



International Convention on the Elimination of All Forms of Racial Discrimination

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Committee on the Elimination of Racial Discrimination

Seventy-fifth session

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Consideration of reports submitted by States parties under article 9 of the Convention

Concluding observations of the Committee on the Elimination of Racial Discrimination

Chile

1. The Committee considered the fifteenth to eighteenth periodic reports of Chile, submitted as one document (CERD/C/CHL/15-18), at its 1950th and 1951st meetings (CERD/C/SR.1950 and 1951), held on 13 and 14 August 2009. At its 1965th meeting (CERD/C/SR.1965), held on 25 August 2009, the Committee adopted the following concluding observations.

A. Introduction

2. The Committee welcomes the periodic report submitted by Chile. It appreciates the opportunity to renew its dialogue with the State party and expresses its gratitude for the open and frank dialogue with the high-level delegation, which comprised numerous experts in areas related to the Convention, and for the extensive and detailed oral and written responses to both the list of issues and the questions posed orally by Committee members.

3. Noting the delay of over seven years in the submission of the report, the Committee invites the State party to respect the timetable set by the Committee for the submission of future reports.

B. Positive aspects

4. The Committee welcomes the State party's ratification in 2008 of the International Labour Organization (ILO) Convention concerning Indigenous and Tribal Peoples in

* Reissued for technical reasons.

Independent Countries (No. 169) and, in 2005, of the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families.

5. The Committee welcomes the establishment of various institutions to promote and coordinate public policies on indigenous matters, including the National Indigenous Development Corporation (CONADI), the Ministerial Council for Indigenous Affairs and the indigenous units in ministries and regional administrations.

6. The Committee notes with interest the action plan entitled “Re-Conocer: a social pact for multiculturalism”, which sets out the main thrust of the State party’s policy on indigenous matters for the coming years.

7. The Committee notes with satisfaction the measures taken to integrate the traditional medicine of indigenous peoples in the State party’s health-care system.

8. The Committee notes with interest the actions aimed at the integration of migrants in the State party, such as the regularization of the migratory status of pregnant migrant women and access for migrant children to the public health-care and education systems.

9. The Committee notes with satisfaction the efforts made by the State party, particularly since 2003, to reduce the gap in average income and socio-economic conditions between indigenous and non-indigenous people.

10. The Committee is pleased to learn that the Convention has been invoked before the domestic courts in the State party, and is especially interested to note that the Convention was expressly cited as one of the legal grounds for the judgement of the court of first instance in case No. RUC 0100037260 (CS No. 4-261).

11. The Committee recognizes the valuable contributions made by Chile to the World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance. It takes particular note of the fact that Chile organized the Regional Preparatory Conference in Santiago in 2000, and of its active involvement in follow-up to the commitments made at the World Conference against Racism, including in areas relating to Afro-descendants.

C. Concerns and recommendations

12. While taking note of the legislative proposals in the area of racial discrimination, the Committee notes with concern that there is still no clear definition of racial discrimination in Chilean law (art. 1).

The Committee recommends that the State party should step up its efforts to adopt the bill on racial discrimination submitted to parliament in 2005, and that it should ensure that a definition of racial discrimination that includes the elements set forth in article 1 of the Convention is incorporated into the Chilean legal system.

13. The Committee notes with interest the bill on the recognition of the Afro-descendant ethnic group in Chile.

The Committee recommends that the State party should adopt the bill in question as soon as possible and in accordance with the relevant provisions of the Convention.

14. While noting the measures taken by the State party to establish a national human rights institution, the Committee notes that progress has been slow in the legislative process leading to its approval.

The Committee recommends that the State party should make further efforts to expedite the establishment of a national human rights institution in accordance with the principles relating to the status of national institutions for the promotion and

protection of human rights (the Paris Principles), as contained in the annex to General Assembly resolution 48/134.

15. The Committee notes with concern that the Counter-Terrorism Act (No. 18.314) has been mainly applied to members of the Mapuche people for acts that took place in the context of social demands relating to the defence of their rights to their ancestral lands (art. 2).

The Committee recommends that the State party should: (a) reform the Counter-Terrorism Act (No. 18.314) to ensure that it is applied only to terrorist offences that deserve to be treated as such; (b) ensure that the Counter-Terrorism Act is not applied to members of the Mapuche community for acts of protest or social demands; and (c) put into practice the recommendations made in this regard by the Human Rights Committee in 2007 and by the special rapporteurs on the situation of human rights and fundamental freedoms of indigenous people, following their visits to Chile in 2003 and 2009. The Committee draws the State party's attention to its general recommendation No. 31 (2005) on the prevention of racial discrimination in the administration and functioning of the criminal justice system (sect. B, para. 5 (e)).

