



**CHILE**  
ISSUES RELATED TO IMMIGRATION  
DETENTION

Submission to the Committee on the Protection of the Rights of All  
Migrant Workers and Members of their Families

32<sup>nd</sup> Session, April 2021

*Submitted in March 2021*

## ABOUT THE GLOBAL DETENTION PROJECT

The Global Detention Project (GDP) is a non-profit organisation based in Geneva that promotes the human rights of people who have been detained for reasons related to their non-citizen status. Our mission is:

- To promote the human rights of detained migrants, refugees, and asylum seekers;
- To ensure transparency in the treatment of immigration detainees;
- To reinforce advocacy aimed at reforming detention systems;
- To nurture policy-relevant scholarship on the causes and consequences of migration control policies.

### **Global Detention Project**

3 rue de Varembé

1202 Geneva

Switzerland

**Email:** [admin@globaldetentionproject.org](mailto:admin@globaldetentionproject.org)

**Website:** [www.globaldetentionproject.org](http://www.globaldetentionproject.org)

# Submission to the Committee on the Protection of the Rights of All Migrant Workers and Members of their Families

32<sup>nd</sup> Session, April 2021

## Chile: Issues Related to Immigration Detention

The Global Detention Project (GDP) welcomes the opportunity to provide information for consideration in the second periodic report of Chile (CMW/C/CHL/2) to the Committee on Migrant Workers (CMW).

The GDP is an independent research centre based in Geneva that investigates immigration-related detention. As per the GDP's mandate, this submission focuses on the State Party's laws and practices on issues related to detention for migration-related reasons.

### 1. Context

Since its first periodic report to the CMW, Chile has made amendments to its immigration law, including the adoption of a protocol for the expulsion of foreign nationals and a bill on migration and aliens (Bulletin No. 8.970-06), which was recently approved by the Senate.<sup>1</sup>

As indicated by a Chilean government official to the GDP, immigration detention in Chile is solely used to conduct deportations of administrative or criminal detainees.<sup>2</sup> According to the state report to the CMW, in Chile, "detention is not among the control measures established by law for migration offences and may be used only in exceptional circumstances as follows: Once an expulsion order is final and enforceable, the person concerned may be subject to restrictions or deprivation of liberty for a period not exceeding 72 hours. Such measures may be imposed only at the residence of the person concerned or at a police station."<sup>3</sup> The state report also mentions that under Article 131 of the migration bill, persons subject to an expulsion order may only be deprived of their liberty to enforce the expulsion and for a maximum of 48 hours.<sup>4</sup>

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<sup>1</sup> Ministerio del Interior y Seguridad Pública, "Congreso Aprueba Ley de Migración y Extranjería," 3 December 2020, <https://www.interior.gob.cl/noticias/2020/12/03/congreso-aprueba-ley-de-migracion-y-extranjeria/>

<sup>2</sup> Governmental Official, "Global Detention Project's COVID-19 Survey," 18 July 2020.

<sup>3</sup> CMW, "Second Periodic Report Submitted by Chile under Article 73 of the Convention Pursuant to the Simplified Reporting Procedure, Due in 2016," CMW/C/CHL/2, 22 October 2019, para.16, <https://undocs.org/en/CMW/C/CHL/2>

<sup>4</sup> CMW, "Second Periodic Report Submitted by Chile under Article 73 of the Convention Pursuant to the Simplified Reporting Procedure, due in 2016," CMW/C/CHL/2, 22 October 2019, para.18, <https://undocs.org/en/CMW/C/CHL/2>; República de Chile, "Informe: Boletín N°8970-06. Proyecto de Ley de Migración y Extranjería. Comisión de Gobierno, Descentralización y Regionalización del Senado de la República de Chile," 18 March 2019, <https://bit.ly/2ORRQgq>

However, according to a protocol concluded between the Ministry of the Interior and Public Security and the Chilean Investigative Police in March 2013, expulsion orders must be executed within 24 hours, and for this reason, the person cannot be detained for longer than this period. In addition, foreign nationals facing expulsion are to be placed in special temporary accommodation units that offer adequate living and sanitary conditions, have separate wings for men and women and these detainees must be separated from persons detained for other legal reasons.<sup>5</sup>

As highlighted in a joint submission by civil society organisations in March 2020,<sup>6</sup> although the bill advances important regulations, and provides for a broader set of rights and duties than current legislation, there are certain points of concern as regards the rights of migrants. For instance, the submission explains that the bill does not contemplate the principle of non-refoulement as the Chilean government indicated that it would not be appropriate to incorporate it into the Migration Act, as it would only apply to refugees. Nonetheless, the joint submission recalls that the principle is contained in several international treaties ratified by Chile and the fact that the principle is provided under Law No. 20,430 on the Protection of Refugees should not be a reason to avoid including it into the bill as the principle applies not only to those who seek asylum or refuge, but also any persons who are at risk and are unaware that they should seek protection, or are unable to do so.<sup>7</sup>

