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Universal periodic review

Report of the Working Group on the Universal Periodic Review*

Chile

Addendum

Views on conclusions and/or recommendations, voluntary commitments and replies presented by the State under review

* The present document was not edited before being sent to the United Nations translation services.



Views on conclusions and/or recommendations, voluntary commitments and replies presented by Chile in the framework of the third cycle of the universal periodic review

1. The Government of Chile, represented by a high-level delegation composed of members drawn from all branches of government, took part in its third universal periodic review on 22 January 2019. For Chile, the universal periodic review is an important opportunity for States to cooperate in promoting human rights within the international community.

2. Moreover, by allowing States to promote respect for human rights, the universal periodic review at the same time contributes to the strengthening of real democracy, which cannot exist unless the human rights of every person are secured. In that context, Chile receives the recommendations of the various States in the constructive spirit that characterizes the process. In doing so, it acknowledges the challenges and opportunities which it still faces in the human rights sphere. The Government reiterates its commitment to the universal human rights system and, in particular, to the work of the Human Rights Council.

3. Chile is a State that is fully committed to human rights. This commitment is reflected, for example, in the concrete progress that it has achieved since the constructive dialogue in January. This progress includes the recent promulgation of Act No. 21.154 of 25 April 2019, designating the National Human Rights Institute as the national mechanism for the prevention of torture and other cruel, inhuman or degrading treatment or punishment. Another significant development has been the promulgation of Act No. 21.151 of 11 April 2019, granting legal recognition to the Chilean Afrodescendent tribal people. These achievements already in fact provide a response to a number of the recommendations made in the current cycle.

4. In the course of this third cycle of the universal periodic review, Chile received a total of 266 recommendations made by 101 States. Following a participatory process involving State agencies, Chile has decided to accept 211 recommendations, equivalent to 79.32 per cent of the total received. It has decided to note 37 recommendations, or 13.90 per cent of the total. There are 18 recommendations – 6.76 per cent of the total – that Chile has decided not to accept or consider.

Recommendations accepted by the Government of Chile

5. Recommendations 125.18, 125.19, 125.20, 125.21, 125.22, 125.23, 125.24, 125.25, 125.26, 125.27, 125.28, 125.29, 125.30, 125.31, 125.32, 125.33, 125.34, 125.35, 125.36, 125.38, 125.39, 125.40, 125.41, 125.42, 125.43, 125.44, 125.45, 125.46, 125.47, 125.48, 125.49, 125.50, 125.51, 125.54, 125.55, 125.56, 125.57, 125.58, 125.59, 125.60, 125.63, 125.64, 125.65, 125.66, 125.67, 125.68, 125.69, 125.70, 125.71, 125.72, 125.73, 125.76, 125.77, 125.78, 125.79, 125.80, 125.83, 125.84, 125.88, 125.90, 125.92, 125.93, 125.94, 125.95, 125.96, 125.97, 125.98, 125.99, 125.100, 125.101, 125.102, 125.106, 125.107, 125.108, 125.109, 125.110, 125.111, 125.112, 125.113, 125.114, 125.115, 125.116, 125.117, 125.118, 125.119, 125.120, 125.121, 125.122, 125.124, 125.125, 125.128, 125.135, 125.136, 125.137, 125.138, 125.139, 125.140, 125.141, 125.142, 125.143, 125.144, 125.145, 125.146, 125.147, 125.148, 125.149, 125.150, 125.151, 125.152, 125.153, 125.154, 125.155, 125.156, 125.157, 125.158, 125.159, 125.160, 125.161, 125.162, 125.163, 125.164, 125.165, 125.166, 125.167, 125.168, 125.169, 125.170, 125.171, 125.172, 125.173, 125.174, 125.175, 125.176, 125.177, 125.178, 125.179, 125.180, 125.181, 125.182, 125.183, 125.184, 125.185, 125.186, 125.187, 125.188, 125.189, 125.191, 125.192, 125.194, 125.195, 125.196, 125.197, 125.198, 125.199, 125.200, 125.201, 125.202, 125.203, 125.204, 125.205, 125.206, 125.207, 125.208, 125.209, 125.210, 125.211, 125.212, 125.213, 125.214, 125.216, 125.217, 125.218, 125.219, 125.220, 125.221, 125.222, 125.223, 125.224, 125.225, 125.226, 125.227, 125.228, 125.229, 125.230, 125.231, 125.232, 125.234, 125.238, 125.239, 125.240, 125.242, 125.243, 125.245, 125.246, 125.247, 125.248, 125.249, 125.250, 125.251,

125.252, 125.253, 125.254, 125.255, 125.256, 125.257, 125.258, 125.261, 125.262, 125.263, 125.265 and 125.266.

