of indigenous peoples is obtained with regard to decisions that may affect the exercise of their economic, social and cultural rights. Despite the efforts made by the State party with regard to the demarcation of indigenous lands, the Committee is concerned at the limited protection of the right of indigenous peoples to dispose freely of their wealth and natural resources and of their ancestral lands (art. 1).

The Committee urges the State party to:

(a) Comply with the commitment that it made during the interactive dialogue to guarantee recognition of the rights of indigenous peoples under the new Constitution;

(b) Take the necessary legislative and administrative measures to ensure that the free and informed prior consent of indigenous peoples is obtained with regard to decisions that may directly affect the exercise of their economic, social and cultural rights;

(c) Increase its efforts to guarantee the right of indigenous peoples to dispose freely of their lands, territories and natural resources, by such means as providing legal recognition and the necessary legal protection.

National Human Rights Institute

9. The Committee notes with concern that the National Human Rights Institute does not have sufficient resources for the effective discharge of its mandate (art. 2, para. 1).

The Committee recommends that the State party should provide the National Human Rights Institute with the financial, material and human resources required to ensure the effective discharge of its mandate.

Statistical data

10. The Committee notes with concern the limited up-to-date statistical data presented by the State party concerning the implementation of economic, social and cultural rights (art. 2, para. 1).

The Committee recommends that the State party should continue to promote the systematic collection of data, as well as the preparation and use of statistics concerning human rights indicators, including economic, social and cultural rights based on such data. In this respect, it refers the State party to the conceptual and methodological framework of human rights indicators prepared by the Office of the United Nations High Commissioner for Human Rights (see HRI/MC/2008/3). The Committee urges the State party to include in its next periodic report comparative annual statistics on the exercise of each of the rights enshrined in the Covenant, disaggregated by age, sex, ethnic origin, urban and rural population and other relevant criteria.

Economic, social and cultural rights and enterprises

11. While the Committee welcomes the information provided on the creation of a national plan on enterprises and human rights, it is concerned that the State party still has no legal framework to ensure full respect for economic, social and cultural rights on the part of enterprises that operate within the State party and enterprises subject to its jurisdiction that operate abroad. In particular, the Committee is concerned that indigenous peoples are still being affected by the operations of enterprises that are engaged in the exploitation of natural resources within their territories (art. 2, para. 1).

In the light of its statement on the obligations of States parties regarding the corporate sector and economic, social and cultural rights (E/2012/22-E/C.12/2011/3, annex VI, section A), the Committee recommends that the State party should:

(a) Establish a clear legal framework for enterprises, including pension fund administrators that operate in the State party in order to ensure that their activities do not negatively affect the exercise of economic, social and cultural rights;

(b) Adopt appropriate legislative and administrative measures to ensure the legal responsibility of enterprises and their subsidiaries based in or managed

from the territory of the State party, with regard to violations of economic, social and cultural rights in the course of their foreign operations;

(c) Draw up clear regulations and guidelines to assess the potential social and environmental impact of projects intended to exploit natural resources, particularly within indigenous territories; and

(d) Ensure that licensing agreements with private companies provide for adequate compensation of the communities affected, in particular the members of indigenous peoples.

Non-discrimination

12. The Committee takes note of the information provided by the delegation on the amendment of Anti-Discrimination Act No. 20.609. It is, nonetheless, concerned at the persistent discrimination against indigenous peoples, lesbian, gay, bisexual and transgender persons, migrants, asylum seekers and refugees, particularly in the areas of employment and education, but also as regards access to health services (art. 2, para. 2).

The Committee recommends that the State party should undertake a comprehensive revision of Act No. 20.609 with a view to ensuring effective protection against discrimination. In particular, it recommends that the State party should:

(a) Explicitly include all the prohibited grounds of discrimination set out in article 2, paragraph 2, of the Covenant, taking into account the Committee's general comment No. 20 (2009) on non-discrimination in economic, social and cultural rights;

(b) Define direct and indirect discrimination in accordance with the obligations incumbent on the State party under the Covenant;

(c) Include provisions for obtaining access to redress in cases of discrimination through judicial, administrative and other procedures and adopt effective and appropriate remedies for victims of discrimination;

(d) Adopt the necessary measures to prevent and combat persistent discrimination against indigenous peoples, lesbian, gay, bisexual or transgender persons, migrants, asylum seekers, refugees and any disadvantaged or marginalized persons or groups, including awareness-raising campaigns, with a view to ensuring the full exercise of the rights recognized under the Covenant, particularly access to employment, social security, health care and education.

