



**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 169th meeting

Held at the Palais Wilson, Geneva, on Tuesday, 13 September 2011, at 3 p.m.

Chairperson: Mr. El Jamri

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The meeting was called to order at 3.05 p.m.

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

Initial report of Chile (CMW/C/CHL/1; CMW/C/CHL/Q/1)

1. *At the invitation of the Chairperson, the delegation of Chile took places at the Committee table.*
2. **Mr. Schmidt** (Chile), introducing the initial report of Chile (CMW/C/CHL/1), said that his country attached great value to the Committee's efforts to promote and facilitate the implementation of the principles enshrined in the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families. His Government took the view that migration was linked to human rights and required a human rights focus and had taken steps to address the many challenges raised by migration. Chile's situation with regard to migration had changed greatly in the past two decades, as the country had moved from being a source country to being a destination country. The composition of migration into Chile had also changed: before 1982 most immigration had originated from European, Arab and Asian countries, while today most immigration was from neighbouring countries and from Asia.
3. According to estimates by the Aliens and Migration Department of the Ministry of the Interior, approximately 369,400 foreigners were living in Chile, constituting 2 per cent of the population – a 270 per cent increase since 1992. Peruvians made up 37 per cent of the foreign population, followed by Argentinians (17 per cent) and Bolivians (7 per cent). In total 67.8 per cent of immigrants were from South America. The Government's task was not limited to issuing residence permits; it also had to develop coordinated policy responses. In 1997 and 2007 Chile had conducted regularization exercises: in 2007 approximately 47,000 temporary residence permits had been granted. In developing its immigration policies the Government in general strove for policies that were clearly anti-discriminatory and promoted equal treatment in a democratic society. The Constitution and Chilean legislation prohibited arbitrary discrimination and guaranteed access to public services and to the higher living standards afforded to all residents as the country developed. The Government wished to better coordinate national public policies on equality of opportunity and prevention of discriminatory acts, and draft legislation to establish anti-discrimination measures was currently before Congress. The Office of the Secretary-General of Government had organized events around the country to raise awareness among public servants and immigrants concerning issues such as diversity, non-discrimination, equal treatment and best practices. In conformity with the Convention's principles and provisions, Government initiatives were designed to make migration safer, integrate immigrants into society and provide special treatment to particularly vulnerable groups such as refugees and asylum-seekers.
4. The Government was aware of the Committee's concerns regarding the relevant legal and institutional frameworks, and of the need to improve coordination and to incorporate the use of new technologies for the benefit of users of migration services. Achievements to date included a 60 per cent reduction in waiting times for those services, speedier processing of residence permits and the use of technological tools such as the Internet, call centres and text messaging. New immigration legislation was being drafted that would set out the fundamental guiding principles of migration management and bring Chile's laws into line with the international instruments to which it was a signatory.
5. Today's immigrants were mainly of South American origin, with women in the majority and professionals in the minority, and were motivated above all by the desire to find work in areas such as construction, industry and domestic services. The Committee's

general comment No. 1 was thus particularly relevant for Chile, as it provided guidelines for according special protection to domestic migrant workers. The Government sought to ensure that foreign domestic workers were in no case treated less favourably than Chilean workers and had promulgated Act No. 20.255 to bring the minimum salary of domestic workers to a par with that of other Chilean workers.

6. Chile considered two principles essential for the migration process: moving individuals to legal residence status and providing equal treatment for native and non-native workers. More than half a million temporary and permanent residence permits had been granted between 2002 and 2010. As Chile's report indicated, steps had been taken to give especially vulnerable immigrants such as women and children access to health care and education. The recently enacted Act No. 20.507 categorized human trafficking and illegal trafficking of migrants as crimes.

7. Finally, the Government was making huge efforts to protect the more than 860,000 Chileans living abroad. In that regard it considered relevant the application of the principle of coherent migration management, which involved applying and demanding the same treatment for Chilean expatriates as was given to migrants in Chile. The Inter-Ministerial Committee for Chilean Communities Abroad had been established to advise the various ministries and to coordinate their work on public policies on the inclusion and development of those communities through the promotion of their civic and human rights. The current Government had committed substantial funding to its consulates and to the establishment of a system of consular assistance for Chileans abroad.

