



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

Distr.: General
14 May 2018
English
Original: Spanish
English, French and Spanish only

Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families

List of issues prior to submission of the second periodic report of Chile*

Section I

A. General information

1. In the light of the Committee's previous recommendations (CMW/C/CHL/CO/1, paras. 10 and 11), please provide information on any measures that the State party has considered or taken in connection with the withdrawal of its reservations to articles 22 (5) and 48 (2) of the Convention.

2. With reference to the legal framework necessary to fulfil the obligations of the Convention (CMW/C/CHL/CO/1, paras. 8 and 9), please provide information on:

(a) Any measures aimed at the adoption of a legal framework that effectively guarantees the rights of migrant workers and members of their families under the Convention, the State party's Constitution and other regulations in force, as well as any relevant court decisions and any measures aimed at establishing a mechanism that would involve civil society and organizations specializing in migration in the development of such a legal framework;

(b) Any measures taken to harmonize domestic legislation with the Convention and to eliminate the disparities between the Convention and the Constitution and between the Convention and existing domestic legislation, in particular the Migration and Aliens Act, Act No. 20.609 of 2012 on non-discrimination, Decree-Law No. 1094 of 1975 on aliens, regulating the discretion granted to the investigative police at the borders, Decree No. 957 (known as the Regulation on Aliens), dealing with the grounds for prohibiting entry to the State party's territory, and Act No. 18.156 establishing differentiated access to social security funds for migrant workers;

(c) The extent to which the Migration and Aliens Bill submitted by the executive branch in 2013 (Bulletin No. 8970-06) and the related presidential instructions and directives, as well as the presidential decrees submitted by the Office of the President of the Republic on 9 April 2018, are aligned with the Convention and other international instruments ratified by the State party and take into account the Committee's general comments in their interpretation of the Convention. Please provide information on how this reform incorporates all the rights enshrined in the Convention, in particular with regard to:

(i) How the migration-related human rights enshrined in the Convention are implemented in practice;

* Adopted by the Committee at its twenty-eighth session (9–20 April 2018).



- (ii) The protection of the rights of migrant workers in an irregular situation, in accordance with the Committee's general comment No. 2 (2013) on the rights of migrant workers in an irregular situation and members of their families;
 - (iii) Any comprehensive regularization mechanisms in place;
 - (iv) Whether it provides for administrative detention for migration-related matters, and, if so, what measures have been taken to ensure that it is used only as a last resort and for the shortest possible time;
 - (v) Whether it fully prohibits the detention of accompanied and unaccompanied migrant children, in line with joint general comment No. 4 (2017) of the Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families and No. 23 (2017) of the Committee on the Rights of the Child on State obligations regarding the human rights of children in the context of international migration in countries of origin, transit, destination and return;
 - (vi) Whether it prioritizes alternatives to detention in cases of irregular migration, based on the principle of detention as an exceptional measure;
 - (vii) Whether it provides for alternatives to deportation in cases of irregular migration, and on what grounds;
 - (viii) Whether it provides for measures to ensure the right to due process in expulsion procedures and for measures to prohibit collective expulsion;
 - (ix) Whether it provides for due process guarantees, including the right to free legal aid in migration procedures;
 - (x) Whether it provides for measures to ensure that the children of migrants holding a temporary residence permit or in an irregular situation are granted Chilean nationality through the modification of their birth certificates, at the request of either the mother or father;
 - (xi) The measures in place to protect the children of migrant workers from statelessness;
 - (xii) The procedures for granting visas in all categories and subcategories and for naturalization;
 - (xiii) The granting of refugee status and other forms of humanitarian protection;
- (d) The existence and scope of bilateral or multilateral agreements with third States in relation to the rights of migrant workers and members of their families in line with the Convention, in particular with Colombia, Haiti, the Dominican Republic and the Bolivarian Republic of Venezuela, as well as how the Agreement on Residence for Nationals of the States Parties of MERCOSUR, the Plurinational State of Bolivia and Chile applies to migrant workers from States parties to the Agreement, in particular those from Colombia, Ecuador and Peru. Please specify how such agreements protect migrant workers' rights in transit and destination countries, particularly concerning detention, repatriation, expulsion and family reunification procedures. Please provide information on any measures that have been taken to strengthen the protection of Chilean migrant workers, particularly women, in other countries, including by concluding, reviewing or amending bilateral and multilateral agreements, as well as with respect to the collection and sharing of relevant data among countries.
3. Please provide information on the policies and strategies adopted by the State party to protect migrant workers and members of their families, including details of the relevant implementation schedules, measurable goals and targets to monitor progress in the fulfilment of the rights of all migrant workers and members of their families. In particular, please provide information on the human, technical and financial resources allocated to the implementation of sectoral commitments relating to the rights of migrant workers and members of their families in the National Human Rights Plan for 2017.
4. Please provide detailed information on the Aliens and Migration Department, the Council on Migration Policy and the Migration Policy Board, in particular regarding the

