



Convention on the Rights of Persons with Disabilities

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Committee on the Rights of Persons with Disabilities

Concluding observations on the initial report of Chile

Addendum

Comments received from Chile on the concluding observations*

[Date received: 21 April 2016]

This note contains comments as well as inaccurate references and factual observations that have been identified in the draft concluding observations (CRPD/C/CHL/CO/1) — advanced unedited version — on the initial report of Chile, adopted by the Committee on the Rights of Persons with Disabilities at its 255th meeting (13 April 2016).

This note has been issued by the Human Rights Directorate of the Ministry of Foreign Affairs, in accordance with instructions from the Under-Secretary for Social Policy Assessment of the Ministry of Social Development, and reflects the suggestions and/or comments received from the National Service for Persons with Disabilities and other ministries and offices that participated in the preparation of the report and that were represented in the delegation.

For methodological purposes, and for ease of understanding, reference is made to the paragraph numbers used in the draft concluding observations.

The following inaccurate references have been identified:

(a) **Regarding paragraph 5.** The term “invalidity” is used in Act No. 20.422 when referring to an institution established under the old paradigm of disability, namely the preventive medicine and disability boards. It is never used to refer to persons with disabilities. Instead, the term “persons with disabilities” is used. In addition, the terms “incapable” and “of unsound mind” are not used in Act No. 20.422, as is stated in paragraph 5 of the concluding observations.

(b) **Regarding paragraph 7.** As was indicated during the Committee’s consideration of the report, Decree No. 47 of the Ministry of Health approving the disability assessment and certification regulations, issued on 16 October 2013, is based on

* The present document is being issued without formal editing



the principles set out in the Convention, in which disability is understood as an interaction between an individual's health condition and environmental and personal factors, taking into account the multidimensional and multidirectional dynamic interaction among all these elements, including environmental barriers.

In particular, article 4 (a) of the Decree defines persons with disabilities as “any persons who, as a result of one or more temporary or permanent physical, mental — whether the cause is psychosocial or intellectual — or sensory impairments, find that their full and effective participation in society on an equal basis with others **is hindered or limited by different barriers encountered in their surroundings**”. The Decree also establishes that the assessment procedure is one in which the individual's functional performance is evaluated and assessed, taking into account their health condition and **their interaction with environmental barriers**. In addition, article 4 (b) of the Decree sets out in detail the criteria for determining these barriers.

(c) **Regarding paragraph 11.** As stated during the consideration of the report, the term “necessary accommodation” as used in article 8 of Act No. 20.422 has the same scope as the term “reasonable accommodation” used in article 2 of the Convention. The Act establishes that necessary accommodations are “the adjustments made to the physical and social environment and attitudes in order to meet the specific needs of persons with disabilities and thereby effectively and practically facilitate accessibility or participation of persons with disabilities on an equal basis with other citizens, without imposing a disproportionate burden”. It does not limit such accommodations to the field of labour or “employment”, as stated in the concluding observations.

The Act further stipulates that, “with a view to ensuring equality of opportunities for persons with disabilities, the State shall take steps to counter discrimination by establishing requirements with regard to accessibility, provision of reasonable accommodation and prevention of harassment”.

(d) Children with disabilities. **Regarding paragraph 13.** State policies cover all women without distinction, including women with disabilities. It is worth highlighting the recent establishment of the Ministry of Women and Gender Equity (Act No. 20.820 of 2015), which is tasked with working in collaboration with the President to design, coordinate and evaluate policies, plans and programmes for the promotion of gender equity and equal rights and the elimination of all forms of arbitrary discrimination against women.

(e) **Regarding paragraph 15.** While recognizing the insufficiency with respect to children, it should be reiterated that, as stated during the consideration of the report, article 8 of the bill on the system of guarantees for the rights of children (reproduced below), which is currently before the Chamber of Deputies, explicitly provides for non-discrimination against children with disabilities, while article 2 recognizes that the care of children should primarily be the responsibility of their parents.

“Article 8: equality and non-discrimination. Children have the right to equal enjoyment, exercise and protection of their rights without arbitrary discrimination.