8. He concluded by expressing his hope that the Committee's examination of his country's report would give fresh impetus to his Government's ongoing work to implement the provisions of the Convention for the protection of all migrant workers and their families, as well as provide an opportunity to learn from the experiences of representatives of other countries and of civil society.

9. **Mr. Alba** said that he appreciated the report's comprehensiveness. Noting that Chile had made efforts to conduct its migration policy in the context of the Southern Common Market (MERCOSUR), he said that the potential for further work in that area merited exploration. Turning to specific aspects of the report, he requested confirmation that the National Human Rights Institute had indeed been established in 2008 and asked why it had not been accredited by the International Coordinating Committee of National Institutions for the Promotion and Protection of Human Rights. He also wished to know whether Chile had ratified the Ibero-American Social Security Agreement, given that the transferability of social security benefits was an issue for migrant workers. Regarding statistics on migrant workers in Chile, though some data appeared in the report, the Committee needed more disaggregated statistical information to be able to determine if the State party was fulfilling its responsibilities with regard to migrant workers – both by implementing the necessary measures and by monitoring and follow-up.

10. Many actors dealing with migration issues were concerned that the requirements for educating children of migrants were not being met. For example, sometimes children who attended school did not receive a school-leaving certificate. Why was that? The State party might wish to consider adopting affirmative action policies to ensure that legal requirements were enforced. Also, children of migrant workers in transit did not have access to Chilean nationality and could thus find themselves in difficulty once they turned 21. Article 29 of the Convention specified that each child of a migrant worker should have the right to a nationality.

11. **Mr. Tall** commended the State party on its report, saying that Chile had made noteworthy progress in implementing the Convention's provisions. Citing the importance of Presidential Instruction No. 9 of 2008 for the development and implementation of

Chile's migration policy, he requested that the delegation provide a copy to the Committee so that the latter could assess its content and scope.

12. He noted that, according to Chile's Labour Code, any form of discrimination was contrary to the principles of labour law. Thus the principle of equality of treatment of immigrants was enshrined in domestic law. That notwithstanding, paragraph 70 of the report stated that in certain cases the law might require that candidates for certain posts hold Chilean nationality, and paragraph 71 stated that in companies with more than 25 employees, at least 85 per cent of those employees should be Chilean nationals. He requested an explanation of the apparent contradiction between those provisions and the principle of equality of treatment.

13. Regarding the statement in paragraph 94 of the report that foreigners whose residence permits had expired and who were found to be engaged in activities not authorized by their residence permits could be stopped by border officials from leaving the country, he wished to know what happened to foreigners who could not regularize their situation.

14. Paragraph 98 of the report stated that the Code of Military Justice provided for the punishment of members of the Armed Forces and the police who used unnecessary violence in performing their duties. Could the delegation provide examples of case law, including ongoing cases, relating to that area?

15. While paragraph 112 of the report stated that there were no restrictions on migrant workers' right to join trade unions, according to paragraph 113 there were no specific statistics on trade union membership among migrant workers. What measures had the Government taken to promote the establishment of trade unions and similar associations by migrant workers?

16. Paragraph 119 of the report stated that, in certain cases, nationals of neighbouring countries were prohibited from acquiring or owning real estate located wholly or partly in Chile's border areas. He would appreciate an explanation of the need for that measure, which constituted interference with the fundamental right of property ownership.

17. According to paragraph 241 of the report, Chile's immigration laws did not contain specific provisions governing the migration status of a family accompanying a migrant worker in the event of the worker's death or divorce. Did the Government have any plans to rectify that situation?

18. According to paragraph 250 of the report, a migrant worker, after being notified of a deportation order issued by the Ministry of the Interior, had only 24 hours to submit an appeal in order for the order to be suspended. In his view, that provision contradicted the provisions in the Convention concerning a just and fair trial.

19. Paragraph 253 of the report stated, regarding particular categories of migrant workers and members of their families, that no such system of categorization existed in Chile. How could that be true given that Chile shared borders with several other countries and had found it necessary to adopt a decree prohibiting nationals of other countries from owning real estate in border zones?

20. He requested information about measures taken by the State party to safeguard the right of migrant workers and their families in Chile to consular assistance in cases of detention or deportation. Also, how were migrant workers informed of available consular services and of their right to access them?

