



International Covenant on Civil and Political Rights

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Human Rights Committee

Concluding observations on the sixth periodic report of Chile*

1. The Committee considered the sixth periodic report of Chile (CCPR/C/CHL/6) at its 3068th and 3069th meetings (CCPR/C/SR.3068 and 3069), held on 7 and 8 July 2014. At its 3090th meeting (CCPR/C/SR.3090), held on 22 July 2014, it adopted the following concluding observations.

A. Introduction

2. The Committee welcomes the submission of the sixth periodic report of Chile and the information presented therein. It expresses appreciation for the constructive dialogue with the State party's high-level delegation on the measures taken by the State party during the reporting period to implement the provisions of the Covenant. The Committee is grateful to the State party for its written replies (CCPR/C/CHL/Q/6/Add.1) to the list of issues (CCPR/C/CHL/Q/6) which were supplemented by the oral responses provided by the delegation.

B. Positive aspects

3. The Committee welcomes the following legislative and other measures adopted by the State party:

- (a) The adoption of Act No. 20609 (2012) on non-discrimination;
- (b) The adoption of Act No. 20507 (2011) on the smuggling of migrants and trafficking in persons; and
- (c) The establishment of the National Human Rights Institute in 2009, pursuant to Act No. 20405.

4. The Committee welcomes the State party's ratification of, or accession to, the following international human rights instruments:

- (a) The Second Optional Protocol to the International Covenant on Civil and Political Rights, aiming at the abolition of the death penalty, on 26 September 2008;

* Adopted by the Committee at its 111th session (7–25 July 2014).



- (b) The International Convention for the Protection of All Persons from Enforced Disappearance, on 8 December 2009;
- (c) The Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, on 12 December 2008;
- (d) The International Labour Organization (ILO) Indigenous and Tribal Peoples Convention, 1989 (No. 169), on 15 September 2008; and
- (e) The Convention on the Rights of Persons with Disabilities and the Optional Protocol thereto, on 29 July 2008.

C. Principal matters of concern and recommendations

Reservations

5. The Committee is concerned by the fact that the State party maintains the declarations that it made upon ratifying both optional protocols to the Covenant (art. 2).

The State party should consider the possibility of withdrawing its declarations, especially the one regarding the Optional Protocol to the Covenant on an individual communications mechanism.

National Human Rights Institute

6. The Committee welcomes the establishment of the National Human Rights Institute in 2009 and the fact that it has been awarded “A” status by the International Coordinating Committee of National Human Rights Institutions. However, the Committee is concerned by the fact that the Institute does not have sufficient resources to carry out its mandate fully and that its activities do not cover the entire country (art. 2).

The State party should intensify its efforts to ensure that the National Human Rights Institute receives the resources that it needs to fulfil its mandate effectively in all parts of the country.

Counter-terrorism

7. The Committee remains concerned (CCPR/C/CHL/CO/5, para. 7) about the definition of terrorism in the Counter-Terrorism Act (Act No. 18314), which is excessively broad and could be applied arbitrarily. For example, although the delegation stated that the Act is not used to prosecute members of the Mapuche community, the Committee is concerned by reports that it has been used to investigate and, in some cases, to prosecute members of Mapuche communities. The Committee repeats that the procedural guarantees set out in the Covenant have been restricted by the application of this Act (arts. 2, 14, 26 and 27).

The State party should amend the Counter-Terrorism Act and adopt a clear and precise definition of terrorism offences in order to ensure that the counter-terrorism efforts of law enforcement personnel do not target specific individuals on account of their ethnic origin or any other social or cultural factors. It should, furthermore, ensure that the procedural guarantees contained in article 14 of the Covenant are observed. The Committee urges the State party to refrain from applying the Counter-Terrorism Act against the Mapuches.

Investigations of past human rights violations

8. The Committee welcomes the progress made regarding investigations, prosecutions and the imposition of penalties for serious human rights violations committed in the past.

However, the Committee is concerned by the fact that, pursuant to article 103 of the Criminal Code, the partial statute of limitations rule (*prescripción gradual or media prescripción*) is being applied to serious human rights violations committed under the dictatorship and the applicable penalties are thereby being reduced or softened. The Committee is also concerned by the fact that the documents, testimony and background information submitted to the Truth and Reconciliation Commission and the National Commission on Political Prisoners and Torture are being treated as confidential (arts. 2 and 14).