Also, according to the civil society submission, the bill does not provide for regularisation mechanisms, thus it runs counter to Article 69 of the International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families, and could lead to situations of long-term irregularity and thus make people increasingly vulnerable to detention and deportation.<sup>8</sup>

In addition, in providing information to the GDP in July 2020, a Chilean government official said that, during the pandemic, they were unaware of any detainees being released from administrative detention or any measures taken to assist people following release as a result of measures implemented in response to COVID-19. Faced with border closures due to the pandemic, the governmental source stated that they were not aware of any deportations taking place and in consequence, no detention orders had been pronounced either.

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<sup>5</sup> Ministerio del Interior y Seguridad Pública, “*Protocolo de actuación Para Expulsión de Extranjeros Infractores*,” 28 March 2013, <http://www.dpp.cl/resources/upload/8d3e68a5b089bdf6801e3dc86c99978c.pdf>

<sup>6</sup> Corporación Humanas, Centro Regional de Derechos Humanos y Justicia de Género, Centro de Estudios de la Mujer, Colectivo Sin Fronteras, Corporación Opción, Corporación Circulo Emancipador de Mujeres y Niñas con Discapacidad de Chile, Fundación Instituto de la Mujer, Fundación mil trescientos sesenta y siete, Movimiento Acción Migrante, Observatorio Contra el Acoso Chile, “Chile: Alternative Report for the Review of the State of Chile Before the Committee on Migrant Workers at Its 32nd Session (March 2020),” 9 March 2020, [https://tbinternet.ohchr.org/Treaties/CMW/Shared%20Documents/CHL/INT\\_CMW\\_CSS\\_CHL\\_41828\\_E.pdf](https://tbinternet.ohchr.org/Treaties/CMW/Shared%20Documents/CHL/INT_CMW_CSS_CHL_41828_E.pdf)

<sup>7</sup> Corporación Humanas, Centro Regional de Derechos Humanos y Justicia de Género, Centro de Estudios de la Mujer, Colectivo Sin Fronteras, Corporación Opción, Corporación Circulo Emancipador de Mujeres y Niñas con Discapacidad de Chile, Fundación Instituto de la Mujer, Fundación mil trescientos sesenta y siete, Movimiento Acción Migrante, Observatorio Contra el Acoso Chile, “Chile: Alternative Report for the Review of the State of Chile Before the Committee on Migrant Workers at Its 32nd Session (March 2020),” 9 March 2020, para. 6, [https://tbinternet.ohchr.org/Treaties/CMW/Shared%20Documents/CHL/INT\\_CMW\\_CSS\\_CHL\\_41828\\_E.pdf](https://tbinternet.ohchr.org/Treaties/CMW/Shared%20Documents/CHL/INT_CMW_CSS_CHL_41828_E.pdf)

<sup>8</sup> Corporación Humanas, Centro Regional de Derechos Humanos y Justicia de Género, Centro de Estudios de la Mujer, Colectivo Sin Fronteras, Corporación Opción, Corporación Circulo Emancipador de Mujeres y Niñas con Discapacidad de Chile, Fundación Instituto de la Mujer, Fundación mil trescientos sesenta y siete, Movimiento Acción Migrante, Observatorio Contra el Acoso Chile, “Chile: Alternative Report for the Review of the State of Chile Before the Committee on Migrant Workers at Its 32nd Session (March 2020),” 9 March 2020, para. 5, [https://tbinternet.ohchr.org/Treaties/CMW/Shared%20Documents/CHL/INT\\_CMW\\_CSS\\_CHL\\_41828\\_E.pdf](https://tbinternet.ohchr.org/Treaties/CMW/Shared%20Documents/CHL/INT_CMW_CSS_CHL_41828_E.pdf)

Certain non-citizens were nonetheless able to leave the country, in coordination with third countries' consulates. Agencia Andalou reported that at the start of June 2020, 750 Bolivian, 300 Peruvian, and 200 Colombian nationals had been camping in front of their national consulates for more than a week, urging their countries to let them return as they had been left stranded and jobless due to the pandemic.<sup>9</sup> Chilean authorities responded by setting up temporary shelters, but these quickly became overcrowded, and several COVID-19 cases were reported amongst migrants. While Bolivia, Peru, and Colombia repatriated their nationals, the situation for Venezuelan migrants was slightly different. The Chilean government said that in order to repatriate Venezuelan nationals, Venezuela had to open its borders. Most Venezuelan nationals were being accommodated in the temporary shelters, and on 2 June 2020, a Venezuelan national died from the virus while waiting for his test results.<sup>10</sup>

