

## Universal Periodic Review Supplementary report of the National Institute of Human Rights, Chile<sup>1</sup>

Through this report, the National Institute of Human Rights (Instituto Nacional de Derechos Humanos (INDH)) of Chile, whose mission is the promotion and protection of people living in the national territory, monitors the recommendations made by the Human Rights Council to the Chilean State in the 2014 Universal Periodic Review (A/HRC/26/5), stated on paragraph 121 of said document.

### *Implemented Recommendations*

Recommendations 121.3, 121.8, 121.9, 121.10 and 121.11: the State ratified the Optional Protocol to the Convention on the Rights of the Child and ILO Convention N° 189.

Recommendation 121.17: On April 11, 2018, the State concluded the process of adherence to the 1954 Convention relating to the Status of Stateless Persons and the 1961 Convention on the Reduction of Statelessness.

Recommendations 121.24-121.25: during the last years, the INDH has expanded its presence in the national territory and has been able to establish offices in thirteen of the fifteen regions of the country.

Recommendations 121.27-121.29 and 121.41-121.46: Law N° 20.885 created the Under-Secretariat for Human Rights, which became operative in December 2016. In January 2018, and for a period of four years, the National Plan for Human Rights began to be implemented.

Recommendations 121.30-121.32: in 2018 Law N° 21.067 came into force creating the Office of the Ombudsman for the Rights of the Child. Law N° 21.090 through which the Under-Secretariat for Children was created is also worth noting.

Recommendations 121.38 and 121.124-121.127: through Law N° 20.840 (D.O. 5.5.15) a mechanism was established so that, out of the total candidacies to Parliament, no sex exceeds 60%<sup>2</sup>. It is also necessary to highlight the creation of the Ministry of Women and Gender Equity through Law N° 20.820.

Recommendation 121.49: the National Human Rights Plan has a section with a series of actions aimed at strengthening human rights education of both the public and public officials. It also highlights the Training System for Public Leadership of the State (Sistema de Formación para el Liderazgo Público (SLP) del Estado); the Gender Equality Policy and the Non-Discrimination Policy of the Judicial Power that strengthens the human rights training of the judiciary and auxiliary officials.

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<sup>1</sup> Document approved by the Council of the National Institute of Human Rights on June 25, 2018 – session N° 430.

<sup>2</sup> Provisional mechanism that will be applied in the 2017, 2021, 2025 and 2029 parliamentary electoral processes.

Recommendation 121.69: Law N° 20.830 created the civil union agreement, a contract that can be entered into by two people, without limitations of sexual orientation, who share a home, with the purpose of regulating the legal effects arising from their emotional life in common.

Recommendation 121.74-121.75: through Law N° 20.968, the Penal Code was amended to define the crimes and offenses of torture and other cruel, inhuman or degrading treatment<sup>3</sup>.

Recommendations 121.105-121.108: through Law N° 21.013 (D.O. 6.6.17), a new offense of abuse was defined and the protection of persons in special situations, among them boys, girls, adolescents, elderly and disabled people, was increased.

Recommendations 121.109-121.112: in 2016, with Law N° 20.968, Article 1 of Law N° 20.477 was amended, stating that “in no case shall civilians and minors, who are victims or defendants, be subject to the competence of military courts”.

Recommendation 121.128: Law N° 20.786 established a more protective status for domestic workers, since it limited their working hours and regulated the right to rest and the composition of the remuneration, also prohibiting the use of uniform in public places.

Recommendations 121.134-121.143: Law N° 21.030 regulated the decriminalization of the voluntary interruption of pregnancy for three causes: danger to the life of the woman, fetal infeasibility of a lethal nature and pregnancy from rape.

Recommendation 121.184: In August 2017 the Executive presented the National Action Plan on Human Rights and Business, whose purpose is to strengthen the State protection of human rights in relation to the action of companies.

### ***Recommendations pending implementation***

#### **Ratification of human rights international instruments (Recommendations 121.1-121.17)**

The State must ratify a series of international human rights instruments, such as the Protocol of San Salvador, ESCR Optional Protocol and the Optional Protocol to CEDAW, and withdraw the reservations made to those of which it is already a party<sup>4</sup>.