Equality between men and women

13. The Committee is concerned that gender stereotypes continue to be deeply entrenched in family and society. It is also concerned by the significant and persistent pay gap and by inequality in the workplace between men and women (art. 3).

Bearing in mind its general comment No. 16 (2005) on the equal right of men and women to the enjoyment of economic, social and cultural rights, the Committee recommends that the State party should:

(a) Take measures to alter attitudes towards gender roles in society by such means as mounting awareness campaigns on the equal sharing of family responsibilities between men and women, and on education and training for equal career opportunities in fields other than those traditionally dominated by either sex;

(b) Take measures to close the persistent gender pay gap, by combating vertical and horizontal segregation in employment that results in women occupying lower-paid jobs and facing obstacles to the enjoyment of career opportunities on an equal footing with men.

Administration of marital property

14. The Committee reiterates its concern that the legal provisions discriminating against women with respect to the administration of marital property still remain in force (arts. 3 and 10).

The Committee urges the State party to take the necessary steps to reform the provisions of the Civil Code that govern marital community property regimes, so as to give full capacity to the wife to administer or freely dispose of her property and equal rights over property produced by the marital community.

Unemployment

15. The Committee is concerned that, despite measures taken to reduce unemployment, young people and women are still disproportionately affected by unemployment (art. 6).

The Committee recommends that the State party should escalate its efforts to lower the high unemployment rate by, inter alia, developing a comprehensive employment policy that includes an action plan with specific goals and a special focus on the groups at most risk of unemployment, such as young people and women. The Committee recommends that priority should continue to be given to programmes for good quality technical and professional instruction and training, adapted to the needs of the job market and taking into consideration the needs of marginalized and disadvantaged persons and groups.

Informal sector of the economy

16. The Committee is concerned at the large number of persons who work in the informal sector of the economy and are therefore not covered by labour laws or the social protection system (arts. 6, 7 and 9).

The Committee recommends that the State party should:

(a) Adopt all necessary measures to progressively regularize the informal sector of the economy and promote the access of persons working in this sector to the basic benefits of social protection and other rights set out in the Covenant;

(b) Systematically include the informal sector of the economy in labour inspections.

Conditions of domestic work

17. Despite information provided by the delegation on the ratification of the International Labour Organization (ILO) Domestic Workers Convention, 2011 (No. 189) and on legislative measures adopted to improve their conditions of work, the Committee is concerned by information it has received regarding discriminatory practices in domestic work (art. 7).

The Committee recommends that the State party should:

(a) Adopt the necessary measures to guarantee domestic workers the same working conditions as other workers;

(b) Establish an effective labour inspection mechanism for monitoring the working conditions of domestic workers;

(c) Establish effective mechanisms for reporting abuses and exploitation, taking into account the vulnerability of many domestic workers.

Equal pay for equal work

18. The Committee notes with concern that there is limited recognition of the principle of equal pay for equal work in national legislation (art. 7).

The Committee recommends that the State party should intensify its efforts to ensure equal remuneration for men and women for work of equal value, as provided in article 7 (a) (i) of the Covenant, inter alia by conducting comparative studies of the different categories of work in relation to equal pay and equal value, with a view to drawing up a comprehensive strategy.

Trade union rights

19. The Committee is concerned that the exercise of such trade union rights as the right to collective bargaining and the right to strike is subject to excessive restrictions, inasmuch as they have not been duly recognized at the constitutional or the legal level (art. 8).

The Committee recommends that the State party should take the necessary measures to ensure that trade union rights are duly recognized in the new Constitution in keeping with international standards and that amendments to the Labour Code submitted to the National Congress are fully compatible with the provisions of article 8 of the Covenant, as well as with the provisions of the ILO Freedom of Association and Protection of the Right to Organize Convention, 1948 (No. 87) and Right to Organize and Collective Bargaining Convention, 1949 (No. 98). It also urges the State party to establish effective mechanisms for the protection of union rights, inter alia by effectively investigating all complaints brought to its attention and the payment of adequate compensation to the workers concerned.

Social security system

20. The Committee welcomes the social security reform under way, which includes the introduction and funding of a solidarity pillar. It is concerned, however, that a large sector of the population remains outside the benefits system and that the State party still has no universal social protection system offering minimum levels of protection to the population as a whole (art. 9).