The Committee urges the State party to repeal or amend article 103 of the Criminal Code to bring it fully into line with the provisions of the Covenant. The State party should continue its concerted efforts to investigate all human rights violations proactively and to ensure that the perpetrators are identified, prosecuted and given appropriate penalties that are in proportion to the gravity of their offences. It should also make the documents of the Truth and Reconciliation Commission and the National Commission on Political Prisoners and Torture public.

Amnesty

9. The Committee welcomes the explanation provided by the State party to the effect that the Amnesty Decree-Law (Decree-Law No. 2191 of 1978) is no longer applied by the courts in Chile. However, the Committee reiterates its concern (CCPR/C/CHL/CO/5, para. 5) about the fact that the Decree-Law remains in force, which leaves open the possibility that it might be applied (arts. 2, 6 and 7 of the Covenant).

The State should repeal the Amnesty Decree-Law and ensure that it continues not to be applied to past human rights violations.

Indigenous peoples

10. Although the Committee acknowledges the measures adopted by the State party, it remains concerned that indigenous peoples are not consulted when decisions regarding issues related to their rights are taken and that an effective mechanism for ensuring consultations with, and the participation of, indigenous peoples, in keeping with international standards, has yet to be established. The Committee is, furthermore, concerned by the delay in approving the constitutional amendment that would allow for the recognition of indigenous peoples and in adopting the bill on the establishment of a council of indigenous peoples, notwithstanding the issues raised in its previous concluding observations (CCPR/C/CHL/CO/5, para. 19). The Committee is also concerned that the land purchase mechanism for indigenous communities is still not sufficiently robust to guarantee indigenous peoples' right to their ancestral lands (arts. 1 and 27).

The Committee recommends that the State party should:

- (a) **Speed up the process for amending the Constitution and include recognition of indigenous peoples;**
- (b) **Do everything in its power to establish a council of indigenous peoples in consultation with indigenous communities;**
- (c) **Establish an effective consultation mechanism, in line with the principles set forth in article 27 of the Covenant, with a view to obtaining indigenous communities' free, prior and informed consent to decisions about projects that affect their rights and in particular, ensure that their free, prior and informed consent is obtained before any measures that might jeopardize, or substantially hinder, their culturally significant economic activities are taken;**

(d) **Intensify its efforts to guarantee the full enjoyment of the right of indigenous peoples to their ancestral lands.**

Non-discrimination and gender equality

11. The Committee welcomes the adoption of the new law on non-discrimination. It is, however, concerned that the law does not include the principle of gender equality, as prescribed in article 3 of the Covenant. The Committee also notes with concern the prevalence of stereotypes, discrimination and marginalization, directed especially against women (arts. 2, 3 and 26).

The State party should adopt laws that explicitly enshrine the principle of gender equality in keeping with article 3 of the Covenant. It should also establish an effective reparation mechanism for victims of discrimination.

12. While it notes the delegation's acknowledgement of the need to amend the laws that discriminate against women in matters of marital property management, the Committee finds it regrettable that the marital community property regime is still in effect (arts. 3 and 26).

The State party should expedite the adoption of a law to abolish the marital community property regime and ensure that the new marital property regime guarantees equal rights for women and men.

13. Its previous recommendation (CCPR/C/CHL/CO/5, para. 18) notwithstanding, the Committee remains concerned at the low representation of women in the public and private sectors, especially in decision-making positions. Even though Act No. 20348, which establishes equal pay for men and women, has been adopted, the Committee finds it regrettable that wide pay gaps persist and notes with concern the limited enforcement and public awareness of the Act (arts. 2, 3 and 26).

The State party should step up its efforts to increase the participation of women in the public and private sectors and, if necessary, take temporary special measures to that end. The State party should also do more to eliminate gender stereotypes and carry out awareness-raising campaigns to that end, especially in the labour market. The State party should urgently adopt tangible measures to enforce its legislation and to ensure that the latter guarantees equal pay for work of equal value.