#### ***Anti-Terrorist Law (Recommendation 121.22)***

The definition of terrorism was modified in October 2010 by Law N° 20.467, reconfiguring some elements of the type and eliminating the presumptions of terrorist purpose by the use of incendiary devices or explosives. Regarding the new definition, the Inter-American Commission on Human

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<sup>3</sup> It has to be mentioned that this legal modification has some limitations: the penalties assigned are not consistent with the seriousness of the crime; neither is the imprescriptibility of the crimes of torture stipulated, other than the general rules of Chilean Criminal Law apply in this regard. Only in the case of torture as crime against humanity (Law N° 20.357) is its imprescriptibility established.

<sup>4</sup> The reservations to the Convention on the protection of the rights of all migrant workers must be withdrawn.

Rights stated that “the problems of breadth, vagueness, imprecision and lack of differentiation with other criminal types that led it to conclude that the types of Law N° 18.314 that are still in force contradict the principle of legality”<sup>56</sup>. A legislative initiative to amend the antiterrorist law is currently being discussed in Parliament<sup>7</sup>.

### ***National Mechanism for the Prevention of Torture (Recommendation 121.26)***

There is a bill in the second constitutional procedure (Bulletin N° 11245-17) that designates the INDH as National Mechanism for the Prevention of Torture (Mecanismo Nacional de Prevención de la Tortura - MNPT<sup>8</sup>), which must move forward in its legislative process to soon become a law<sup>9</sup>.

### ***Law of comprehensive protection for children and adolescents (Recommendation 121.36)***

To address the violation of the rights of children and adolescents, there are in the National Congress three bills that would remedy the aforementioned situation: a system for guaranteeing the rights of children<sup>10</sup>, the creation of the National Service for the Social Reintegration of Young Offenders<sup>11</sup>,

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<sup>5</sup> Inter-American Commission on Human Rights, Merits Report N° 176/10, November 5, 2010, paragraph 152.

<sup>6</sup> Subsequently, regarding the same case, the Inter-American Court on Human Rights (CIDH) issued a judgment against the Chilean State, questioning the application of Law 18.314, although focusing on the system of “presumptions of terrorist purpose” existing in the version in force before Law 20.467, since it was this version of the law that was applied. To the extent that the IDH Court considered that that system violated Art. 2 (duty to adopt provisions of domestic law) regarding Articles 9 (principle of legality) and 8.2 (presumption of innocence) of the American Convention, it did not rule on other problematic aspects of Law 18.314 that subsist after the legal amendment of 2010. In its ruling the Court stated that “it does not deem it necessary to rule in this case on the other alleged violations related to the subjective element of the type, or the allegations regarding the objective element of the terrorist type, since it already concluded that the presumption of the purpose of instilling fear in the population in general is incompatible with the Convention, and in the processes against the alleged victims of this case, this presumption was applied” (paragraph 178). IDH Court, Norín Catrimán et al. (leaders, members and activists of the Mapuche indigenous people) vs. Chile case. Judgment of May 29, 2014 (Merits, reparations and costs).

<sup>7</sup> The bill to modify the anti-terrorist regime (Bulletin 9692-07), mentioned in the State Report, was consolidated in 2015 with another bill presented by a group of senators (Bulletin 9669-07). The new government which took office on March 11, 2018, submitted proposals to said consolidated bill, which are in turn based on a bill presented during president Piñera’s previous term (2010-2014), Bulletin 7207-07.

<sup>8</sup> Chilean Chamber of Deputies. Bill appointing the INDH as National Mechanism for the Prevention of Torture. Available at: [https://www.camara.cl/pley/pley\\_detalle.aspx?prmID=11755&prmBoletin=11245-17](https://www.camara.cl/pley/pley_detalle.aspx?prmID=11755&prmBoletin=11245-17) [Last accessed: May 30, 2018.]