21. He also requested information on the means by which Chilean nationals who wished to emigrate were informed of their rights under the Convention, and of their rights and obligations in the State where they would be employed; on any measures adopted by Chile

to safeguard the right of Chileans working abroad and their families to exercise their right to vote; on any measures to facilitate the sending of remittances by Chilean workers living abroad, including fiscal measures; and on any measures to eliminate the illegal movement of migrant workers and members of their families, particularly in the context of human trafficking and with regard to children. He wished to know whether migrant workers who were victims of trafficking enjoyed any particular protection under the law.

22. **Ms. Cubias Medina** asked what steps were being taken to ensure that the immigration legislation currently under review in Congress incorporated the principles and rights enshrined in the Convention. She requested information regarding the legal and administrative application of provisions of the Convention. For example, did immigration authorities, in performing their work, set aside those provisions of existing laws that were contrary to the Convention? She also requested information on the process of detention of immigrants in an irregular situation. Were they sent to penitentiaries or handed over to law enforcement officials? Noting that the Convention strictly prohibited placing migrant workers in penitentiaries, she asked what efforts had been made to comply with the Convention in the area of detention.

23. **Mr. Kariyawasam** said that, in view of the continuing influx of migrants that economic expansion would inevitably attract to Chile, he was concerned that the bilateral and international agreements adopted to facilitate conditions for migrant workers from specific categories, countries and regions could result in preferential treatment for some and inferior treatment for others. For that reason, he would appreciate information about steps taken to ensure that all provisions of the Convention were applied equally to all migrant workers and members of their families, without discrimination.

24. Given that Chileans working abroad still outnumbered migrants working in Chile by a ratio of 3 to 1 and that the flow of returnees was likely to continue apace with economic development, information about any special institutions or programmes established to help manage migrants' return and facilitate their reintegration would also be useful. He would also like to know whether Chilean citizens had the right to dual nationality and, if so, whether that right applied equally to all persons or was conditional upon circumstances.

25. **Ms. Miller-Stennett** said that her principal concern was that children of migrant workers might be denied Chilean nationality because of their parents' irregular status and asked what the Chilean authorities were doing to remedy that situation. Given the predominance of women in Chile's migrant population, she would also like to know whether immigration policies incorporated a gender perspective. For example, was special assistance available for migrant women who came to Chile with children?

26. It was commendable that regular migrants were entitled to the same unemployment benefits as Chilean citizens but it was important that migrant workers who found themselves in an irregular situation could access equivalent benefits. The fact that the residence permits granted to migrant workers' dependents did not authorize them to engage in remunerated activities and that migrant workers whose visas had expired faced restrictions when seeking new employment at the end of their contracts were additional sources of concern and she urged the State party to address those anomalies.

27. **Mr. Sevim** said that he had been concerned to read reports of forced labour and human trafficking in Chile. He asked the delegation to provide information about the scale of the problem and the sectors affected. He was particularly interested in the State party's reaction and comments in relation to a report published by the Office of the United Nations High Commissioner for Refugees in 2010 which stated that Chilean girls were trafficked to Argentina, Peru, Bolivia and Spain for economic and sexual exploitation and that girls from Argentina, Peru, Colombia, Ecuador and China were forced into domestic servitude and prostitution in Chile.

The meeting was suspended at 4.20 p.m. and resumed at 4.50 p.m.

28. **Mr. Schmidt** (Chile) said that the National Human Rights Institute had not yet been accredited because it had been created only recently. However, the accreditation process was under way and would be concluded in the near future.

29. Legislative experts in Chile were working to draft a specific law on migration that should resolve most of the shortcomings and deficiencies identified during consideration of the periodic report, including the excessively short time window available to migrants wishing to appeal against deportation.

30. Comprehensive support, protection and information was available to all Chileans living overseas through an extensive consular network which, after recent institutional changes that had transferred responsibility for most of the commercial and cultural activities formerly overseen by consular staff to the economic section of the Ministry of Foreign Affairs and the embassy network, respectively, was dedicated almost exclusively to that task. The consular network provided detailed guidance to Chilean exiles and émigrés requiring legal assistance and ran local campaigns to raise awareness of their rights and inform them of the benefits and services to which they were entitled.