Discrimination against lesbian, gay, bisexual and transgender (LGBT) persons

14. Despite the issues raised in its previous concluding observations (CCPR/C/CHL/CO/5, para. 16), the Committee is still concerned by reports of discrimination and violence against LGBT persons. Although the State party has declared its intention of repealing article 373 of the Criminal Code, the Committee notes with concern that the article is still used to stop and harass persons because of their sexual orientation or gender identity (arts. 2, 3, 6, 7 and 26).

The State party should step up its efforts to provide effective protection against violence and discrimination committed on the grounds of people's sexual orientation or gender identity, especially in the education system, and launch a public awareness campaign to combat social prejudices. The State party should repeal article 373 of the Criminal Code and ensure that all acts of violence that are committed because of the sexual orientation or gender identity of the victim are investigated, prosecuted and punished.

Abortion

15. The Committee, recalling its previous concluding observations (CCPR/C/CHL/CO/5, para. 8), expresses its concern at the continued, absolute criminalization of abortion, which forces pregnant women to seek backstreet abortions that endanger their lives and their health. While the Committee takes note of the information provided by the delegation concerning a bill under consideration that makes provision for exceptions to the absolute prohibition of abortion, it notes with concern that the bill does not provide for an exception to be made in cases where a pregnancy is the result of incest. The Committee is also concerned about the high rates of backstreet abortion, which is associated with more maternal deaths, and about teenage pregnancies (arts. 3 and 6).

The State party should establish exceptions to the general prohibition of abortion to take account of therapeutic abortion and cases where a pregnancy is the result of rape or incest. The State party should ensure that all women and adolescents have access to reproductive health services in all parts of the country. The State party should, furthermore, increase the number of sexual and reproductive health education and awareness-raising programmes, particularly for adolescents, and make sure that they are implemented.

Violence against women

16. The Committee welcomes the measures adopted to combat violence against women and the information provided by the delegation concerning a bill on the elimination of violence against women that will cover all forms and manifestations of such violence. However, the Committee is concerned at the persistence of this phenomenon. The Committee expresses concern at the inclusion of the offence of “habitual ill-treatment” in the Domestic Violence Act (Act No. 20066), as it creates a procedural obstacle for victims, who cannot file a complaint directly with a prosecuting body, particularly in cases of psychological violence. The Committee is also concerned at the shortcomings in the arrangements for providing support to victims of violence and at the limited number of prosecutors and legal personnel who specialize in cases of domestic violence (arts. 3, 6, 7, 14 and 26).

The State party should expedite the adoption of the new law on the elimination of violence against women in order to meet international standards and ensure that it covers all forms and manifestations of violence and excludes the criterion of “habitual ill-treatment”. The State party should, furthermore, strengthen and institutionalize the delivery of gender awareness training, which should be made mandatory for all legal and law enforcement personnel in order to equip them to respond effectively to all forms of violence against women. The State should increase the number of prosecutors and legal personnel who specialize in cases of domestic violence.

Prohibition of torture and cruel, inhuman or degrading treatment

17. The Committee is concerned at the fact that the statute of limitations for the crime of torture is 10 years (art. 7).

The State party should extend the statute of limitations for torture offences, bearing in mind the grave nature of these offences, and thus ensure that all acts of torture can be investigated properly and the perpetrators can be prosecuted and punished.

18. While noting the State party’s intention to designate the National Human Rights Institute as the national preventive mechanism for the purposes of the Optional Protocol to the Convention against Torture, the Committee is concerned at the fact that the mechanism has yet to be established (art. 7).

The State party should expedite the procedures for the adoption of the legal measures required for the establishment of an independent national preventive mechanism.

19. The Committee notes with concern that allegations are still being made about torture and ill-treatment by State officials. The Committee is particularly concerned by cases involving the excessive use of force during public protests and the infliction of torture during the transfer and detention of persons, as well as by allegations about the police committing acts of sexual violence against girls and women during student protests (art. 7).

The State party should redouble its efforts to prevent and eliminate torture and ill-treatment by, inter alia, strengthening human rights training for members of the security forces and revising operating procedures for law enforcement personnel in the light of the relevant international standards. The State party should, furthermore, ensure that all allegations of torture or ill-treatment are investigated promptly, thoroughly and independently, that perpetrators are brought to justice and that victims receive appropriate reparation, including health and rehabilitation services.