Bearing in mind its general comment No. 19 (2008) on the right to social security and its statement on social protection floors (2015), the Committee urges the State party to:

(a) Intensify its efforts to establish a social security system that will ensure broad social coverage and sufficient benefits to all workers and all individuals, including the most disadvantaged and marginalized groups, so that they may enjoy decent living conditions;

(b) Redouble its efforts to establish social protection floors that include basic social security entitlements;

(c) Take the necessary measures to ensure that the social security system functions effectively, even where the responsibility to fulfil this right, particularly in the case of the pension system, has been delegated to non-State entities.

Economic exploitation of children

21. The Committee is concerned at the large number of children engaged in child labour, especially those carrying out dangerous jobs, particularly in agriculture, mining and domestic work (art. 10).

The Committee urges the State party to step up its action against child labour, by such means as ensuring that legislation protecting children from economic exploitation is vigorously enforced and strengthening child labour monitoring mechanisms. The Committee recommends that the State party should adopt measures to strengthen programmes for preventing and eliminating the economic exploitation of children and for providing support to poor families.

Violence against children

22. The Committee is concerned at the prevalence of physical and psychological violence against children in the State party (art. 10).

The Committee recommends that the State party should adopt the necessary legislative and administrative measures to prevent and sanction every sort of violence against children.

Domestic violence

23. While the Committee notes that a comprehensive bill to combat all forms of violence against women is preparation, it is nonetheless concerned by the high incidence of domestic violence in the State party and the limits of current legislation in providing victims with access to justice (art. 10).

The Committee recommends that the State party should speed up the process of drafting and adopting comprehensive legislation to eliminate all forms of domestic violence, under which all sorts and degrees of domestic and gender violence will be characterized as crimes and appropriate sanctions provided. The Committee urges the State party to adopt all necessary and effective measures to prevent incidents of domestic violence and to protect all victims by offering them adequate access to shelters for immediate physical protection, legal assistance and medical care, as well as redress and compensation. It also urges the State party to hold information campaigns so as to raise public awareness, as well as to provide training for law enforcement officials and judges concerning the gravity and criminal nature of domestic violence.

Poverty and inequality

24. Despite significant economic growth in the State party and the various measures adopted to combat poverty, including though the introduction of cash transfer programmes, the Committee is concerned that such measures have not been sufficiently effective in reducing the inequality gap and that the levels of poverty and extreme poverty continue to affect the most disadvantaged and marginalized groups, particularly indigenous peoples (art. 11).

In the light of its Statement on Poverty and the International Covenant on Economic, Social and Cultural Rights (2001), the Committee recommends that the State party should:

(a) Adopt a comprehensive plan to combat poverty and extreme poverty that establishes specific targets and effective coordination mechanisms between the various sectors and ministries and that aims to significantly reduce the inequality gap, taking into account the needs of the most disadvantaged and

marginalized social sectors in both rural and urban areas and of indigenous peoples in particular;

(b) Ensure that social programmes to combat poverty, especially extreme poverty, are implemented using a human rights-based approach, that they are allocated sufficient resources for implementation and that they pay due attention to existing disparities and gaps between different social groups.

Right to food

25. The Committee is concerned at the rising rate of obesity due to the nutritional changes occurring in the State party and the lack of comprehensive measures currently addressing this problem (art. 11).

The Committee recommends that the State party should intensify its efforts to devise a comprehensive national strategy for the protection and promotion of the right to adequate food, which promotes healthier diets and incorporates aspects related to trade, territorial planning, education and fiscal policy, and is developed with the participation of all the stakeholders involved. The Committee refers the State party to its general comment No. 12 (1999) on the right to adequate food and the Voluntary Guidelines to support the progressive realization of the right to adequate food in the context of national food security, adopted by the United Nations Food and Agriculture Organization.

Right to adequate housing

26. Despite the measures adopted, there remains a housing shortage in the State party affecting, in particular, the most disadvantaged and marginalized families living in rural areas, disadvantaged urban areas and informal settlements, and the Committee is concerned that such measures have been insufficient to eliminate long standing housing segregation and social exclusion (art. 11).

In the light of its general comments No. 4 (1991) on the right to adequate housing and No. 7 (1997) on forced evictions, the Committee recommends that the State party should review its social housing measures with a view to adopting a comprehensive social housing strategy that:

(a) Is based on the right of every individual to adequate and affordable housing, subject to clearly defined standards of quality and habitability;

(b) Gives due priority to disadvantaged and marginalized groups and individuals living in encampments, informal settlements or uncertain and unfavourable conditions, and guarantees protection against forced evictions, ensuring adequate compensation or the option of adequate housing;

(c) Does not lead to segregation or social exclusion on the grounds of people's social or economic situation, or any other grounds of discrimination prohibited by the Covenant;

(d) Provides for resources that are proportionate to the unmet need for social housing and effective monitoring of the housing situation in the State party and an accountability framework for the implementation of policies and plans.