<sup>9</sup> The INDH has made some observations on the articles of the bill so that it can be improved. Special attention should be given to the definition of torture for purposes of the work of the MNPT; the establishment of more serious sanctions in the case of retaliation for the work of experts of the MNPT and the correction of the rule on inability to be an expert of the MNPT.

<sup>10</sup> Chilean Chamber of Deputies. Bill on the guarantee system for the rights of children. Available at: [https://www.camara.cl/pley/pley\\_detalle.aspx?prmID=10729&prmBoletin=10315-18](https://www.camara.cl/pley/pley_detalle.aspx?prmID=10729&prmBoletin=10315-18) [Last accessed: May 3, 2018.]

<sup>11</sup> Senate. Bill creating the National Service for the Social Reintegration of Young Offenders and introducing amendments to Law N° 20.084, on criminal responsibility of adolescents, and other rules indicated. Available at: <http://www.senado.cl/appsenado/templates/tramitacion/index.php> [Last accessed: May 3, 2018.]

and the creation of the National Service for the Specialized Protection of Children<sup>12</sup>. The two last mentioned bills have not yet passed the first legislative procedure in the National Congress.

***Participation and representation of women in politics (Recommendations 121.38, 121.124-121.127 and 121.166)***

Although with Law N° 20.840 the representation of women in the National Congress increased, it is far from ensuring a proportional representation to this segment of the population<sup>13</sup>. This under-representation is even more profound in the case of indigenous women, who have only two representatives<sup>14</sup>.

***Human Rights Training for State Officials (Recommendations 121.48-121.49)***

Despite the aforementioned progress, as of 2015 investment on human rights training was only 1,04%, with a total of 3,9% of participants. In terms of addressing the issues, only 1,34% of the training was directly related to human rights<sup>15</sup>.

The INDH is concerned about the fact that the training provided by the Policía de Investigaciones (PDI) does not show curricular changes aimed at dealing in a more profound way with the prevention of torture and avoiding the abuse of use of force. Although the training of instructors of Carabineros and the mainstreaming of human rights in their training are valued, as well as their permeability in the practice of action, there is a need to have institutional mechanisms guaranteeing the implementation of these guiding processes based on the human rights approach.

***Antidiscrimination Law (Recommendations 121.51-121.61)***

One of the most relevant problems of this law is that it considers *a priori* “reasonable the discriminatory distinctions, exclusions or restrictions if it is justified to have acted in the legitimate

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<sup>12</sup> Chilean Chamber of Deputies. Bill creating the National Service of Specialized Protection of Children and amending the legal rules it indicates. Available at: [https://www.camara.cl/pley/pley\\_detalle.aspx?prmID=11691&prmBoletin=11176-07](https://www.camara.cl/pley/pley_detalle.aspx?prmID=11691&prmBoletin=11176-07) [Last accessed: May 3, 2018.]

<sup>13</sup> In the new Congress the number of female legislators is 23,2% of the Senate, and 22,5% of the Chamber of Deputies.

<sup>14</sup> In this regard it should be noted that the indigenous population was more than 12% of the population in the 2017 Census.

<sup>15</sup> According to data requested by the INDH to the SISPUBLICI Computer Training System of the National Directorate of Civil Service.

exercise of another fundamental right”<sup>16 17</sup>, which in practice can make it ineffective. Neither does this law establish the concept of indirect discrimination nor does it include a complete definition about discrimination against women. The INDH has also stated that this law is weak in terms of prevention of discrimination.

***Gender equity in salaries and pensions (Recommendations 121.62, 121.129-121-131)***

The wage gap between men and women persists, reaching on average 30%<sup>18</sup>. The respective law has been ineffective in reducing it<sup>19</sup>.