31. A comprehensive package of support measures designed to encourage the return of exiled Chileans and facilitate their reintegration had been introduced following the restoration of democracy in 1990, within the framework of the country's broader reparation and reconciliation efforts. The package included exemption from customs duty, housing assistance and medical support. However, it was recognized that those measures had become dated and their application infrequent; he hoped to be able to provide the Committee with information about future plans and provisions at the next meeting.

32. **Mr. Quintano** (Chile) said that the Constitution offered the possibility of naturalization to all persons aged 21 or over who had lived in Chile for at least five years and had not been convicted of a criminal offence carrying a sentence of at least three years' imprisonment. Thus any migrant could apply for citizenship after five years' uninterrupted residence. For migrant children born in their country of origin, the age requirement was lowered to 18 provided that their parents also became Chilean nationals. Migrant children born in Chile were in principle Chilean nationals irrespective of parentage. Exceptions to that rule included the children of foreign diplomats and those born to parents who had entered Chile on tourist visas. Those children could, however, opt for Chilean nationality upon reaching the age of 21.

33. In medical emergencies, all foreigners were guaranteed free care and assistance. To cover non-urgent care requirements, regular migrants who were working were encouraged to join their employer's health insurance scheme. Irregular migrants afflicted with chronic conditions such as HIV/AIDS, cancer and mental health disorders were guaranteed free non-urgent care under a special arrangement whereby the Ministry of the Interior granted temporary residence permits, valid for an extendable period of one year, on humanitarian grounds. Similar temporary residence arrangements were available to migrant women in an irregular situation who fell victim to domestic violence or became pregnant, ensuring that all women in Chile had access to adequate care and support without discrimination.

34. All children and adolescents in Chile were entitled to enrol in any State-sector educational institution irrespective of their parents' status and were granted extendable one-year student visas until they finished their studies.

35. Following constitutional reforms in September 2005, persons wishing to become naturalized Chileans were no longer required to relinquish their former nationality, or any other nationality to which they might be entitled, but were thenceforth permitted to hold

dual nationality. All naturalized Chileans were entitled to stand for election to any public office.

36. A new anti-trafficking law effective as of April 2010 provided protection against prostitution and forced labour as well as support for the victims of trafficking. Under the new legislation, the Ministry of the Interior was under an obligation to grant residence permits to all migrant victims of such offences. The permits were valid for at least six months and could be extended for as long as the investigations or legal proceedings required or as long as the victim required assistance. That assistance, which might be psychological, medical or practical, was provided through a specialized witness and victim support unit within the Public Prosecution Service.

37. With regard to the Committee's concerns that the brief 24-hour period available to migrants wishing to lodge an appeal against deportation might be incompatible with the Convention's guarantees of due process, he explained that the 24-hour deadline applied only to appeals against expulsions ordered by the Ministry of Interior that were submitted to the Supreme Court under a special fast track procedure for cases involving recent migrants who were based in Santiago. For appellants outside the capital, the deadline was extended by a few days. Alternatively, a third party could file the appeal on their behalf.

38. In any case, the fast track process was not the only available remedy. The alternatives would be clearly stated in the expulsion order and would include administrative appeals, standard judicial appeals for which the filing deadline was 30 days and applications for protection to any appeal court in the country. Ample judicial protection was therefore available for migrants facing deportation, including legal aid for those of limited financial means.

39. **Mr. Sepúlveda** (Chile) said that the police authorities were careful to distinguish between non-nationals suspected or guilty of immigration irregularities and non-nationals suspected or guilty of criminal offences. Foreigners in the former category were never detained with convicted criminals. Those in the latter category were treated in the same way as Chileans and benefited from all relevant due process safeguards, including the right to be informed of available remedies and the right to consular assistance.

40. The police were permitted to confiscate the identity documents of foreigners under investigation for immigration irregularities and to replace them with an Alien Offender Card until such time as the authorities determined which, if any, of the administrative penalties provided for in migration law should be applied, at which point the documents were returned. Foreigners could be prevented from exiting Chile in those cases where, upon presenting themselves at the border, they were found not to have complied with an administrative penalty order. There were no impediments to exit once the requirements of such orders were satisfied.