16. While noting the efforts made by the State party to undertake constitutional reform in the area of the rights of indigenous peoples, such as the consultations held with indigenous people, the Committee is concerned at the slow pace of this process and the fact that not all indigenous peoples have been adequately consulted on decisions related to issues that affect their rights (arts. 2 and 5).

The Committee recommends that the State party should: (a) step up its efforts to speed up the process of granting constitutional recognition to the rights of indigenous peoples and, to this end, conduct effective consultations with all the indigenous peoples, in accordance with the International Convention on the Elimination of All Forms of Racial Discrimination and ILO Convention No. 169; (b) take the necessary measures to establish a climate of trust conducive to dialogue with indigenous peoples; and (c) take effective measures to involve indigenous peoples in the work on a human rights action plan and in all areas, including legislative proposals, that might affect their rights.

17. While noting with satisfaction the measures taken by the State party to guarantee the rights of migrants, the Committee is concerned that the economic and social rights of migrants and refugees are not fully guaranteed, and that migrants and refugees, especially Peruvians and Bolivians, are sometimes the victims of discrimination (arts. 2 and 5).

The Committee recommends that the State party should take effective legislative and other measures as necessary to guarantee equality for migrants and refugees in the exercise of the rights recognized in the Convention and that it should take into account for this purpose the results of the studies carried out by the Ministry of the Interior in 2007 and 2008.

18. The Committee notes with concern that, as pointed out by the State party, in recent years Chile has seen incidents of discrimination against and violent attacks on indigenous people and migrants, among others, by totalitarian groups. The Committee is concerned that racism, discrimination and xenophobia are not classed as criminal offences in Chilean law (art. 4).

The Committee recommends that the State party should: (a) speed up the adoption of the anti-discrimination bill that would make discriminatory acts punishable by law; (b) step up its efforts to prevent and combat xenophobia and racial prejudice among the various groups in society, and also to promote tolerance among all ethnic groups; and (c) present in its next periodic report further information on investigations,

indictments and sentences related to racially-motivated offences, as well as on compensation obtained by the victims of such acts.

19. The Committee notes with concern the accusations of ill-treatment and abuse of members of the Mapuche people by the police during police raids and other operations. The Committee notes with dismay the death of a young Mapuche man, José Facundo Mendoza Collio, on 12 August 2009, as a result of police gunfire (art. 5 (b)).

The Committee recommends that: (a) the State party should investigate accusations of ill-treatment and abuse of indigenous people by some members of the armed forces; and (b) those responsible for such acts should be tried and punished and compensation granted to the victims or their families. The Committee also urges the State party to take prompt steps to prevent such acts, and in that regard recommends that it should boost training for its armed forces in human rights, including the provisions of the Convention.

20. The Committee notes with concern the low level of participation in political life by the indigenous peoples and the poor representation of indigenous peoples in parliament (art. 5 (c)).

In the light of its general recommendation No. 23 (1997), section 4 (d), the Committee recommends that the State party should redouble its efforts to ensure full participation by indigenous people, especially women, in public affairs, and that it should take effective steps to ensure that all indigenous peoples participate in the administration at all levels.

21. The Committee notes the measures taken by the State party to transfer ancestral lands to indigenous peoples, but it is concerned about the slow progress made in demarcating lands and the lack of a specific mechanism for recognizing the right of indigenous peoples to the land and to their natural resources (art. 5 (d) (v)).

The Committee recommends that the State party should take the necessary measures to speed up the restitution of ancestral lands to indigenous peoples and that it should establish a specific mechanism for recognizing the rights of indigenous peoples to lands and natural resources, in accordance with the Convention and the other relevant international standards. Specifically, the State party should ensure that land-purchasing policies conform fully with ILO Convention No. 169 and should consider increasing the budget of CONADI so that it is able to carry out its work properly.

22. While noting the measures taken by the State party to regulate investment in indigenous lands and indigenous development areas, the Committee notes with concern that indigenous peoples are affected by the exploitation of subsoil resources in their traditional lands and that in practice the right of indigenous peoples to be consulted before the natural resources of their lands are exploited is not fully respected.

The Committee urges the State party to hold effective consultations with indigenous peoples on all projects related to their ancestral lands and to obtain their consent prior to implementation of projects for the extraction of natural resources, in accordance with international standards. The Committee draws the State party's attention to its general recommendation No. 23.

23. The Committee reiterates its concern about the situation of the Mapuche communities in the Araucanía region affected by activities that are harmful to the environment, health and their traditional ways of life, including the establishment of waste dumps and plans to set up sewage-treatment plants there (art. 5).

