



# International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families

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## Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families Thirty-second session

### Summary record (partial)\* of the 444th meeting

Held via videoconference on Tuesday, 6 April 2021, at 4 p.m. Central European Summer Time

*Chair:* Mr. Ünver (Vice-Chair)

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\* No summary record was prepared for the rest of the meeting.

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*Mr. Ünver (Vice-Chair) took the Chair.*

*The meeting was called to order at 4.05 p.m.*

### **Opening of the session**

1. **The Chair** declared open the thirty-second session of the Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families.

*Tribute to the memory of Christof Heyns, former member of the Human Rights Committee*

2. **The Chair** said that he wished to pay tribute to the memory of Christof Heyns, who had passed away on 28 March in South Africa.

3. *At the invitation of the Chair, the members of the Committee observed a minute of silence.*

*Opening statement by the representative of the Secretary-General of the United Nations*

4. **Mr. Cisse-Gouro** (Office of the United Nations High Commissioner for Human Rights (OHCHR)) said that he wished to convey the appreciation of the United Nations High Commissioner for Human Rights, Michelle Bachelet, for the work of the Committee and of the treaty body system as a whole, particularly in the context of the coronavirus disease (COVID-19) pandemic.

5. He welcomed the new members but noted that gender parity was a key objective of the United Nations system. He hoped that States parties would help the United Nations achieve that objective by nominating more female candidates for membership of the treaty bodies.

6. The pandemic had forced United Nations bodies, including the Committee, to adapt to a new reality. In that regard, he welcomed the decision to organize a virtual constructive dialogue with Chile. It would be the Committee's first such dialogue with a State party.

7. At its forty-sixth session, the Human Rights Council had adopted a resolution in which it called for the inclusion of migrants in pandemic responses. In a similar vein, the Committee had contributed to the drafting of two joint guidance notes on aspects of the pandemic. In the first note, which was broader in scope and referred to the impact of the pandemic on the human rights of migrants, the Committee and the Special Rapporteur on the human rights of migrants had highlighted the vital contributions that migrant workers made to economies – particularly by delivering essential and front-line services during the pandemic – and called on States to include all migrants, regardless of their migration status, in prevention, response and recovery plans and policies.

8. In the second joint guidance note, on equitable access to COVID-19 vaccines for all migrants, countries were urged to provide equitable access to vaccination for all migrants and their families, regardless of their nationality and migration status, ensure that vaccine prioritization took into account the vulnerabilities, risks and needs of those migrants who were most exposed to the virus and make certain that relevant information about vaccines was made available to migrants. The note, which had been produced by the Committee, the Special Rapporteur on the human rights of migrants, OHCHR and regional human rights experts, was an outstanding example of cooperation between international and regional human rights mechanisms. The High Commissioner for Human Rights and the High Commissioner for Refugees had agreed to participate in a campaign to promote the two joint guidance provided in the two notes. The Director General of the International Organization for Migration had also been asked to support the campaign.

9. In fulfilment of its core mandate, the Committee had adopted lists of issues, lists of issues prior to reporting and follow-up letters during the intersessional period. It would adopt its annual report during the current session. The Committee had also continued to work on its draft general comment on migrants' rights to liberty and freedom from arbitrary detention, which was scheduled for adoption during the session. Many stakeholders – States parties, national human rights institutions, international and regional human rights organizations,

civil society, including migrants' organizations, and academics – had engaged in the process and keenly awaited the general comment's publication.

10. The facilitators of the 2020 review of the treaty body system had recommended in their report that OHCHR should prepare, in coordination with the treaty bodies, a proposed schedule for and an estimate of the costs of predictable review cycles. The aim of such a schedule should be to maximize synergies and take into account the resource constraints of States parties. The facilitators had also encouraged the treaty bodies to engage with States at the regional level.

11. The regional reviews of the implementation of the Global Compact for Safe, Orderly and Regular Migration were on the right track. As a member of the Executive Committee of the United Nations Network on Migration, OHCHR supported States and stakeholders in bringing the reviews to a successful human rights outcome. During the session, the Committee on Migrant Workers would have the opportunity to discuss the regional review process in meetings with OHCHR and with the Special Rapporteur on the human rights of migrants. The Committee's next general comment would address the harmonization of States' efforts to implement the Global Compact and the fulfilment of their commitments under the Convention. Lastly, noting that the States that had ratified the Convention most recently were Fiji and Togo, in 2019 and 2020 respectively, he encouraged the Committee to engage with the United Nations Network on Migration with a view to increasing the number of States parties.