No child may be arbitrarily discriminated against on the grounds of race, ethnicity, nationality, culture, migration status, status as a refugee or asylum seeker, language, political opinion or ideology, membership or association, religion or belief, socioeconomic status, sex, sexual orientation, gender identity, gender expression, sexual characteristics, civil status, age, parentage, personal appearance, health, disability or situation of disability, being or having been charged, indicted or convicted in application of Act No. 20.084, or on the basis of any other condition,

activity or status in relation to the child or their parents, relatives, legal representatives or those responsible for their care.”¹

(f) **Regarding paragraph 17.** Public funds are provided to finance rehabilitation activities that follow a human rights-based approach; these funds are not used to carry out campaigns of any kind.

(g) **Regarding paragraph 19.** As stated during the consideration of the report, and as indicated in the information provided at that time, Supreme Decree No. 50 of 2015, issued by the Ministry of Housing and Town Planning on 4 March 2016, has entered into force. This contains amendments to the General Ordinance on Town Planning and Construction that bring the Ordinance into line with Act No. 20.422 and the principles of the Convention. This regulation was prepared with the participation of civil society and taking its views into account.

This new legal framework contains key concepts and actions aimed at creating an accessible country as an essential means of achieving true inclusion, reflecting the concepts of universal accessibility and universal design, and reinforcing the provisions of Act No. 20.422, particularly articles 23 to 32 of the Act, and the Convention on the Rights of Persons with Disabilities.

Architectural adaptations for existing buildings that are for public use or that provide a service to the community must be carried out within a maximum of 3 years from the date of issuance of Supreme Decree No. 50 to bring them into line with the established accessibility standards, and permits for those adaptations must be requested from the Municipal Works Directorate at least 180 days before the deadline.

The assertion that there is a “lack of mechanisms to lodge complaints of violations of the rights of persons with disabilities in relation to inaccessibility” is incorrect, as complaints of violations of article 28 of Act No. 20.422 may be submitted to the appropriate local police court, as provided for in article 57 of the Act, which stipulates that “any persons who, due to an arbitrary or illegal act or omission, have their rights under this Act threatened, interfered with or denied, may appeal, either themselves or through someone acting on their behalf, to the judge of the local police court nearest their home to take the necessary measures to ensure and restore those rights”. Article 58 of the Act further provides that the judge may impose fines on the persons responsible for such acts or omissions. Such complaints may be initiated by any person in the face of a violation of the rights of persons with disabilities stemming from a lack of accessibility.

(h) **Regarding paragraph 23.** The situation referred to in this paragraph pertains to persons with intellectual, mental and, in certain cases, psychological disabilities. It does not pertain to all persons with disabilities, as the paragraph indicates.

It is requested that the sentence indicating that Act No. 18.600 concerns “the procedure for revoking legal capacity on the basis of a psychiatric report” be reviewed. The Act does not, in fact, concern the procedure for revoking legal capacity “on the basis of a psychiatric report”. Article 4 of the Act provides that “the determination, assessment, evaluation and declaration of mental disability, as well as the certification of it, shall be carried out in accordance with the procedure set out in title II of Act No. 19.284 and in the relevant regulations (currently the aforementioned Decree No. 47 issued by the Ministry of Health in 2012)”. The Act further establishes that, when a person’s mental disability has been registered in the National Disability Register, the person’s father or mother may ask the judge to revoke his or her legal capacity on the basis of a valid certification of disability issued in accordance with title II of Act No. 19.284, and after having heard the views of the

¹ See https://www.camara.cl/pley/pley_detalle.aspx?prmID=10729&prmBoletin=10315-18.

person with disabilities. Lastly, the Act stipulates that the judge shall proceed on an informed basis and after summoning and hearing the views of the person with disabilities.

(i) **Regarding paragraph 25.** The situation referred to in this paragraph pertains to persons with intellectual, mental and, in certain cases, psychological disabilities, not to all persons with disabilities, as the paragraph indicates.

(j) **Regarding paragraph 34.** As indicated during the Committee's consideration of the report, any practices against persons with disabilities that are deemed to be "disciplinary" or "corrective" are strictly prohibited by Chilean legislation and, if carried out, are subject to administrative or criminal sanctions commensurate with the seriousness of the misconduct or criminal offence committed. With respect to the known cases of abuse, judicial proceedings are either ongoing or have been completed and resulted in criminal sanctions, as there are cases which have not been investigated.