human, technical and financial resources allocated to them. Please also provide details of their functions and the follow-up and monitoring mechanisms in place for the implementation of the Convention. Please indicate to what extent the creation of the National Migration Service and the Council on Migration Policy will improve the quality of the migration services currently being provided by the Aliens and Migration Department. Please indicate whether the State party has taken steps to strengthen the Aliens and Migration Department as the coordination mechanism for the implementation of a comprehensive rights-based migration policy in all government bodies at the national, regional, provincial and municipal levels.

5. Please provide information on the measures taken to put in place a national information system on migration and on the type of information to be contained in the new registration system for foreign nationals proposed in the Migration and Aliens Bill and its regulations. Please provide detailed qualitative and quantitative information on the extent to which the rights of migrant workers residing or in transit in the State party, and also of emigrants, are implemented, disaggregated by sex, age, civil status, reasons for entering and leaving the country and type of work performed, with respect to both regular and irregular migrants (see CMW/C/CHL/CO/1, paras. 16 and 17). Please also provide statistical data and qualitative information on the situation of unaccompanied children in the State party and children born to Chilean migrants abroad.

6. Please provide information on specific programmes and mechanisms to disseminate and promote the Convention, including those implemented in cooperation with civil society. Please also provide information on training programmes that cover the content of the Convention for the public in general and, in particular, for all officials, including local officials, working in the areas of migration and border control, labour, education, justice and health. Please also indicate whether there is a monitoring mechanism for the Convention. If not, please say why.

7. Please provide information about the measures taken in collaboration with civil society, including non-governmental organizations, migrants' associations and academia, to strengthen the implementation of the Convention and the general participation of civil society in the design, implementation and evaluation of the State party's migration policy and other policies that are relevant for the safeguarding of the rights of migrant workers and their families. Please provide information on the mandate of the Advisory Council for Migration and the resources allocated to it. Please also provide information on measures taken to ensure the involvement of the Advisory Council for Migration in the formulation, design and implementation of policies, legislation and reforms in the State party.

B. Information relating to the articles of the Convention

1. General principles

8. Please provide information on the extent to which the provisions of the Convention have been directly applied by government officials, including by the superintendents of health, pensions, education and social security, and on whether they have been invoked directly before the courts; if they have, please provide examples. Please also provide information on:

(a) The judicial and administrative entities competent to examine and decide on complaints by migrant workers and members of their families, including migrant workers in an irregular situation;

(b) The extent to which legal protection is afforded to persons who report abuse and ill-treatment or discrimination, regardless of their migratory status;

(c) The number and type of complaints examined by judicial and administrative bodies in the past five years and the outcome of the related investigations, disaggregated by sex, age and nationality of the victim and type of offence or behaviour;

(d) Whether legal assistance was provided;

(e) Reparation, including compensation, provided to the victims of violations, including in the area of economic, social and cultural rights;

(f) Any measures taken to inform migrant workers and members of their families about the remedies available to them for violations of their rights.