Due to family and labor inequalities, added to the different calculation of pensions based on life expectancy, 59% of the women receive pension lower than the poverty line, versus 26% of the men<sup>20</sup>

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<sup>16</sup> Article 2, third paragraph of Law N° 20.609 states: “The distinctions, exclusions or restrictions that, although based on any of the criteria mentioned in the first paragraph are justified in the legitimate exercise of another fundamental right, in particular those referred in numbers 4, 6, 11, 12, 15, 16 and 21 of Article 19 of the Political Constitution of the Republic, or in another constitutionally legitimate case, are considered reasonable”. That is to say, the legislator establishes in an abstract way that the right to equality before the law gives way to other rights, such as the respect and protection of private life and the honor of the individual and family, freedom of conscience, freedom of education, freedom of expression, the right of association, freedom to work and right to free economic entrepreneurship. INDH. Informe Anual sobre la situación de los Derechos Humanos en Chile 2012. Institucionalidad Democrática y Derechos Humanos: Ley Antidiscriminación. pp. 109-113.

<sup>17</sup> Already in the legislative debate the INDH had warned that in the case of a collision of rights the judge should carry out a concrete review of the situation, and that it was not correct for the legislator to resolve the situation in the abstract. To date, the Executive has not sponsored any bill to amend the antidiscrimination law and to solve the problems affecting it.

<sup>18</sup> According to data from the National Institute of Statistics, during 2016 the average and median income of men were around 601.311 pesos and 399.790 pesos, respectively, while for women they reached 410.486 pesos and 300.000 pesos, respectively. The aforesaid implied gaps between men and women in 2016 of 31,7% in the average income (compared with 31,6% in 2015) and of 25% in the median income (compared with 24,8% in 2015), both to the detriment of women.

<sup>19</sup> Law N° 20.348 that protects the right to equality in remuneration, under which Article 62 bis was added to the Labor Code: “The employer must comply with the principle of equal remuneration between men and women who provide the same work, the objective differences in the remunerations based, among other reasons, on skills, qualifications, suitability, responsibility or productivity not being considered arbitrary”.

<sup>20</sup> INDH. Informe Anual sobre la situación de los Derechos Humanos en Chile 2017. *Cultura de discriminación arbitraria hacia las mujeres*. p. 47. Data from the Superintendence of Social Welfare reveal that in 2016 the average old-age pension of a woman was UF 3,8 (around 100.000 pesos), while that of a man was UF 6 (157.000 pesos). 85% of women pensioners receive less than the minimum wage, while with men this figure is 72%. What is more, 59% of the women (6 out of 10) have pensions under the line of poverty, while with men it is less than 26% (less than 3 out of 10).

<sup>21</sup> As stated by the INDH in its 2016 Annual Report, another area of inequity is that referring to the pension funds received by the civilian population affiliated to private corporations and those received by pensioners affiliated to Armed Forces pension funds. The average pensions in the three branches of the Armed Forces as of 2016, tripled the average old-age pension of the civilian population. It is not clear that the initiatives for the legal reform of the pension system promoted in recent years will allow reverting the inequity herein identified.

***Racial prejudice (Recommendation 121.65)***

There are various prejudices and stereotypes of a racist nature in the Chilean population regarding migrants<sup>22</sup>, a social behavior that is even more serious in the context of increased migration in the country. This reality is a cause for concern and expresses the need to formulate public policies and communication campaigns to raise awareness in the national population about the respect and protection of human rights of migrants.

***Discrimination based on sexual orientation and gender identity (Recommendations 121.70, 121.72-121.73)***

With regard to transgender children and adolescents —since there is no law of gender identity authorizing a registered change of name and sex— one of the main discriminating practices that affects them is that their identity is not respected and that they are forced to use their legal name and the gender expressions of the sex assigned to them at their birth. Regarding the situation of intersex children and adolescents, there are no clear clinical protocols to prevent newborns who have a non-binary sexual morphology from being subjected to surgeries whose purpose is simply to “normalize” the appearance of their genitals, and no protocols to establish that their sexual features are protected, their progressive development, respected, and thus, preventing them from being affected by future problems and discriminations<sup>23</sup>.

***Police violence and protocols (Recommendations 121.76-121-78)***

Regarding protocols on the use of force in demonstrations, a greater dissemination of them is required among all police personnel, as well as adequate supervision of their application<sup>24</sup>.