### **Adoption of the agenda**

12. *The agenda was adopted.*

### **Promotion of the Convention**

#### *Informal meeting with non-governmental organizations and national human rights institutions*

13. **Ms. Vargas Rivas** (Diego Portales University) said that she wished to draw the Committee's attention to two important topics ahead of its consideration of the second periodic report of Chile (CMW/C/CHL/2). The first was that of collective expulsions, which the Government of Chile had been carrying out since 2018 as part of a policy of what was informally referred to as "putting the house in order". Under that policy, persons of different nationalities had been detained at the same time and location and subsequently placed on government-funded flights to their countries of origin. The State had even invited the media to cover the expulsions. In such cases, the authorities treated all migrants the same way, serving them with standard expulsion orders that, not informed by an individual examination of each case, differed only in respect of the person named in the order and therefore did not meet international standards.

14. In February 2021, the Government had launched the so-called Colchane Plan, under which it continued to pursue the same policy, expelling a large number of persons – mostly Venezuelan nationals who had entered Chile at an unstaffed port of entry – without first examining their individual situation, their links to Chile or what would happen to them if they were forced to return to their country of origin. The Committee might therefore request information from Chile that would allow it to determine that Chile was ordering collective expulsions.

15. The second issue referred to the principle of non-refoulement and access to asylum. According to reports received by the Human Rights Centre of Diego Portales University, many people were being turned away at the border even though they had requested international protection and came from countries that were experiencing well-documented social, economic and political crises. She would therefore be grateful if the Committee enquired about the enormous obstacles faced by prospective applicants for asylum. The Centre was also concerned about the humanitarian repatriation programme that had returned almost 1,000 Haitian migrants to Haiti since 2018. Although such returns were supposedly voluntary, it had turned out, upon closer examination, that Haitian nationals were targeted under the programme, that persons returning to Haiti were not provided with appropriate

information and that the Government of Chile did not concern itself with the situation that awaited them in their country of origin.

16. **Mr. Hernández Trejo** (Servicio Jesuita a Migrantes) said that his organization had been observing how orders to expel migrants were issued in border regions in the north of Chile, where migrant flows were heavy, and had found that family reunification, as a criterion for the award of a residence permit, bore very little weight. Instead, a punitive approach had been adopted. The police usually decided to issue an expulsion order based on voluntary statements given by migrants, who explained why they had entered Chile or had decided to remain. However, their individual circumstances were not taken into account. The orders were generic and did not specify the legal provisions on which they were based.

17. While previously it had been possible to lodge both administrative and judicial appeals against expulsion orders, administrative review was no longer possible under the current Government. That change entailed high costs for both migrants and the judicial system. It appeared that the Government had to be compelled by the country's courts to uphold the principle of family reunification.

18. **Ms. Banda Gallegos** (Servicio Jesuita a Migrantes) said that a number of the approximately 120 expulsions ordered within the framework of the Colchane Plan had been challenged in court, challenges that had brought to light the attitude of the authorities towards migrants. Migrants alone, for example, not the immigration authorities, were blamed for their separation from their families, and national security concerns were consistently prioritized over family reunification, in violation of the Convention.

19. **Mr. Hernández Trejo** (Servicio Jesuita a Migrantes) said that, although the Supreme Court had upheld the principle of family reunification, its decisions were ambiguous, as they did not refer to article 44 of the Convention. For the Supreme Court, the Convention was apparently not one of sources of the country's international human rights obligations. An explicit reference to the article would be necessary to ensure the protection of the unity of the families of migrant workers.

20. **Ms. Banda Gallegos** (Servicio Jesuita a Migrantes) said that the systematic punishment of migrants and lack of respect for the unity of the families of migrant workers violated the rights of migrant families, particularly the children of parents whose expulsion had been ordered. Such violations were well documented in the files of cases that had been brought before the courts. She recommended that the Committee should ask the Government of Chile to explain how its enforcement of expulsion orders was compatible with article 44 of the Convention.

21. **Ms. Cobos Fontana** (Observatorio Ciudadano) said that in Chile, identity cards and residence permits were necessary for access to work, housing, health and education. Migrants needed effective regularization procedures if they were to avoid abuse and exclusion. It was therefore regrettable that the law on migration and aliens recently passed by the country's lawmakers did not provide for a standard regularization mechanism; instead, it empowered the executive authorities to establish such mechanisms. Once the new law entered into force, it would become more difficult for persons already in Chile to apply for residence permits and thus to regularize their migration status. As migrants with expired temporary permits were likely to remain in the country, the change would only increase irregularity. While the new law provided for a special regularization mechanism, it would exclude migrants who had entered the country after March 2020 or at unauthorized ports of entry. The choice of that date was regrettable, as the pandemic had led to the closure of the country's land borders for almost a year, despite ongoing flows of migrants.