2. Part II of the Convention

Article 7

9. With reference to the Committee's previous recommendations, please provide information on:

(a) Measures to prevent and eliminate discriminatory attitudes towards, and the social stigmatization of, migrant workers and members of their families in the State party (CMW/C/CHL/CO/1, para. 19) at the regional, provincial and commune level; and measures taken to prevent xenophobia and hate speech on the part of public officials and private individuals dealing with migrant workers;

(b) Measures taken to prevent, investigate, prosecute and punish discriminatory behaviour by the Carabineros (police) towards migrant workers or members of their families;

(c) Measures to prevent discriminatory practices in the admission and rejection of migrant workers at the border on the basis of ethnic origin and nationality, which predominantly affect migrant workers of Haitian and Dominican origin;

(d) Measures to ensure gender equality in the State party's migration policies, particularly measures to eliminate discrimination against migrant women, including gender-based violence towards women and discrimination in the enjoyment of their rights to health, employment and education.

10. Please provide information about the work of the inter-municipal committee on migrants in cities, which aims to pave the way for social inclusion by organizing forums and workshops. In this regard, please provide information on the programme of the commune of Quilicura. In addition, please provide information on the programme being implemented by the Ministry of Social Development on guidelines for the social inclusion of migrants in the period 2014–2018 and give details of the programme's results.

3. Part III of the Convention

Articles 8 to 15

11. Please provide information on the measures taken by the State party to comply with the Committee's recommendations (CMW/C/CHL/CO/1, paras. 36 and 37) in relation to protecting female migrants engaged in domestic work and ensuring that they have access to mechanisms for bringing complaints against employers in cases of abuse and ill-treatment and for obtaining adequate reparation. Please also provide information on the measures taken to bring national legislation into line with the International Labour Organization (ILO) Forced Labour Convention, 1930 (No. 29), and Abolition of Forced Labour Convention, 1957 (No. 105).

12. Please provide information on the measures taken to ensure observance of the rights of migrant children, especially the children of migrant workers in an irregular situation. In particular, provide information on measures taken to:

(a) Protect children from all forms of exploitation, especially with regard to the worst forms of child labour;

(b) Promote public awareness of the harmful effects of all forms of sexual exploitation of children for commercial or non-commercial purposes, particularly child prostitution and the use of children in pornography;

(c) Establish a system for collecting data on child labour that accounts for the work of migrant children.

13. Please provide qualitative and quantitative data on the rights of unaccompanied migrant children or migrant children separated from their parents in the State party, and on their living conditions. Please also provide information on policies for the protection of the children of migrant workers in the State party, including those in an irregular situation (CMW/C/CHL/CO/1, paras. 34 and 35), and on their effective access to education.

Articles 16 to 22

14. Please provide information on border control measures, particularly as regards the procedures applicable to migrant workers, asylum seekers and other persons in need of international protection arriving in the border areas of the State party. Please also provide information on the reception facilities available in the State party and the legal or administrative procedures for processing applications for international protection, determining refugee status and granting subsidiary protection in a manner that is fair, gender- and age-sensitive and respectful of the principles of non-refoulement and the prohibition of arbitrary and collective expulsion.

15. Please provide information on the measures taken to ensure that the administrative detention of migrants is used only as a last resort and that unaccompanied children and families with children are not subjected to any form of administrative detention (CMW/C/CHL/CO/1, paras. 24 and 25). Indicate what alternatives to detention are in place and what procedures ensure they are used effectively. The State party is requested to submit detailed information, disaggregated by sex, age and nationality, on the number of immigrants detained and/or expelled for violations of migration laws, as well as on the length and conditions of their detention, including in special holding facilities designed for temporary stays (CMW/C/CHL/CO/1, paras. 26 and 27).