Right to drinking water and sanitation

27. The Committee is concerned by the limited access to drinking water and sanitation services, in particular in rural areas, and the disproportionate and unsustainable use of water by the mining industry (art. 11).

The Committee recommends that the State party should ensure access to drinking water and sanitation services for the most disadvantaged and marginalized groups, particularly in rural areas, and take the necessary steps to ensure moderate use of water by the mining industry, including the adoption of standards for the processing of waste water in mining.

Health system

28. The Committee is concerned that, despite the reforms adopted in order to improve the health system, access to basic health services remains limited, particularly for disadvantaged and marginalized groups on low incomes (art. 12).

The Committee recommends that the State party should allocate sufficient resources to the health sector and continue its efforts to ensure the accessibility, availability, affordability and quality of health care, paying special attention to the needs of disadvantaged and marginalized groups, especially those on low incomes, and those of indigenous peoples, migrants, asylum seekers and refugees. The Committee draws the attention of the State party to its general comment No. 14 (2000) on the right to the highest attainable standard of health.

Sexual and reproductive health

29. While the Committee takes note of the discussions taking place regarding draft legislation on termination of pregnancy, it remains concerned about the strict prohibition of abortion. It is further concerned by the high rates of teenage pregnancy due, in part, to a lack of adequate sexual and reproductive health services and information (art. 12).

The Committee recommends that the State party should:

(a) Expedite the adoption of the bill on termination of pregnancy and ensure its compatibility with other fundamental rights, such as women's rights to health and life, by considering a broadening of permitted circumstances;

(b) Intensify its efforts to ensure the accessibility, availability and affordability of sexual and reproductive health services, including the issuing of emergency contraception;

(c) Expand and strengthen comprehensive, age-appropriate sexual and reproductive health education for both sexes in primary and secondary school curricula.

Right to education

30. The Committee welcomes the education reform undertaken by the State party and the efforts made to extend the coverage of primary education. However, it remains concerned that the lack of resources and, occasionally, the poor quality of public education continues to result in high levels of segregation and discrimination along socioeconomic lines, which has the effect of limiting social mobility in the State party (art. 13).

The Committee recommends that the State party should:

(a) Take the necessary measures to ensure that the reform of the education system eliminates all mechanisms that result in the discrimination and segregation of students based on their social or economic background and, inter alia, ensure the effective implementation of the Inclusive Education Act, which regulates school admissions, eliminates partial fee-paying and stipulates that educational establishments receiving State support must be non-profit-making;

(b) Take the necessary measures to eliminate the sharp disparities in quality of education that currently exist between private, subsidized and public schools and to ensure that all schools have adequate infrastructure and suitably trained teaching staff;

(c) Carry out regular monitoring of the implementation of measures taken to reform the education system;

(d) Adopt specific measures to progressively introduce free secondary and higher education based on the capacity of each individual.

Cultural rights

31. The Committee notes with concern that, notwithstanding the efforts made, the measures adopted to respect cultural diversity and foster the use of indigenous languages are still limited and that both the culture and use of indigenous languages are not encouraged in a sufficiently comprehensive manner, particularly in the area of education (art. 15).

The Committee recommends that the State party should:

(a) Take the necessary measures to strengthen the protection of cultural rights and respect for cultural diversity, including more effective implementation of the bilingual intercultural education system;

(b) Raise awareness of the cultural heritage of indigenous peoples;

(c) Create favourable conditions for indigenous peoples to preserve, develop, express and disseminate their identity, history, culture, languages, traditions and customs.

D. Other recommendations

32. The Committee encourages the State party to ratify the **Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women**.

33. The Committee requests the State party to disseminate the present concluding observations widely among all levels of society, in particular among indigenous peoples, public officials, judicial authorities, lawmakers, lawyers and civil society organizations, and to inform the Committee in its next periodic report regarding the steps taken to implement them. It also encourages the State party to engage civil society organizations in the discussions to be held at the national level prior to the submission of its next periodic report.

34. The Committee requests the State party to submit its fifth periodic report not later than 30 June 2020 and invites it to update its common core document, where necessary, in accordance with the harmonized guidelines on reporting under the international human rights treaties.