22. A previous special regularization process, initiated by presidential order in April 2018, had been poorly designed and implemented. The information provided to applicants had been insufficient and unavailable in Haitian Creole; Haitian and Venezuelan migrants had been required to submit criminal record certificates, and applicants had been unable to work pending issuance of the final permit. No consideration had been given to the difficulty of obtaining documentation in countries in crisis or the capacity of consulates to process requests.

23. The current Government was not of the view that regularization was the most appropriate measure to combat the vulnerability of migrants in an irregular situation. For example, under current legislation, temporary worker status was available only to persons who entered the country for seasonal employment, excluding the majority of immigrants who were temporarily employed. There were no specific provisions on granting visas to pregnant women, children or victims of trafficking. The Government should ensure that mechanisms were sufficiently broad to allow for the regularization of those affected by changes in the law, eliminate barriers to the regularization of the most vulnerable groups and put in place permanent regularization mechanisms.

24. **Ms. Castellón** (Red Nacional de Organizaciones Migrantes y Promigrantes) said that the main barriers to safe and orderly migration were a regressive migration policy, inadequate administrative procedures, including excessive waiting times, and a centralized and ineffective immigration bureaucracy that had not adopted a rights-based approach. Digital processing had been promoted as a way to eliminate backlogs; however, the digital system had proved to be exclusionary and ineffective, and at one point there had been more than 15,000 pending applications. No provision had been made for persons who had difficulty using digital tools. Response times were extremely long, rarely less than six months, and the final decision, which might be unfavourable, could take more than two years. The legal deadlines for access to permanent residence and nationality were not met, leaving migrants in a situation of emotional and social vulnerability.

25. People all over the country received responses to their applications for regularization after the expiry of their documents, leading to fines that had to be paid before the procedure could continue. In the provinces, additional requirements could be placed on applicants, sometimes owing to local policies and sometimes to ignorance. Closures of local offices had led to a return to outdated methods such as sending documentation to Santiago by mail, with no record other than proof of postage. A lack of official information on the process had left only civil society organizations, whose capacity was limited, to assist migrants. In some recent cases, documents had been issued with a validity period of as little as a day, most often to Haitian, Colombian and Dominican applicants.

26. The Government should amend its immigration procedures to allow migrants to exercise their rights without undue delay, simplify administrative procedures and avoid introducing requirements that were not stipulated in law or requesting documents that were impossible to obtain. It should also refrain from using emergency measures to adopt a migration control system incompatible with respect for human rights.

27. **Ms. Hurtado Pinochet** (Corporación Humanas) said that Chile was currently undergoing its most serious human rights crisis since the restoration of democracy. In addition, the impact of the pandemic had exacerbated violations of the rights of members of marginalized groups, particularly migrants, who faced widespread discrimination. Calls for anti-immigrant demonstrations, a form of incitement to violence, prompted no condemnation from the authorities, pointing to a need to make incitement to hatred a criminal offence and to implement anti-discrimination policies. Migrants' complaints that they had been subjected to violence by officials and private citizens should be investigated promptly and impartially, and redress should be provided if their complaints were substantiated. The State should address the fact that the risk of gender-based violence and femicide was three times higher for migrant women than for women in Chile in general and guarantee such vulnerable women access to support programmes, regardless of their immigration status.

28. Reports of violations of migrants' labour rights had tripled between 2016 and 2018. Migrants were also subject to discriminatory provisions that prevented them from transferring their pensions to their countries of origin. Domestic work, much of which was done by migrants, was among the sectors most in need of increased monitoring. Workers in the sector would benefit greatly from increased awareness of their rights and pandemic-related income support programmes.

29. Poverty was higher among migrants, especially children, than in the general population, and migrants had significantly lower levels of education. More than 15 per cent of foreign nationals lacked medical coverage. Over the previous year, the number of migrant

families living in informal settlements without access to drinking water and basic infrastructure had skyrocketed, and evictions had continued apace.

30. In 2018, visa requirements had been introduced for Haitians, and priority had been given to placing migrants from Haiti on return flights to their country of origin. In 2019, administrative barriers to entry had targeted Venezuelans, resulting in a humanitarian crisis on the northern border of Chile, including loss of life, and an increase in unauthorized border crossings, trafficking and smuggling of migrants.