41. **Mr. Schmidt** (Chile) said that it was important to add that the new constitutional provisions allowing dual nationality applied equally to Chileans living overseas. Thus, since 2005, exiles or émigrés wishing to acquire the nationality of their country of residence were no longer required to relinquish their Chilean citizenship but could thenceforth hold two or more nationalities.

42. The purpose of programmes facilitating migration between MERCOSUR countries was neither to discriminate against non-MERCOSUR migrants nor to prevent or discourage immigration from non-MERCOSUR countries. Their aim was to promote regional integration, encourage mobility and exchange of labour and allow MERCOSUR nationals to take advantage of opportunities in neighbouring countries without risking the loss of regular status.

43. The question of whether or not Chileans living abroad should have the right to vote had been debated in Parliament at length. However, negotiations had stalled and there was nothing on the table at that time. The question was a complex one since voting was obligatory in Chile and debate on whether to grant the franchise to Chileans abroad was inextricably linked to the ongoing debate as to whether voting should be made voluntary.

44. Lastly, he was pleased to be able to inform the Committee that Chile had recently ratified the International Labour Organization (ILO) Convention concerning Minimum Standards of Social Security (No. 102).

45. **Ms. Cubias Medina** said that she would like more information about Instruction No. 07/1008 concerning measures adopted to guarantee access to education for migrant children, issued by the Ministry of Education in 2005. She asked the delegation to provide a copy of the Instruction, an update on its application, and any statistics on migrant children in the education system that might be available.

46. **Mr. Alba** said that he would like more detail on the four categories of administrative penalty for immigration irregularities that migrant workers might face. In particular, he would appreciate statistics showing the frequency with which each type of penalty was applied and the severity of the fines handed down. Although admittedly dependent on the amount of the fine, deportation appeared a harsh punishment for failure to pay, especially when transgressors were given only two weeks to settle the amount due. For that reason he suggested that the State party might consider reviewing the circumstances that served as grounds for expulsion.

47. **The Chairperson**, speaking as a member of the Committee, said that he would appreciate more detail on the National Human Rights Institute's role in migration issues. He would also like to know whether an ombudsman's system had been established in Chile and, if so, how it addressed migration issues. Information about the administrative and judicial remedies available to Chileans abroad and how their grievances in relation to family, property, tax and other matters were handled from within Chile would also be useful.

48. **Mr. Schmidt** said that he would ensure that a copy of Instruction No. 07/1008 was available at the next meeting.

49. The National Human Rights Institute had a very broad mandate and was authorized to intervene in all human rights issues without legal impediment.

50. **Mr. Quintano** said that the administrative penalties which migrant workers faced for immigration irregularities ranged from a simple written warning to expulsion. Warnings were issued for offences that included engaging in remunerated activities without the correct authorization and could be issued once only. Second offences necessarily carried a minimum fine equivalent to €30, rising in proportion to the severity of the offence. For companies, the fine could rise as high as €2,800 for every irregular migrant employed. Unfortunately, no payment exemptions were permitted by law, even though it was recognized that, for some impoverished migrants, settling such fines was a near impossibility. However, the two-week payment window available to migrants before deportation proceedings were initiated, while admittedly brief, could be extended by up to six months in such cases. Deportation orders were issued only if, at the end of that extended period, migrants had failed in their efforts to find work and regularize their situation and therefore remained unable to pay. Furthermore, conscious that in certain cases it would make sense to issue a second written warning rather than a fine, the authorities were considering whether legislative amendments might be made to allow for that possibility.

51. Lastly, with regard to the concerns expressed in relation to the lack of a migrant categorization system, he confirmed that current Chilean legislation did not categorize

migrant workers by function and contained no specific definition as to what constituted a cross-border worker, seasonal worker or temporary worker, for example. A form of categorization based on employment, migrant and residence status did, however, exist. Under that system, workers were grouped into one of 11 broad categories based on needs and circumstances; for example, a cross-border worker who worked for one employer only would be classified differently to a cross-border worker who was self-employed or owned a business, and would be granted a different type of visa. Nonetheless, legislative experts were considering the possibility of adopting a form of worker categorization that reflected the distinctions and definitions contained in the Convention and other international treaties.

The meeting rose at 5.45 p.m.