Additional information on the above recommendations accepted by Chile

6. The Government accepts recommendation 125.34, pointing out that the legal configuration of the national mechanism for the prevention of torture meets the requirements set forth in the principles relating to the status of national institutions for the promotion and protection of human rights (the Paris Principles).

7. Chile accepts recommendations 125.59 and 125.60. However, the Government wishes to highlight two circumstances linked to these recommendations. The first is the current increase in human rights training taking place within the Forces of Order and Public Security. The second is that the police forces have procedures that enable them to investigate police abuses and impose administrative penalties, without prejudice to the powers exercised by the Public Prosecution Service and the courts.

8. Chile accepts recommendations 125.93, 125.94 and 125.95. However, the Government points out that Chilean legislation currently conforms to international human rights standards in the area of combating people smuggling and trafficking in persons.

9. Chile accepts recommendation 125.101. Nevertheless, the Government would like to point out that the expression “including by harmonizing national legislation with relevant international standards” does not take account of the fact that Chilean legislation already conforms to international human rights standards in the area of combating people smuggling and trafficking in persons.

10. Chile accepts recommendation 125.102. As in the previous instance, the Government wishes to point out that the expression “including by reviewing its criminal legislation on trafficking in persons in line with international standards, ensuring the prosecution of perpetrators and providing rehabilitation and compensation to victims” fails to take account of the fact that Chilean legislation currently conforms to international human rights standards in the area of combating people smuggling and trafficking in persons.

11. The Government accepts recommendation 125.110. However, it notes that while there is now a bill intended to create an “independent control authority”, the Government cannot guarantee the bill’s adoption by the National Congress owing to the nature and duration of the constitutional processes inherent to the enactment of legislation.

12. Recommendation 125.144 is accepted subject to the clarification that no commitment can be made in respect of the legislative process, which does not have a specific duration, and considering that in any case the Public Sector Budget Act already provides for financing in this area.

13. The Government accepts recommendation 125.195, considering that it already has a public policy on the eradication of child labour and the protection of adolescent workers, which was adopted in 2015 and is implemented by the Ministry of Labour and Social Security. However, it points out that the phrase “by increasing the number of labour inspectors, particularly in remote areas” represents a concrete measure which depends on resources subject to the annual adoption of the Public Sector Budget Act.

14. The Government accepts recommendation 125.220. It does so without prejudice to its overall commitment to promoting the rights of indigenous peoples.

Recommendations noted by the Government of Chile

15. Chile notes recommendations 125.1, 125.2, 125.3, 125.4, 125.5, 125.6, 125.7, 125.8, 125.9, 125.10, 125.11, 125.12, 125.13, 125.14, 125.15, 125.16 and 125.17, which refer to the ratification of certain instruments. The Government cannot in fact commit to a firm date for the discussion and possible ratification of the international instrument because the

Constitution requires that they first be approved by the National Congress; a process which does not have a set duration.

16. Chile takes note of recommendation 125.52, considering that the Supreme Court has ruled on the non-applicability of Decree-Law No. 2.191 on the understanding that statutory limitations are not applicable to crimes against humanity. As a result, the courts have continued to prosecute and convict perpetrators of human rights violations committed between 1973 and 1990.

17. Chile notes recommendation 125.53 in its entirety. In Chile the death penalty has been abolished and may only be applied exceptionally by military courts in times of war.

18. The Government notes recommendation 125.61. This is because the Chilean legal system, as it stands, already has the *necessary* legal mechanisms to prevent and punish any excesses by the police.

19. The Government notes recommendation 125.62. It does so because current domestic legislation already sets out the *necessary* procedures to ensure that the Forces of Order and Public Security operate within the framework of the rule of law. Moreover, the legislation also provides for mechanisms to investigate and punish any kind of abuse by those forces, regardless of the context in which such abuses might occur.

20. The Government notes recommendation 125.75. This is because the Chilean legal system currently provides for mechanisms enabling the prompt, impartial and effective investigation of police abuses, while the judiciary is able to determine the corresponding penalties and any redress that might be appropriate.

21. The Government notes recommendation 125.81. This is because the Chilean legal system currently provides for mechanisms enabling the prompt, impartial and effective investigation of allegations of enforced disappearances which may have occurred in the country. Chile renews its commitment to the Working Group on Enforced or Involuntary Disappearances of the Human Rights Council.

22. Recommendation 125.82 is noted. The Government states its intention to continue implementing the reparation measures established for victims of human rights violations which occurred during the dictatorship.

23. Recommendations 125.103, 125.104 and 125.105 are noted. This is because they relate to a subject on which it is not possible to guarantee a legislative outcome.

