



# 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 Fifteenth session

### Summary record of the 170th meeting

Held at the Palais Wilson, Geneva, on Wednesday, 14 September 2011, at 10 a.m.

*Chairperson:* Mr. El Jamri  
*later:* Ms. Cubás Medina (Vice-Chairperson)

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*The meeting was called to order at 10.10 a.m.*

**Consideration of reports submitted by States parties under article 73 of the Convention (continued)**

*Initial report of Chile (continued) (CMW/C/CHL/1; CMW/C/CHL/Q/1 and Add.1; HRI/CORE/1/Add.103)*

1. *At the invitation of the Chairperson, the delegation of Chile took places at the Committee table.*

2. **The Chairperson** invited the delegation of Chile to continue answering the questions raised at the previous meeting.

3. **Mr. González** (Chile) said that the regulations on foreigners acquiring real estate had changed in 1993, following the amendment of the relevant law. Since then, it had become easier for foreigners to acquire property in areas, such as border areas, frontier zones and beach plots, that had previously been off-limits to them. Indeed, almost all the applications submitted thus far had been accepted.

4. The programmes implemented by the National Service for Women also benefited equally all women residing in the country, whether they were Chilean or foreign. He referred to the programmes outlined in the Government's written replies to the list of issues (CMW/C/CHL/Q/1/Add.1, paras. 127–130), namely women's centres and foster homes, and provided information on the new programme "Working Women Heads of Households", which used vocational and other training, counselling and assistance to help poor women heads of households to find better jobs. The programme had been implemented in 217 municipalities throughout the country's 15 provinces.

5. Schools were required to provisionally enrol all children of migrants who did not hold the certificates normally required, so that they might receive the same treatment as other students and have access to subsidized schools. Children of poor parents could also benefit from the scholarship system up to university level.

6. Freedom of association was guaranteed by law, and migrant workers, whether or not they were in a regular situation, could be unionized under the same conditions as Chilean workers. Migrant workers in a regular situation were allowed to establish trade unions. It should be noted that the National Union of Workers formally took into account the problems and concerns of migrant workers.

7. **Mr. Quintano** (Chile) said that the fact that a child's parents were migrants in an irregular situation could not under any circumstances constitute grounds for preventing the child from continuing to attend school and obtain a diploma. The Ministry of the Interior had instituted a student visa programme for which all students could apply regardless of their parents' migratory status. In accordance with article 28 of the Convention, migrant workers had the right to receive any type of emergency medical care in any public health facility throughout the country.

8. Foreigners under a deportation order who violated the Aliens Act could be placed in detention. The length of detention was limited to the time necessary to carry out the deportation order, under the supervision of the judicial authorities.

9. If an impoverished foreigner — or Chilean — died in Chile without leaving a will, the Chilean Civil Status and Identification Service settled the estate at no charge. On the other hand, if the deceased had left a will, another public body — the legal aid association of the Ministry of Justice — intervened free of charge. With regard to divorce formalities, persons who did not have sufficient resources to hire a lawyer were also assisted by the legal aid association, which handled the case and covered the costs.

10. There were two types of residency in Chile: temporary residency and permanent residency. Temporary residency was authorized through three types of permits (visas): a student visa, which did not entitle holders to work unless they submitted a request that was then granted on the grounds that they had to work to cover all or part of their expenses; a temporary residency permit, which in some cases was linked to a contract, and which entitled holders to engage in any lawful occupational activity; and lastly, the permit issued to dependants, who were not allowed to engage in any remunerated activity unless they requested to do so and paid a higher tax levied on holders of that type of permit.

11. The best guarantee that the new law on migration, which was currently still a preliminary bill, would protect the principles and rights set forth in the Convention was the willingness of the Chilean Government to comply with all international norms and obligations in that area.

12. **Mr. Tall**, referring to the second sentence in paragraph 94 of the State party's initial report (CMW/C/CHL/1), which stated that border officials could stop foreigners from leaving the country if they were in an irregular situation, asked if the persons concerned were forced to remain in Chile, and what happened if they were unable to regularize their situation or if it was impossible to do so.