31. One of the most prominent policies of the current Government was the expedited deportation of migrants without due process. In addition, the number of asylum applications had decreased by 87 per cent between 2018 and 2019, despite the serious humanitarian crisis in the region. Refugee status had been granted in a combined total of only 14 cases in 2019 and 2020. Pandemic-related restrictions on access to asylum had been announced, in violation of the country's international obligations.

32. **Ms. Ordóñez** (Movimiento de Acción Migrante) said that once the new law on migration and aliens entered into force, migrants who had lived in Chile for less than two years would not have the right to non-contributory social security benefits. As a result, such migrants would be denied benefits to which they were currently entitled. Migrants would also have no automatic right to request the suspension of an expulsion order while the order was reviewed or to request removal to a country other than their country of origin. In addition, it would be possible to expel migrants immediately, without giving them an opportunity to contest the expulsion.

33. The Committee could thus recommend that Chile should ensure that due process was followed in all expulsion proceedings. For example, the country should be asked to ensure that migrants whose expulsion had been ordered were given a reasonable period of time to challenge the expulsion. The Committee could also make recommendations concerning procedures for the assisted return of migrants, including children and adolescents, to their countries of origin and for family reunification.

34. The rights enshrined in article 44 of the Convention, in which the family was recognized as the natural and fundamental group unit of society, were also likely to be affected by the new law, under which there would be a narrow understanding – excluding same-sex couples, for example – of what families were. Lastly, the new law would allow only adults resident in Chile to apply for residence permits for family members. Children and adolescents, however, should also be given that opportunity.

35. **Mr. Botero Navarro** (Country Rapporteur) said that he would welcome more information on the violence that migrants had been subjected to and the outcome of the police reports they filed. Similarly, he wondered whether there had been complaints of incitement to hatred of migrants and, if so, what action the Chilean law enforcement and judicial authorities had taken in response. In addition, it would be interesting to learn more about the fate of the migrants whose expulsion had been ordered within the framework of the Colchane Plan. Had some of those people ultimately been allowed to remain in Chile?

36. **Mr. Corzo Sosa** (Country Rapporteur) said that he wished to know whether it was common for people who had entered the country illegally to incur administrative penalties, expulsion in particular. He would welcome more information on the situation of the children who were born in Chile to parents who were not considered resident in Chile. Lastly, he wondered whether migrants whose removal had been ordered could – in a bid to ensure that the execution of the order was suspended – avail themselves of any legal remedies not explicitly mentioned in the new migration law.

37. **Mr. Hernández Trejo** (Servicio Jesuita a Migrantes) said that the regional authorities were responsible for prosecuting persons accused of illegal entry, a crime that was punishable by a prison sentence of as much as or more than 5 years. Under the law, however, the authorities could also drop the prosecution. In that case, an administrative penalty – expulsion – would be imposed. At bottom, the criminal proceedings were a fiction. In 2019 and the first half of 2020, for example, the authorities in Arica y Parinacota, a region on the country's northern border, had typically initiated criminal proceedings and dropped them on the same day. The criminal justice system, which afforded stronger guarantees of due process than the

administrative system, was improperly marginalized, and due process, in violation of the law, was not followed. As a result, his organization had successfully contested a number of expulsions facing the migrants it represented.

38. **Ms. Banda Gallegos** (Servicio Jesuita a Migrantes) said that her organization, together with two Chilean universities, had initiated legal action with a view to ensuring that 73 persons whose expulsion had been ordered as part of the Colchane Plan could remain in Chile. The expulsion orders had been cancelled for only 11 of those persons, however, although several others had been allowed to remain in the country after having tested positive for COVID-19. Other institutions had represented other migrants facing expulsion as part of the Plan, but she had no information on the outcome of those cases.

39. **Ms. Vargas Rivas** (Diego Portales University) said that migrants in irregular situations should, in principle, still be able to turn to the courts – to file an appeal for *amparo*, for example – under the new migration law. Practice was another matter.

40. Fewer of the people referred to by the authorities as “transient foreigners” were giving birth in Chile than had been the case in the recent past, but, as many people who intended all along to remain in Chile had no choice but to enter the country as tourists, such foreigners were still giving birth in the country. For the administrative authorities, those people, as tourists, were transient, and any children they gave birth to in Chile were not entitled to birthright citizenship.

*The discussion covered in the summary record ended at 5.25 p.m.*