16. Please provide information on the specific measures taken to ensure that detention conditions are in line with international standards and that men and women are duly separated, and to ensure the provision of basic social services such as food, health care, hygienic living conditions, the assistance of interpreters, access to justice and all due process guarantees, taking account of the particular situation of women migrants in detention. Please also include information on whether:

- (a) Persons detained for immigration reasons are held in separate facilities that do not hold ordinary prisoners;
- (b) Families are housed in appropriate facilities;
- (c) Procedures are in place to determine the best interests of the child in rights-based return and reintegration procedures;
- (d) There are mechanisms for legal representation and reparation for migrant workers who are victims of torture or cruel, inhuman or degrading treatment, and the appropriate public resources are available;
- (e) Statistical data have been collected on cases of torture or unlawful coercion of migrant workers from 2011 to the present.

17. Please provide information on the situation of indigenous migrant women deprived of their liberty by members of the Chilean Investigative Police, hospital staff (in the case of drug mules who ingest packages of drugs), Carabineros, prison staff and officers of the criminal justice system. Provide specific information on the safeguards employed to prevent the arbitrary deprivation of liberty of indigenous migrant women and on the number of complaints received and investigated in the past three years in cases of torture or cruel, inhuman or degrading treatment or punishment, specifying the nature of the charges and the penalties imposed.

18. Please provide specific information on the alleged administrative detention and expulsion of some 169 Haitian nationals in March 2018, with detailed information on:

- (a) Whether each case was examined individually;
- (b) The authorities that took the decision;

(c) How the concerned persons' procedural guarantees were upheld, including the provision of legal assistance, access to justice and the right to an effective remedy with suspensive effect;

(d) Whether the persons had access to an asylum procedure in accordance with international standards. Also indicate whether any investigations into the legality of the expulsions have been carried out (and, if so, what the outcome was) or are ongoing or envisaged. Please further indicate, if it can be established that the expulsions were in violation of the Convention, whether the State party is planning to provide appropriate reparation to the persons who were expelled;

(e) Whether the State party coordinated with the country of origin of the persons expelled and whether consular assistance was provided to them, in line with the Convention.

19. Please provide information on border governance measures and on the procedures applicable to migrant workers, asylum seekers and other persons in need of international protection arriving at the State party's international borders. In particular, please provide information on:

(a) Reception facilities and how the State party processes protection claims to ensure that it is acting in accordance with the principles of non-refoulement and the prohibition of arbitrary, collective or automatic expulsion;

(b) Current training programmes for border and immigration officials on the application of the safeguards provided for the treatment and international protection of those in need of such protection;

(c) The procedure for cancelling or revoking a visa and how due process is guaranteed in such cases.

Article 23

20. Please provide information on consular protection and the policies applied by the State party's consular authorities with respect to protection of the rights of and the guarantees of due process for Chilean migrant workers and members of their families — including those in an irregular situation — particularly in cases of abuse, arrest, detention or imprisonment, while awaiting expulsion in transit or destination countries or when the legal guarantees of employment are not fulfilled in the destination country, especially in those countries with the highest migrant flows, such as Argentina, Spain and the United States of America. Please also describe the consular protection measures in place to ensure the return of the belongings acquired abroad by migrant workers and members of their families and/or the issuance of identity documents to Chilean migrant workers and members of their families.

Articles 27 to 30

21. Please provide information on measures to ensure equality in the State party's social security system, in particular to ensure that migrant workers and members of their families have access to their pension funds, regardless of the stipulated retirement age, once they have decided not to reside in the State party, in accordance with the relevant bilateral and multilateral social security agreements signed by the State party.

22. Please provide information on measures taken to facilitate access by women migrant workers to sexual and reproductive health services and to ensure the implementation of Supreme Decree No. 67 of 2016 of the Ministry of Health, on health coverage for migrant workers in an irregular situation and with limited resources.