24. The Government takes note of recommendation 125.129. It does so on the understanding that the reference to “legal abortion” relates only to the grounds described in Act No. 21.030 and is not intended to include other grounds, and respects the legal framework established by national institutions to regulate this issue.

25. Chile takes note of recommendations 125.236, 125.237 and 125.244. This is because in Chile, antiterrorism legislation is applied only to persons who engage in the criminal conducts that are defined by law, without discrimination based on origin or race.

26. Chile notes recommendation 125.259. It does so because the migration bill currently under discussion in the National Congress is consistent with international human rights standards in this area.

27. Recommendation 125.264 is noted. Chile currently guarantees, through its regulations and institutional practice, the rights of all persons who for legal reasons are expelled from the country.

Recommendations not accepted by the Government of Chile

28. Recommendation 125.37 is not accepted, considering that Chilean migration rules are in conformity with existing international law, which permits the restriction of cross-border traffic as necessary to protect public safety, order, health or morals. The application of these rules does not rely on discriminatory criteria such as nationality.

29. Recommendation 125.74 is not accepted. This is because alleged police abuse in the context of peaceful protests are investigated and, if the facts are proven to be true, punished.

30. Recommendation 125.87 is not accepted. This is because domestic law not only recognizes but also guarantees freedom of expression and protects the right of assembly through various constitutional, legal and administrative mechanisms.

31. Recommendation 125.89 is not accepted owing to the use of the verb “refrain”. Under the rule of law, national legislation applies to all citizens equally. The antiterrorism law applies to all those who engage in the criminal conducts that are defined therein. For that reason, there can be no prior exemption of individuals from the application of the law on the grounds of their ethnic origin or belonging to a certain group.

32. Recommendation 125.91 is not accepted. This is due to the fact that the Public Prosecution Service, in the exercise of its legal powers, conducts investigations in which the principles of legality, necessity and proportionality are upheld. In the event of their infringement, there are jurisdictional mechanisms to safeguard respect for these principles.

33. Recommendations 125.126, 125.127, 125.132 and 125.133 are not accepted because Act No. 21.030, which decriminalizes the voluntary termination of pregnancy, provides for the possibility that persons or institutions may invoke conscientious objection. In the case of persons, a surgeon who is requested to terminate a pregnancy on the basis of one of the three legal grounds may express his or her conscientious objection to the director of the health facility. The same right extends to the members of the team that would perform the procedure. The requirements and process for invoking conscientious objection are regulated by Decree No. 67 of 2018 and by the Act itself. Both instruments require the development of protocols to ensure that women receive care, through referral either to non-objecting personnel or to another facility that is able to carry out the procedure.

34. Recommendations 125.130, 125.131 and 125.134 are not accepted owing to the entry into force, following a broad democratic debate, of Act No. 21.030, which decriminalized the voluntary termination of pregnancy on three grounds: danger to the woman’s life, lethal fetal non-viability and pregnancy due to rape. The expansion of these grounds, which were agreed within the National Congress, is not envisaged. In addition, national legislation expressly protects motherhood and provides for special support for vulnerable pregnant women.

35. Chile does not accept recommendation 125.241. The bill amending national antiterrorism legislation does not envisage creating exceptions to its general application.

36. Chile does not accept recommendation 125.260. This is because the rights of Bolivian citizens in transit to Pacific ports are guaranteed by national legislation and the implementation of that legislation by public institutions.

Recommendations partially accepted and partially noted by the Government of Chile

37. The Government notes recommendation 125.85, while pointing out that the statement “many victims and their families still have not received the appropriate reparations from the State” is not consistent with the substantial effort Chile has made in pursuing reparation policies for the victims of the dictatorship. It accepts the rest of the recommendation.

38. Recommendation 125.193 is noted only in respect of the phrase “establish an independent commission”, given that the Public Prosecution Service – an autonomous body under the Constitution – is already investigating cases of deaths and reported abuse of children and adolescents under the care of the National Service for Minors, and that, if applicable, the judiciary will determine the corresponding penalties and any redress that might be appropriate. The remainder of the recommendation is accepted.

39. Recommendation 125.233 is noted solely in relation to the phrase “considering revising the antiterrorism law”. This is because the National Congress is currently considering a bill amending antiterrorism legislation.

40. The Government notes recommendation 125.235 only in respect of the phrase “in the new constitutional text”, as there are no plans for a constitution-making process in Chile.

Additional note

41. The Government of Chile has decided not to consider recommendations 125.86, 125.123, 125.190 and 125.215, which were issued by the representatives of a regime whose legitimacy it does not recognize.