The protocols of Carabineros for maintaining public order are not fully applied in the case of detentions of adolescents, which means that the time of deprivation of liberty of minors tends to increase considerably, compared to adults who are in the same situation<sup>25</sup>.

On the other hand, there are Carabineros protocols that are covered by the secrecy regime contemplated by the Code of Military Justice, within them the Manual of Police Operations in the Control of Public Order, called “Operations Instructions of Water Cannons”<sup>26</sup>.

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<sup>22</sup> INDH. Informe Anual sobre la situación de los Derechos Humanos en Chile 2017. *Manifestaciones de discriminación racial en Chile: un estudio de percepciones*. pp. 13-34.

<sup>23</sup> INDH. Informe anual sobre la situación de los derechos humanos en Chile 2017. *Realidad y desafío: niños, niñas y adolescentes trans e intersex en contextos de salud y educacionales*. pp. 64-77.

<sup>24</sup> INDH, Informe anual Programa de derechos humanos y función policial, 2013, p. 93.

<sup>25</sup> INDH, Informe Programa de Derechos Humanos, Función Policial y Orden Público 2016, pág. 87.

<sup>26</sup> Faced with a request for information from the INDH in July 2017, the General Sub-Directorate of Carabineros replied through Official Letter N° 94 of July 21, 2017, that said Manual “is of a confidential nature in accordance with Article 436 of the Code of Military Justice, since it refers to the plans of operation or service of Carabineros de Chile.

***Investigation and punishment of police abuse (Recommendations 121.79-121.82)***

There have been reports of police sexual abuse against female adolescents during demonstrations, as also against indigenous children and women during police raids in rural areas and indigenous territories, where force has been used without criteria of necessity, graduality and proportionality. The arrests in demonstrations and raids have caused a scenario of little control of police action, in which women, adolescents and children have reported physical abuse and mistreatment by officials not duly identified.

***Poor prison conditions, overcrowding and isolation cells (Recommendations 121.83-121.85)***

According to the latest statistics available, as of April 2018, a total of 49,711 people were deprived of liberty in the closed system, of which 26,241 were serving sentences. According to the Study of Prison Conditions conducted by the INDH between 2014-2015, of 31 public prisons for male population visited in 2014, 20 exceeded the number of places and 13 were at a critical level, according to the definition of the European Committee on Crime Problems. In 2015, in 19 of the traditional prisons visited there were occupancy conditions that exceeded their structural capacity, of which 15 had a critical overpopulation level.

***Violence against women (Recommendations 121.86-121.97)***

In a context in which violence against women does not diminish<sup>27</sup>, despite the various efforts of the State in recent years, the INDH appreciates the admission of the bill on the right of women to a life free of violence in 2017<sup>28</sup>. It is the opinion of the INDH that the bill must improve technical aspects, incorporating other kinds of violence such as the obstetrics violence and that it is granted the necessary urgency to promptly become a law. It is likewise essential to allocate sufficient resources for its proper implementation, particularly with respect to the training of justice operators and the assistance to victims of violence.

In March 2015 a parliamentary motion was submitted to modify the Criminal Code and typify street sexual harassment. Since October 2016, this bill does not show any progress in its process<sup>29</sup>.

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<sup>27</sup> According to the National Institute of Statistics, the femicides committed in 2012 were 34; 40 cases in 2013; 40 cases in 2014; 45 cases in 2015; 34 cases in 2016. The femicides committed do not show a clear trend; however, from 2011 the rate has remained below 0,50: in 2016 it was 0,37, i.e., in Chile per 100,000 women, 0,37 die as a result of femicide. It is worth remembering that in Chile the law only includes intimate femicides. In its turn, the number and rate of frustrated femicides increased during the years for which there were available data: 76 cases in 2013; 103 cases in 2014; 112 cases in 2015; and 129 cases in 2016. Therefore, there is no reduction of violence towards women despite the various efforts made by the State during recent years. According to preliminary data published on femicides committed in 2017, they would amount to 44, which shows an increase of cases related to 2016. According to gender indicators of the INE, the prevalence of family violence to women reached 38,8% in 2017.