23. Please provide information on measures taken to grant citizenship to children born in Chile to parents who are migrant workers in an irregular situation, when the parents cannot pass on their own nationality. Please indicate the progress made and resources allocated to facilitate the registration of children of migrant workers in an irregular situation at the regional, provincial and municipal levels (CMW/C/CHL/CO/1, paras. 32 and 33) and to continue the "Chile Reconoce" programme, which permits the registration of children of migrant workers in an irregular situation. In addition, please provide information on the

process of recognizing Chilean nationality to persons who are stateless because they are the children of foreign “transients”, as well as statistical data on the implementation of the decision of the Supreme Court concerning the recognition of Chilean nationality to 161 stateless people.

24. Please provide information on:

(a) Programmes to facilitate the teaching of the local language to migrants and the inclusion in the education system of children of migrant parents of all nationalities, particularly Haitian children;

(b) Measures to ensure there are sufficient school places in the metropolitan region for children of migrant workers;

(c) Measures to facilitate the effective inclusion of migrant children in education, both in terms of learning methods and in terms of decent treatment and non-discrimination, as well as the continued implementation of the programme on the right to education.

Articles 31 to 33

25. Please provide information on measures taken by the State party to ensure that migrant workers and members of their families have the right to transfer their earnings, savings, pensions and, in accordance with the applicable legislation, personal effects and belongings. Please also provide information on the measures taken to facilitate the transfer of private funds, and in particular to reduce the cost of such transactions (CMW/C/CHL/CO/1, paras. 40 and 41).

4. Part IV of the Convention

Article 37

26. Please describe any pre-departure counselling and/or training programmes for nationals of the State party considering emigration and in need of information on their rights and obligations in the State of employment. Please indicate which government institution is responsible for providing such information and whether any coordinated policies, programmes or legislation have been developed and properly funded to ensure transparency and accountability in this process.

Article 40

27. Please report on the measures taken to ensure that migrant workers and members of their families have the right to form associations and unions and to be part of the executive bodies thereof, in accordance with article 40 of the Convention and the ILO Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), which the State party has ratified.

Articles 43 to 45

28. Within the framework of the migration reform bill and proposed amendments to it, please provide information on measures taken with regard to restrictions on the employment of migrant workers in companies with more than 25 employees, which should apply only to migrant workers whose work permit is valid for less than five years or to limited categories of employment, functions, services or activities where this is necessary in the interests of the State party, in accordance with article 52 of the Convention (CMW/C/CHL/CO/1, paras. 44 and 45).

29. Please provide information on the programmes and policies in place until 23 April 2018 to facilitate the reunification of migrant workers with their spouse, or person with whom they have a relationship that equates in its civil effects to marriage, and with their unmarried dependent children. Please also explain how the State party intends to facilitate the family reunification of migrant workers in accordance with article 44 of the Convention after 23 April 2018, in the context of the immigration reforms.

30. Please provide information on the steps taken to ensure access to health care and housing on an equal footing with Chilean nationals. In particular, provide information on:

(a) Measures to combat and punish the exploitation of migrant workers by landlords and to ensure that they enjoy appropriate health and safety conditions, as well as measures to review the situation of migrating workers in terms of homelessness and their access to housing subsidies;

(b) The financial resources set aside to ensure that migrant workers have access to health services under the health policy for international migrants (2017).

Article 49

31. Please provide information on the steps taken by the State party to protect the rights of migrant workers vis-à-vis the elimination of the temporary visa for employment purposes as the only category provided for in the migration bill and migration policy reform submitted by the Office of the President of the Republic on 9 April 2018.