13. Turning to paragraph 250 of the report, according to which migrant workers under a deportation order were allowed just 24 hours from the moment they received the order to submit an appeal, he said that he considered such a time limit to be very short and asked for clarification on how such situations unfolded in practice. He wished to know if any provisions had been made for example by providing such assistance as legal aid, to enable persons in that situation to use the time allowed to submit an appeal on time.

14. **Mr. Kariyawasam** asked what specific steps the State party was taking to combat the racial discrimination and xenophobia to which certain categories of migrant workers from neighbouring countries appeared to be subjected, especially migrants of African descent. He wished to know if an action plan had been established in that regard, and if so how that plan was applied.

15. He asked what steps the State party was taking or planned to take to ensure the exercise of the right to family reunification, which was one of the fundamental rights of migrant workers. He also wished to know if the State party would consider withdrawing the two reservations it had made upon ratification of the Convention. Lastly, with regard to articles 76 and 77 of the Convention on recognizing the competence of the Committee to receive and consider communications, he pointed out that thus far two countries had recognized that competence and wished to know if Chile planned to make a declaration to that effect.

16. **Mr. Alba**, referring to the new law on the smuggling of migrants and trafficking in persons mentioned in paragraph 7 of the Government's written replies to the list of issues (CMW/C/CHL/Q/1/Add.1), said he wished to know how the expression "allow access" ("permitir el acceso") in subparagraph (f) should be interpreted. He would also appreciate further information on the opportunities for women domestic workers employed in Chile, of whom there were many, to have their families join them, and on the circular issued by the Ministry of Education in 2005 on access to education for children of migrants, according to which children of immigrants could obtain a student visa to enrol in school but that their situation needed to be regularized before the end of the school year.

17. **Mr. Sevim** said he wished to know if the Chilean consular or diplomatic authorities provided legal assistance to Chilean workers abroad who were under a deportation order, were in dispute with their employer or had problems with social security services. He asked whether migrant workers in Chile benefited from similar services provided by the consular

or diplomatic authorities of their country of origin and whether the Chilean authorities agreed to them receiving such aid.

18. He was surprised that, as he understood it, the minimum age for marriage was 14 years for boys and 12 years for girls. He asked if that might not pose an obstacle to family reunification both for immigrants in Chile and for Chileans abroad.

19. **Ms. Cubías Medina** said that she would like to know whether the bill on migration stipulated that migrants who had committed an offence would no longer be placed in prisons or national civil police stations, and whether, generally speaking, the bill was modelled on the Convention. She would like to have further information on the length of such “detention” and the treatment received by detained migrants.

20. **Mr. Taghizadet** requested clarification on the support services the Government offered to Chileans abroad, particularly with regard to legal assistance, the recognition of diplomas and participation in national elections. In that regard, he wished to know what percentage of Chileans voted from abroad.

21. Noting that Colombians were sometimes denied visas to enter Chile, he asked how widespread that practice was and what measures were taken to avoid that kind of violation of the rights of migrants.

22. **The Chairperson** enquired about measures taken to ensure the right to education for children of migrants and the right to emergency health care for migrants in general.

23. **Mr. Brillantes** said that he wished to know whether the recruiting or placement agencies that found jobs for foreigners in Chile or for Chileans abroad were subject to any specific regulations, whether the percentage they took as a commission was set by the State, whether they needed State authorization to operate, whether penalties were imposed when they violated the rights of migrants, and whether they accepted responsibility if workers found themselves in trouble.