<sup>28</sup> Chamber of Deputies. Bill on the right of women to a life free of violence. Available at: [https://www.camara.cl/pley/pley\\_detalle.aspx?prmID=11592&prmBL=11077-07](https://www.camara.cl/pley/pley_detalle.aspx?prmID=11592&prmBL=11077-07) [Last accessed: May 9, 2018.]

<sup>29</sup> Chamber of Deputies. Bill amending the Criminal Code to typify street sexual harassment. Available at: [https://www.camara.cl/pley/pley\\_detalle.aspx?prmID=10360](https://www.camara.cl/pley/pley_detalle.aspx?prmID=10360) [Last accessed: May 30, 2018.]

***Human Trafficking (Recommendations 121.99-121.104)***

Law N° 20.507 (D.O. 8.4.11) differs partly from international standards since it does not include “labor exploitation” as one of the purposes of this crime.

In addition, the training of State officials in matters of human trafficking is insufficient. According to figures provided by the Civil Service, only 5 training sessions were carried out in 2015 on migration, shelter and trafficking, which totaled only 20 hours, reaching 112 officials.

***Military justice (Recommendations 121.109-121.112)***

The amendments to Law N° 20.477 introduced by Law N° 20.968, left civilians and children under 18, who are victims or defendants, outside the jurisdiction of military courts. However, in certain cases, the Code of Military Justice provides for the trial of civilians<sup>30</sup>. Furthermore, the organic structure of these courts has not been modified to guarantee their impartiality and independence<sup>31</sup> and the process is still the same, which could constitute a violation of the due process guarantees, both for the victims and the defendants<sup>32</sup>.

***Serious violations of human rights committed during the dictatorship (Recommendation 121.114)***

One can confirm the tendency of the higher courts of justice to apply institutions that mitigate criminal responsibility, such as half periods of limitation, which is incompatible with the imprescriptible nature of crimes against humanity. The Judiciary must take measures to punish appropriately those responsible for these crimes, as also for their families to know the truth about what happened. Likewise, the State must provide full reparation to the victims and their families, both in criminal and civil courts, as established in international human rights law.

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<sup>30</sup> The legal modifications that have been made are insufficient to fully comply with the Palamara Iribarne judgment of the Inter-American Court of Human Rights, since the military criminal jurisdiction has not been limited only to “offences committed in the course of duty by servicemen in active service”, while the Code of Military Justice considers the trial of both the military and officials of Carabineros and civilian staff of the military institutes. In addition, these courts have jurisdiction to hear military and civilian crimes when they are committed by military personnel in the course of duty or in facilities considered military, which includes police precincts. Furthermore, the organic structure of these courts has not been modified to guarantee their impartiality and independence. In the same way, the process before the military justice system remains the same, which could constitute a violation of the due process guarantees, both for the victims and the defendants.

<sup>31</sup> All these points were indicated by the INDH in its Memorial of Law before the Inter-American Court of Human Rights in the Humberto Palamara Iribarne vs the Chilean State case, May 2014.

<sup>32</sup> In this regard, the Constitutional Court has indicated that “the current military criminal process contains a minimum set of rights that prevents the victim from having right to a public process (...) and an adequate right to defense that allows him to watch over his interests, especially if the perpetrator is a member of the same hierarchical institution that is judging him, generating a violation of the right to be tried by the natural judge”. Judgment of the Constitutional Court, June 17, 2014, Case 2492-2013.

***Repeal of Decree Law N° 2191 on amnesty (Recommendation 121.116)***

Although currently this figure is not applied by Chilean courts, the State must comply with the ruling of the IDH Court (Almonacid Arellano case), as concerns depriving said rule of any legal effect.