(k) **Regarding paragraph 36.** Please refer to the comments regarding paragraph 34. In addition, in the known cases in which police officers have been involved in crimes, the relevant administrative and criminal proceedings provided for in national legislation have been initiated. This issue was addressed during the Committee's consideration of the report.

(l) **Regarding paragraph 39.** With respect to "the law", article 5 (2) and article 7 (3) of Act No. 20.066 on domestic violence provide for such protection, stipulating as follows: "If the behaviour referred to in the preceding paragraph occurs between the parents of a child of both parties, or is inflicted on a minor, an elderly person or a person with disabilities who is under the care of or dependent on any of the members of the family group, this shall also constitute domestic violence"; and "[i]n addition, the Court shall act with particular caution in cases where the victim is pregnant, is a person with a disability or has a condition that makes them vulnerable".

(m) **Regarding paragraph 41.** The bill on the system of guarantees for the rights of children, which is currently before Congress, contains a series of provisions (including art. 8) that comprehensively guarantee the ability of children, and of children with disabilities in particular, to exercise their rights, so as to reduce and prevent the practices described in this paragraph.

"A child's disability or situation of disability must never be used as a ground for denying that child the rights set out in this article. In particular, any practice that seeks to deprive children of their sexual and reproductive rights is prohibited" (art. 24 (4)).

(n) **Regarding paragraph 43.** As stated during the consideration of the report, the National Subsystem of Support and Care — which is now in its initial implementation phase — will constitute one of the pillars of the social protection system by providing social benefits to provide systematic support to persons with disabilities throughout all their lives. The number of persons in institutions has fallen by approximately 75 per cent, thanks to an active deinstitutionalization policy, which began with the Caracas Declaration led by the Pan American Health Organization in 1990 and was strengthened in Chile at the end of the 1990s with the implementation of the National Mental Health Plan.

(o) **Regarding paragraph 45.** Article 25 (2) of Act No. 20.422 stipulates that any State-funded public service announcement, election campaign advertisement, presidential debate or national television or radio broadcast must be transmitted or broadcast with closed captions and sign language.

(p) **Regarding paragraph 47 (a).** The law that governs this matter is the Civil Marriage Act and its regulations, which contain provisions allowing for the expression of

consent through sign language and do not expressly restrict marriage for persons with psychosocial disabilities.

(q) **Regarding paragraph 47 (b).** The general rule under Chilean legislation is that everyone has the right to marry and to have a family. The only exception is the existence of regulations prohibiting the marriage of persons whose legal capacity has been revoked on grounds of “insanity”.

(r) **Regarding paragraph 47 (c).** It should be noted that, even before Ms. Valeria Riveros became pregnant, she was granted all the support and assistance she requested, on a continual basis.

(s) **Regarding paragraph 48 (c).** In cases such as those described in this paragraph, persons with disabilities are entitled to all the available guarantees of public defence and legal representation for the purposes of restoring custody of the children to their parents.

(t) **Regarding paragraphs 49 and 50.** The main objectives of the Inclusive Education Act (Act No. 20.845) of 2015 are to guarantee free primary and secondary education, eliminate segregation by socioeconomic status and ensure equitable access to education. All these inspiring principles ensure that education is actually provided not through a market-based system but rather through a social rights-based system that protects human dignity, eliminates arbitrary discrimination in schools, and thereby strengthens comprehensive education and moves closer towards a system of inclusive schools.

Chile provides education to students with disabilities in accordance with the decisions taken by their families and in the following ways:

1. Through educational institutions where specialized support is provided under a school integration programme in preschool, primary and secondary institutions and in institutions for young people and adults;
2. In special schools, where support staff are employed, from the age of 2 to the age of 24 years; and
3. In hospital schools and classes that provide education to students with serious or chronic diseases, either within hospital premises or in their own homes.

In the second half of 2015, there were 104,811 students with disabilities, of whom 45,818 were enrolled in special schools and 59,469 were enrolled in educational institutions and received specialized support through the school integration programme. This information was provided during the consideration of the report.