*The meeting was suspended at 11.05 a.m. and resumed at 11.35 a.m.*

24. *Ms. Cubías Medina, Vice-Chairperson, took the chair.*

25. **Mr. González** (Chile) said that the cases of discrimination against persons of African descent were not widespread, even though it was true that Chilean society was not accustomed to seeing foreigners of any kind, owing to its geographic isolation. The Department of Social Organizations, part of the Ministry of the Interior, was working to develop public policies to promote non-discrimination and tolerance towards diversity. Various initiatives undertaken in that area were mentioned in the written replies to paragraph 7 of the list of issues (CMW/C/CHL/Q/1/Add.1). Many activities had been conducted (including workshops, school councils and seminars) with a view to creating an environment that was more welcoming to foreigners. In 2010, an intersectoral body had been established for civil servants, students and representatives of civil society. The purpose of that forum was to seek solutions to discrimination problems. Changing cultural practices would take time, but all the aforementioned activities, which would be conducted on a long-term basis, should result in measures that extended beyond the provisions of the Convention.

26. The minimum age for marriage was 18 years, but minors could marry from the age of 16 with their parents’ consent.

27. The primary function of the consular authorities, which had 160 offices around the world, was to assist Chilean workers living abroad. They dealt with a variety of problems, whether economic, legal or administrative, on a case-by-case basis.

28. The right to education for children of migrants and the right to health care for migrants were guaranteed. Civil servants who did not apply the rules had to assume responsibility for any reported cases of failure to respect those rights, and it was important to understand the situation if it was to be improved.

29. Chile had signed bilateral agreements with some countries on recognizing diplomas. Chileans who found that their diplomas were not recognized should go to their local consular office, which would contact the relevant educational authorities to settle the disagreement. Often when disputes arose, however, the conditions required in the agreement had not been met, and the latter could therefore not be applied. The types of problems raised during the meeting with the Committee did not reflect the general situation of Chileans abroad, which was generally satisfactory.

30. The same could be said for the reported cases of migrants being detained in prisons, which were special cases. As a general rule, only migrants who had committed a crime could be incarcerated in such places of detention.

31. The bill on migration was based on the Convention, and the comments made during the current meeting would encourage lawmakers to review the bill with a view to improving it.

32. There were no regulations specifically applicable to recruiting agencies, which were subject to ordinary law and to the new law on trafficking in persons.

33. **Mr. Quintano** (Chile) outlined the procedure for deporting foreigners from Chile, which comprised several steps, the last of which was detaining the foreigners before returning them to their countries of origin. Throughout the proceedings the foreigners enjoyed the guarantees of due process, namely the right to be heard and the right to defend themselves, and could therefore challenge the arguments on which the deportation decision was based.

34. Deportation orders were normally preceded by the denial or cancellation of a residency permit. At that stage, the foreigners could make use of all the administrative measures provided for by law and file for a judicial review. If they were unable to counter the reasons for their deportation, the order was issued. The persons then received notification of the decision, and the competent authorities informed them that, under the Vienna Convention on Diplomatic Relations, they had the right to ask their consulate for the necessary assistance. The judicial review file was submitted to the higher court, which set a time limit within which the persons could appeal. That limit was 24 hours if the foreigners received the notification in the capital, Santiago, and it could be extended up to 30 days if the notification was received in another town. In addition, there were two administrative remedies available to foreigners: an application for judicial review of the facts by the authority that had made the decision or an application for a hierarchical remedy brought before the higher authority.

35. Furthermore, there were two other types of general judicial remedies available to any foreigners or Chileans who believed that their guarantees and fundamental rights had not been respected: the remedy of *amparo*, which was not subject to any time limit and which the persons concerned invoked themselves or through an intermediary before a court of appeal for the latter to decide on the situation and restore the persons' rights; and the remedy of protection, which guaranteed fundamental rights such as the right to a fair trial, the right not to be incarcerated in a place other than that provided for by law, and the right to freedom of movement. That remedy had to be invoked before one of the country's 15 courts of appeal, in person or through an intermediary, within 15 days. Should the persons concerned not have the means to hire a lawyer to represent them in all those proceedings, they could be granted the services of a court-appointed lawyer. Other bodies also provided legal assistance to migrants.