***Repeal of 50-year confidentiality established by Law N° 19.992 (Recommendation 121.117)***

Despite the existence of a legislative initiative of the Executive<sup>33</sup>, which aims to make the background of the Valech I Commission accessible to the Courts, the 50-year secret established over such background (Law 19.992) has not yet been reviewed, nor the existence of the special crime of “breach of secrecy” established in said law, which would be configured even when the information is delivered at the request of some judiciary body<sup>34</sup>.

***Juvenile justice system (Recommendations 121.118-121.120)***

It is a cause for concern that the current legislation (Law N° 20.084) cannot achieve its objective of rehabilitating and integrating adolescents in conflict with criminal law and establishes conditions that favor the application of custodial measures in detention centers that do not comply with the basic conditions of care and good treatment, hygiene and health.

***Statelessness (Recommendation 121.123)***

In 2015, the Supreme Court determined that the Chilean nationality should be recognized to 161 sons and daughters of non-resident foreigners, thus ending their situation of statelessness and it also ordered the National Civil Registry and Identification Service to conduct a search of the remaining persons in that condition.

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<sup>33</sup> Bulletin N° 10.883-07, of 2016.

<sup>34</sup> The National Commission on Political Imprisonment and Torture (Valech I Commission), was created by Supreme Decree N° 1.040, of September 26, 2003, whose Final Report was delivered on November 28, 2004, acknowledging a total of 28,459 victims. Subsequently, the Presidential Advisory Commission for the Qualification of Disappeared Detainees, Persons Executed for Political Reasons and Victims of Political Imprisonment and Torture (Valech II Commission) was created by Supreme Decree N° 43 of February 17, 2010, and constituted on that same date which operated for 18 months and accredited 9,795 new cases of political imprisonment and torture and 30 new cases of disappeared detainees and persons executed for political reasons, raising the official figure of recognized victims of political imprisonment and torture to 38,254 people. Regarding the Valech II Commission, Transitory Art. 3 of Law 20.405 states that “actions taken by the Commission, as well as all the antecedents it receives, will be confidential, for all legal purposes”. Notwithstanding the aforesaid, it does not consider special penal types, so one could conclude that Art. 15 of the Valech Law is not applicable. Instead, Law 20.496 established in 2011, by extending the term of operation of the Valech II Commission in 6 months, makes expressly applicable the penal type of Art. 15 of Law 19.992, in the following terms: “The Advisory Commission to which transitory article 3 of Law 20.405 refers to, and the persons authorized by it by virtue of the previous paragraph, will be subject to the same obligations, prohibitions and sanctions established in Article 15 of Law 19.992”.

The State must continue with this policy of recognition of nationality and take measures to prevent future cases of statelessness.

#### ***Education (Recommendations 121.144-121.156)***

The INDH acknowledges the efforts made in the context of the set of progressive measures of the educational reform. Particularly noteworthy are Law N° 20.845 on school inclusion, which eliminates economic barriers for the access to education and Law N° 20.911 creating the Citizen Training Plan and Guidelines for the inclusion of LGBTI students<sup>35</sup>.

Notwithstanding the above, the education financing model generates economic access barriers and there are discriminatory regulations, mechanisms and practices that create inequalities in the quality of the teaching and learning processes that are accessed<sup>36</sup>.

The INDH has also indicated the lack of a clear notion of the quality of education, pointing out that the regulations and public policies designed to protect it are inconsistent and fail to give due protection to central elements of the purpose of education as a human right<sup>37</sup>.

#### ***People with disabilities (Recommendations 121.157-121.159)***

One of the main challenges is to modify the regulation of legal capacity that deprives people with mental, intellectual and auditory disabilities (in this last case, provided they cannot be clearly understood) of the exercise of their economic and personal rights. One of the most serious manifestations of the restriction of the legal capacity is the practice of sterilizations and other irreversible procedures to women with disabilities, without their free and informed consent.

#### ***Strengthening the protection of the rights of indigenous people (Recommendations 121.160-121.162, 121.163-121.166)***

The co-legislating bodies must set adequate mechanisms for the determination, protection and restitution of territories, including the mechanism of expropriation and its corresponding compensation in the corresponding cases. In the prospect of guaranteeing these rights, there is still the need to adapt sectorial legislation (Water Code, mining, energy and forestry regulations) and environmental legislation to international human rights standards with a view of giving effectiveness to collective rights over lands and natural resources and the duty to make the correct consultations in the case of investment or development projects in those habitats.