Trafficking in persons

20. While it notes the measures adopted by the State party to combat trafficking in persons (including internal trafficking), forced labour and domestic servitude, the Committee is concerned at the persistence of such practices, particularly when the victims are women and girls. The Committee is concerned at the ineffectiveness of the measures taken to combat this crime (art. 8).

The State party should step up its efforts to put a stop to trafficking in persons, including internal trafficking in persons. The State party should ensure that the existing legal framework is used effectively at all levels of the State to combat trafficking in and smuggling of persons. It should continue to train police and immigration officers and should provide protection, rehabilitation and reparation to victims. The State should, furthermore, ensure that allegations concerning these practices are investigated and that the perpetrators are brought to justice and given appropriate penalties.

Conditions of detention

21. The Committee takes note of the efforts made by the State party but is concerned at the persistence of high levels of overcrowding, poor conditions in detention facilities and the lack of defined objectives to resolve these issues. The Committee is also concerned by the high rate of incarceration, including in young offender institutions. While the State party has indicated that the average duration of solitary confinement has been reduced, the Committee reiterates its concern (CCPR/C/CHL/CO/5, para. 11) at the persistent use of this measure (arts. 7 and 10).

The State party should adopt effective measures to improve material conditions in prisons, reduce the current levels of overcrowding and supply the basic needs of all persons deprived of their liberty. In particular, the State party should bring young offender institutions up to international standards. The use of solitary confinement should be reviewed, and the measure should only be used in exceptional circumstances and for strictly limited periods.

Military tribunals

22. The Committee welcomes the enactment of Act No. 20477, by which limits are set on the competence of military tribunals. However, the Committee does not consider this step to be fully in keeping with its previous recommendation (CCPR/C/CHL/CO/5, para. 12). The Committee takes note of the decision handed down by the Constitutional Court but

is concerned by the fact that military tribunals continue to have competence for the adjudication of offences committed by military personnel, including Carabineros (police), against civilians (arts. 2, 6, 7 and 14).

In the light of the Committee's previous recommendation, the State party should amend the current rules of military criminal law so as to exclude human rights violations from military jurisdiction. Military tribunals should, furthermore, be prohibited from exercising jurisdiction over civilians.

Immigration

23. The Committee welcomes the new bill on migration but is concerned that it does not fully safeguard the rights set forth in the Covenant. The Committee finds it particularly regrettable that the extension of the time limit for lodging appeals against expulsion decisions (48 hours) is extremely short. The Committee is concerned at the fact that the current Aliens Act allows for the confiscation of migrant workers' identity documents if they violate migration laws (arts. 12, 13 and 14 of the Covenant).

The State party should expedite the procedures for securing approval of the migration bill and ensure that it fully safeguards the rights set forth in the Covenant. The State party should ensure that persons subject to deportation proceedings benefit from an effective right to be heard and to have proper representation and sufficient time to lodge appeals against expulsion decisions. The Committee urges the State party to do away with the practice of confiscating migrant workers' identity documents and to bring its legislation into line with article 12 of the Covenant, bearing in mind the Committee's general comment No. 27 of 1999 on freedom of movement.

Conscientious objection to military service

24. Even though the State party has indicated that the legislation in force establishes voluntary recruitment as the primary method for filling gaps in the ranks and that conscription is still used, but only as a supplementary measure, the Committee remains concerned, as it previously stated (CCPR/C/CHL/CO/5, para. 13), that the legislation in force does not recognize the right of conscientious objection to military service (art. 18).

The State party should expedite the procedures for the adoption of legislation that recognizes the right of conscientious objection to military service.

25. The State party should widely disseminate the Covenant, the optional protocols to the Covenant, its sixth periodic report, its written replies to the list of issues prepared by the Committee and the present concluding observations with a view to raising the awareness of the judicial, legislative and administrative authorities, civil society and non-governmental organizations that operate in the country, as well as the general public. The Committee requests the State party to engage in broad consultations with civil society and non-governmental organizations when it comes to preparing its seventh periodic report.

26. In accordance with rule 71, paragraph 5, of the Committee's rules of procedure, within one year the State party should provide information on its implementation of the recommendations made by the Committee in paragraphs 7, 15 and 19 above.

27. The Committee requests the State party to provide specific, up-to-date information in its next periodic report, which is due to be submitted on 31 July 2019, on all the Committee's recommendations and on the Covenant as a whole.