(u) **Regarding paragraph 55.** Please refer to the comments regarding paragraph 17.

(v) **Regarding paragraph 58.** The Government of Chile is preparing a bill on establishing a workforce inclusion system for persons with disabilities, with the aim of, inter alia, fostering the effective inclusion of persons with disabilities in the workforce, in both the public and private sectors, by means of a hiring quota established by law.

(w) **Regarding paragraph 62.** The State ensures that all persons are able to exercise their political rights, including the right to participate in elections. The existing legal limitation applies to persons with disabilities whose legal capacity has been revoked on the ground of “insanity”.

(x) **Regarding paragraph 63.** It should be clarified that, as was pointed out during the consideration of the report, the second national study on disability did cover persons belonging to indigenous peoples and/or of indigenous descent (residing in private homes). According to the survey of the adult population, 18.9 per cent of persons 18 years

of age or older who report belonging to an indigenous people are persons with disabilities. This percentage does not show any statistically significant differences compared with the estimate for persons who do not belong to an indigenous people and are not of indigenous descent.

(y) **Regarding paragraph 64.** As was indicated during the consideration of the report, the second national study on disability made it possible to measure disability and identify characteristics of persons with disabilities, including both adults (18 years of age and over) and children and adolescents (2 to 17 years of age), taking into account, inter alia: age, sex, type of permanent and/or chronic condition, illness or health status classified according to the International Classification of Diseases, membership in an indigenous people, residence in an urban or rural area, and distribution by region. In addition, the survey made it possible to estimate the percentage of persons with disabilities, 18 years of age and over, who stated that they had felt discriminated against at some point within the past 12 months, and to record the reported ground for that discrimination, the location where it had occurred and the frequency with which it had occurred during the period in question.

As was reported during the consideration of the report, the survey questionnaire was designed taking into account information gathered at the Participatory Citizen Dialogues, held between September and October 2014, which brought together a total of 1,855 representatives of organizations of and for persons with disabilities.

(z) **Regarding paragraphs 65 and 66.** With regard to the 2030 Agenda for Sustainable Development, the Government of Chile has established a system for monitoring the fulfilment of the commitments made at the national level. This includes the establishment of the National Council for the Implementation of the 2030 Agenda for Sustainable Development, which comprises the Ministry of Foreign Affairs (which will chair the Council), the Ministry of the Environment, the Ministry of the Economy, Development and Tourism, and the Ministry of Social Development (which will be responsible for the technical secretariat). The Council's duties will comprise coordinating the actions of various government agencies, international organizations, NGOs, private sector entities and civil society organizations, including organizations of and for persons with disabilities. The procedure for adopting the decree establishing the Council is currently in course. This will be carried out in accordance with the 2030 Agenda for Sustainable Development, which requires a revitalized partnership that will bring together governments, the private sector, civil society and the United Nations system, among other stakeholders, to achieve the proposed goals and targets, ensuring that "no one will be left behind" in this process.

(aa) **Regarding paragraphs 69 and 71.** Chile undertakes to send the Committee its report on the measures taken to implement the recommendations contained in paragraphs 34 and 38.

It also undertakes to disseminate and transmit the Committee's recommendations to the various stakeholders, including members of the Government and parliament, the judiciary, local authorities, the media, and above all to organizations representing persons with disabilities.

It is hoped that these bodies will in turn serve to raise awareness of and widely disseminate information about the rights of persons with disabilities, in compliance with article 9 of the Convention. As stated during the consideration of the report, overcoming the lack of awareness in society about disability and about a social paradigm that focuses on individuals as rights holders constitutes a major challenge for the country. The Government is therefore actively working to promote an inclusive culture by carrying out a series of

activities and by designing and implementing various policies. The experience of this participatory dialogue will undoubtedly provide a greater impetus for further progress.

Chile is irrevocably committed to building a society that is caring, participatory, proactive and respectful of the rights of all.

Lastly, Chile thanks the Committee for its observations and for the constructive dialogue that took place during the consideration of the report. The observations received will serve as a guide for future work aimed at achieving the full inclusion of persons with disabilities.