## 2. Previous relevant comments by Human Rights Bodies

In its concluding observations in 2011, the CMW recommended that Chile “(a) provide information on the number of migrants held in custody for violations of migration laws, as well as on the conditions and length of their detention; (and) (b) ensure that the conditions of detention in migrant holding centres are in accordance with international standards.”<sup>11</sup> The Committee also said it remained concerned “about the lack of information received on the length and conditions of [migrant workers in] detention.”<sup>12</sup>

The Committee against Torture (CAT), in its concluding observations in 2018, stated that the period of 24 hours to file an appeal against an expulsion decision to the Supreme Court was too short, while noting that the migration bill would extend the limit to 48 hours.<sup>13</sup> Moreover, the CAT called on the state party “to adopt legislative and other measures necessary to: (a) Review existing legislation on migration and aliens in order to extend the deadline for the filing of appeals against expulsion decisions (b) Ensure that, in practice, no one may be expelled, returned or extradited to another State where there are substantial grounds for believing that he or she would run a personal, foreseeable risk of being subjected to torture; (c) Guarantee that all persons in the territory or under the jurisdiction of the State party have effective access to the procedure for determining refugee status; (d) Ensure that procedural safeguards against refoulement are in place and that effective remedies in respect of refoulement claims in removal proceedings are available, including reviews of rejections by an independent judicial body, in particular on appeal.”<sup>14</sup>

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<sup>9</sup> A. A. Cordoba, “*El Drama de los Inmigrantes Sudamericanos Varados en Chile a Causa del Coronavirus*,” *Agencia Andalou*, 8 June 2020, <https://bit.ly/30HFSbR>

<sup>10</sup> A. A. Cordoba, “*El Drama de los Inmigrantes Sudamericanos Varados en Chile a Causa del Coronavirus*,” *Agencia Andalou*, 8 June 2020, <https://bit.ly/30HFSbR>

<sup>11</sup> CMW, “Concluding Observations of the Committee on the Protection of the Rights of All Migrant Workers and Members of their Families,” CMW/C/CHL/CO/1, 19 October 2011, para.27, <https://undocs.org/en/CMW/C/CHL/CO/1>

<sup>12</sup> CMW, “Concluding Observations of the Committee on the Protection of the Rights of All Migrant Workers and Members of their Families,” CMW/C/CHL/CO/1, 19 October 2011, para.26, <https://undocs.org/en/CMW/C/CHL/CO/1>

<sup>13</sup> Committee Against Torture, “Concluding Observations on the Sixth Periodic Report of Chile,” CAT/C/CHL/CO/6, 28 August 2018, para.42, <https://undocs.org/en/CAT/C/CHL/CO/6>

<sup>14</sup> Committee Against Torture, “Concluding Observations on the Sixth Periodic Report of Chile,” CAT/C/CHL/CO/6, 28 August 2018, para.43, <https://undocs.org/en/CAT/C/CHL/CO/6>

During the 3<sup>rd</sup> cycle of the Universal Periodic Review of Chile (41<sup>st</sup> session, June/July 2019), member states issued several recommendations relevant to Chile's immigration practices.<sup>15</sup> These included:

- Ratify the ILO Domestic Workers Convention, 2011 (No. 189) (Benin) (para. 125.1);
- Ensure that measures under the migration policy in Chile guarantee the protection of the basic rights of migrants, in accordance with its international commitments (Haiti) (para 125.262);
- Strengthen the necessary legislative and policy measures to combat discrimination against migrants, asylum seekers and refugees in all spheres (Honduras) (para. 125.263);
- Develop the legal framework to guarantee the rights of all migrants, regardless of their status, and to promote orderly, safe and regular migration (Mexico) (para. 125.265);
- Scale up its efforts in ensuring the protection and promotion of the rights of migrants (Nigeria) (para. 125.266).

### 3. Suggested recommendations

- Disclose disaggregated data on the numbers of migrants who are detained and deported for migration-related reasons, including information about the lengths of time each person faced in detention as they awaited deportation or other administrative measure;
- Provide a list of the police stations and other facilities that are used for immigration detention purposes;
- Provide information in terms of the number and location of the special temporary accommodation units, as described by the 2013 protocol;
- Release detainees whose detention is unlawful or unnecessary, including anyone whose deportation is not possible amidst the COVID-19 pandemic;
- Ensure the observance of the principle of non-refoulement in all relevant situations;
- Disclose information clarifying measures being taken to protect immigration detainees during the pandemic;
- Avoid deportation measures during the COVID-19 pandemic;
- Adopt a regularisation mechanism for irregular migrants through legislation, as provided by Article 69 of the International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families.

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<sup>15</sup> UN Human Rights Council, "Report of the Working Group on the Universal Periodic Review," A/HRC/41/6, 2 April 2019, <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G19/088/61/PDF/G1908861.pdf?OpenElement>