5. Part VI of the Convention

Articles 64 to 68

32. In light of the Committee's recommendations (CMW/C/CHL/CO/1, paras. 46 and 47), please provide information on the steps taken to classify domestic trafficking in persons as a crime under the Criminal Code and also provide statistics on the complaints received, investigations conducted and convictions secured in cases of migrant-smuggling and trafficking in persons under Act No. 20.507 from 2011 to the present. Please also provide detailed information on:

(a) The policies adopted to prevent, combat and provide assistance in cases of trafficking in persons, in accordance with the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime;

(b) Cross-sectoral strategies to prevent trafficking in persons;

(c) National coverage of temporary shelters and protection programmes to help victims of trafficking to rebuild their lives;

(d) Measures to ensure the rehabilitation and social integration of victims, including those victims who prefer not to be involved in court cases;

(e) Measures taken to provide adequate education and training for law enforcement officials, judges, prosecutors, labour inspectors, service providers, teachers, embassy and consular personnel and other relevant professionals in the State party;

(f) Measures to ensure family reunification for victims;

(g) The steps taken to strengthen data collection on victims of trafficking. Please also indicate whether victims of trafficking may be granted temporary or permanent residence permits or be issued with a residence permit on humanitarian grounds, and provide qualitative and quantitative data in this respect.

Article 69

33. Please describe the measures taken to formulate and implement a comprehensive policy on a regularization process that is accessible to all migrant workers and members of their families in an irregular situation, including since 23 April 2018, in keeping with the principle of non-discrimination. Please also provide information on the progress made with regard to the request from civil society organizations to establish a special regularization process.

34. Please indicate what measures have been taken to ensure the availability of regular, safe, accessible and affordable migration channels through the progressive liberalization of the visa regime and other schemes to make visas more readily accessible, and also any other measures taken in relation to, for example, subsidiary protection, temporary

protection, humanitarian visas, visitor visas, family reunification, visas for the purposes of employment, residence, retirement or study, and private sponsorship programmes.

35. Please provide information on the status of ratification of the 2002 Agreement on Residence for Nationals of the States Parties of MERCOSUR, the Plurinational State of Bolivia and Chile, and on its applicability in States that ratified it subsequently, particularly Colombia, Ecuador and Peru. Please provide statistical data on residence permits granted by the State party since 2012, disaggregated by nationality, sex, age and regular or irregular migration status, including the residence permits granted to nationals of Argentina, the Plurinational State of Bolivia, Brazil, Paraguay and Uruguay under Circular No. 26.465 of 4 December 2009 issued by the Undersecretary of the Interior.

Section II

36. The Committee invites the State party to provide information (in no more than three pages) regarding the protection of migrant workers and members of their families with respect to the following:

- (a) Bills or laws, and their respective regulations;
- (b) Institutions (and their mandates) responsible for implementing migration policies, and the institutional reforms undertaken since 2012;
- (c) Policies, programmes and action plans relating to migration issues and specifically to the rights of migrant workers and members of their families, including their scope and financing and how they take into account the children of migrants;
- (d) Recent ratifications of human rights instruments, specifically the ILO Migration for Employment Convention (Revised), 1949 (No. 97), and the Migrant Workers (Supplementary Provisions) Convention, 1975 (No. 143);
- (e) Recent comprehensive studies on the situation of migrant workers and members of their families and on Chilean nationals residing and working in other countries;
- (f) Mechanisms in place to facilitate access to public information on migration and the rights enshrined in the Convention.

Section III

Data, official estimates, statistics and other information, if available

37. Please provide updated disaggregated statistical data from 2012 onwards on:

- (a) The volume and nature of migratory flows to and from the State party since the Convention entered into force in the State party;
- (b) Migrant workers in detention in the State party and Chilean migrant workers in detention in the State where they work or are in transit, and whether such detention is immigration-related;
- (c) Migrant workers and members of their families who have been expelled from the State party;
- (d) The number of migrant children in the State party who are unaccompanied or separated from their parents;
- (e) Remittances received from Chilean nationals working abroad;
- (f) Legal assistance services provided to migrant workers and members of their families in the State party and to Chilean nationals working abroad or in transit through third States.

38. Please provide additional information on any important new developments and on measures considered by the State party as priorities in implementing the Convention, including on whether the State party intends to make the 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.

39. Please submit an updated core document in line with the harmonized guidelines on reporting (HRI/GEN/2/Rev.6). In accordance with General Assembly resolution 68/268, paragraph 16, the common core document should not exceed 42,400 words.