The Committee urges the State party to spare no effort to develop a specific policy, in line with international standards, to deal with the environmental impacts affecting indigenous peoples. To this end, the Committee recommends that scientific assessments should be carried out regularly. The Committee further recommends that the State party should amend its legislation on land, water, mining and other sectors so that it does not conflict with the Indigenous Peoples Act (No. 19.253) and ensure that the protection of the rights of indigenous peoples prevails over commercial and economic interests. The Committee urges the State party to take immediate steps to resolve the issue of the waste dumps established in Mapuche communities without their prior consent.

24. The Committee notes the efforts made by the State party to combat poverty. However, it is concerned that indigenous peoples, in particular the Mapuche, are among the poorest and most marginalized groups (art. 5 (e)).

The Committee recommends that the State party should take the necessary steps to assure effective protection against discrimination in various areas, particularly in employment, housing, health and education. It also calls on the State party to include in its next report information on the impact of programmes designed to guarantee economic, social and cultural rights to the indigenous population, as well as statistics on progress made in this regard.

25. The Committee notes with concern that the ranking of the Convention in the domestic legal order is not clearly defined (art. 6).

The Committee recommends that the State party should consider taking the legislative measures necessary to explicitly establish the Convention's precedence over domestic law.

26. The Committee notes the lack of information on complaints of racial discrimination and on the follow-up to such complaints (arts. 6 and 7).

Referring to its general recommendation No. 31 (para. 5 (e)), the Committee recalls that the absence of cases may be due to the victims' lack of information about the existing remedies, and therefore recommends that the State party should ensure that appropriate provisions are available in national legislation regarding effective protection and remedies against violation of the Convention and that the public at large is properly informed about their rights and the legal remedies available if these are violated, including the individual complaints procedure under article 14 of the Convention. The Committee further recommends that the State party should provide information on future complaints and cases in its next periodic report.

27. While noting the programmes implemented by the Department of Diversity and Non-Discrimination, the Committee is concerned about the persistence in the State party of prejudices and negative stereotypes that affect, inter alia, indigenous peoples and members of minorities, as revealed by surveys carried out by the University of Chile (art. 7).

The Committee recommends that the State party should take appropriate steps to combat racial prejudice, which may lead to racial discrimination. In the area of information, the State party should foster understanding, tolerance and friendship among the various racial groups in the State party. The Committee further recommends that the State party should reinforce information campaigns and educational programmes on the Convention and its provisions, as well as strengthen its training activities for police and those working within the criminal justice system on the mechanisms and procedures provided for in national legislation in the field of racial discrimination.

28. Taking into account the indivisibility of all human rights, the Committee encourages the State party to consider ratifying those international human rights instruments that it has not yet ratified.

29. The Committee recommends that the State party should take into account the relevant parts of the Durban Declaration and Programme of Action, adopted in September 2001 at the World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance (A/CONF.189/12, sect. I), in incorporating the Convention, particularly articles 2 to 7, into its domestic legal order. It also recommends that, in its next periodic report, the State party should provide information on action plans and other measures adopted to implement the Durban Declaration and Programme of Action at the national level.

30. The Committee recommends that, for the purposes of the preparation of its next periodic report, the State party should undertake broad consultations with civil society organizations involved in human rights protection, particularly in the area of combating racial discrimination.

31. The Committee recommends that the reports of the State party should be made available to the public without delay at the time of their submission, and that the observations of the Committee with respect to these reports should be similarly publicized in the official language and other languages in common use.

32. Noting that the State party submitted its core document in 1999, the Committee encourages it to submit a core document in accordance with the harmonized guidelines on reporting under the international human rights treaties, in particular those on the common core document, as adopted by the fifth inter-Committee meeting of the human rights treaty bodies held in June 2006 (HRI/GEN/2/Rev.4, chap. I).

33. Pursuant to article 9, paragraph 1, of the Convention and rule 65 of the Committee's amended rules of procedure, the Committee requests the State party to provide information on its follow-up to the Committee's recommendations contained in paragraphs 14, 19, 22 and 23 above, within one year of the adoption of the present conclusions.

34. The Committee also wishes to draw the attention of the State party to the particular importance of the recommendations contained in paragraphs 12, 15 and 24 above and asks it to provide detailed information in its next periodic report on the concrete steps taken to implement those recommendations.

35. The Committee recommends that the State party should submit its nineteenth to twenty-first periodic reports as a single document by 31 August 2012, taking into consideration the guidelines for the CERD-specific report to be submitted by States parties under article 9, paragraph 1, of the Convention, adopted by the Committee at its seventy-first session (CERD/C/2007/1). The report should contain up-to-date information and answer all the points raised in the concluding observations.