36. He gave an overview of the different circumstances in which migrants in an irregular situation might wish to leave the country but not be allowed to do so precisely because of that situation, namely, if they had committed an offence or were subject to some penalties. Thus, for example, if tourists exceeded the legal duration of stay in the country, which was 90 days, they needed to request an exit permit from the immigration authorities. Persons who had failed to leave Chile after their temporary residency permit had expired had 30 days from the expiration date of their visa to leave the country if the visa was valid for less than one year, and 60 days if the visa was valid for one year or more. In both cases, the migrants must apply to the competent immigration authorities to obtain an exit permit. If it was the first time that the migrants had been in such a situation, they received simply a written warning. He emphasized the fact that migrants were never placed in detention for failure to respect such time limits.

37. Migrants who were victims or witnesses of trafficking had the right to apply for a residency permit, even if they did not meet the necessary legal requirements. Moreover, while the Aliens Act of 1975 did not expressly establish the principle of family reunification, it allowed close relatives of migrants living in Chile, namely the migrant's parents, children and spouse, to obtain a residency permit. The bill on migration currently being drafted would extend family reunification to grandparents and grandchildren and would establish the principle of family reunification, as had been the case with the law on protecting the rights of refugees.

38. Any children or adolescents enrolled in school were automatically entitled to student visas, which were issued within two or three days of an application being filed and were renewable each year until the studies were completed, regardless of their parents' immigration status. Once they had completed their studies they could request permanent resident status. A chapter of the bill on migration would be specifically devoted to the principles that mattered to migrants, particularly those enshrined in the Convention.

39. **Mr. Sepúlveda** (Chile) said that foreign tourists or workers could not leave the country unless they had completed the formalities to renew their residency permits or to leave Chile within the prescribed time limits. The applicable time limits were always specified whenever a residency permit was issued. When foreigners were placed in detention because they had committed an act punishable by deprivation of liberty, they received a notification in Spanish or their mother tongue informing them of their right to consular assistance. Even if, as often happened, the foreigners did not wish to inform the consular authorities about their situation, the Chilean authorities did so themselves. Foreigners could only be placed in custody if they had committed an offence. When a deportation order was issued, the migrants concerned were kept on police premises until they were put on a flight leaving Chile or taken to the border.

40. **The Chairperson** asked if assistance was provided to Chilean migrant workers living abroad who had been issued with a deportation order or had been sentenced to death.

41. **Mr. González** (Chile) said that the former situation rarely occurred, and that generally the cases concerned Chileans turned back when attempting to enter the Schengen area. It was usually possible to resolve the situation through dialogue between the Chilean consular authorities and the airport authorities concerned if the migrants did not meet the prescribed conditions. Migrant workers in an irregular situation were entitled to the services of a lawyer or counsel offered by the host country or local non-governmental organizations (NGOs) working to protect migrants. The consular authorities could also help the migrants to find a lawyer directly.

42. In Chile, the consular authorities of any country could ask to meet with the Chilean authorities at any time to discuss the situation of one of their nationals. The protection of migrant workers in Chile was therefore the sole responsibility of the consular officer in

charge of their case. Since Chile was a party to the Vienna Convention on Consular Relations, all persons detained in Chile were informed of their right to consular protection from the moment they were detained, in a language they understood.

43. **Mr. Oyarce** (Chile) reiterated Chile's commitment to promote cooperation and dialogue with all the treaty bodies, the autonomy and independence of those bodies and the special procedure mandate holders, protection for victims, the harmonization of national law with the provisions of the Convention, and the strengthening of a culture based on human rights, a welcoming attitude and respect for diversity.

44. **Mr. Alba** praised the quality of the report and the frankness and detail of the replies to the list of issues. He congratulated the Government for having clearly assessed the situation and encouraged it to complete the process of adopting a new law on migration, which was a real priority for the country.

45. **The Chairperson** concluded by welcoming the fruitful dialogue with the delegation and said that Chile must meet the challenge of adapting to its new situation as a destination country. She said she was confident that it would do so, considering that the necessary legislation and administrative structures were already in place and that there was a real political will in that regard.

*The meeting rose at 12.40 p.m.*