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<sup>35</sup> Ministry of Education. *Orientaciones para la inclusión de las personas lesbianas, gays, bisexuales, trans e intersex en el sistema educacional chileno*. Available at: <https://formacionciudadana.mineduc.cl/2017/04/28/orientaciones-la-inclusion-las-personas-lesbianas-gays-bisexuales-trans-e-intersex-sistema-educativo-chileno/> [Last accessed: May 10, 2018.]

<sup>36</sup> INDH. 2014 Annual report on the situation of human rights in Chile. *Derecho a la educación y libertad de enseñanza en la reforma educacional*. p. 175.

<sup>37</sup> INDH. 2014 Annual report on the situation of human rights in Chile. *Derecho a la educación y libertad de enseñanza en la reforma educacional*. p. 176.

***Constitutional recognition of indigenous peoples (Recommendations 121.63-121.164)***

The constitutional recognition of indigenous peoples and their rights is still pending on the part of the Chilean State. The co-legislating powers of the State must amend the Constitution, recognizing indigenous persons as a “people”, as well as their rights and the multi-cultural nature of the Chilean State and society. The last bill submitted does not show any major progress in its processing<sup>38</sup>.

***Discrimination against indigenous peoples (Recommendations 121.66-121.68)***

A pattern of discrimination against indigenous peoples is maintained, mainly manifest in the social and political exclusion to which they are subjected, and the persistence of social indicators that reveal inequalities of a structural nature.

***Anti-terrorist law, definition of terrorism and criminalization of Mapuche people (Recommendations 121.167-121.169)***

Between 2000 and 2016, there were 21 cases where an attempt was made to apply the Anti-Terrorist Law, with 108 people charged<sup>39</sup>. Of the nine persons convicted, all of them of Mapuche origin, seven convictions were left without effect by order of the Inter-American Court of Human Rights<sup>40</sup>, and the other two convictions fall on the same person: Raúl Castro Antipán<sup>41</sup>. Castro Antipán was an informant of police intelligence, and in both cases accepted his responsibility in summary trials. In addition to him, the only other person convicted for a terrorist crime according to Law N° 20.467 is Juan Flores Riquelme —with no connection to the territorial demands of the Mapuche people—, for placing a bomb in a subway station in the city of Santiago in September 2014<sup>42</sup>. Subsequently, on May 5, 2018, three individuals of the Mapuche people were sentenced by

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<sup>38</sup> Constitutional reform bill, initiated by message of the president of the Republic to modify the Political Constitution of the Republic (Bulletin N°11617-07). Available at: <http://www.senado.cl/appsenado/templates/tramitacion/index.php#> [Last accessed: May 9, 2018.]

<sup>39</sup> Of these, 8 cases and 30 defendants correspond to the version in force of Law 18.314, i.e., after the 2010 reform.

<sup>40</sup> Norín Catrimán and others Vs. Chile case, judgment of May 24, 2014. Besides the aforesaid violation of Articles 9 and 8.2 of the American Convention on Human Rights, in this judgment the Court also declared the violation by the State of Chile of Art. 24 (principle of equality and non-discrimination); Art. 8.2 f) (right of the defense to examine witnesses and obtain the appearance of witnesses who could shed light on the facts; Arts. 7.1, 7.3 and 7.5 (right to personal freedom, not to be subjected to arbitrary detention and not to suffer custody in conditions not adjusted to international standards); Art. 13.1 (freedom of thought and expression); Art. 23 (political rights); and Art. 17.1 (right to the protection of the family).

<sup>41</sup> Judgment of the Warranty Court of Victoria of October 22, 2010, RUC 0900969218-2 and Judgment of Warranty Court of Temuco of September 14, 2012, R.U.C.: 0900697670-8.

<sup>42</sup> Judgment of the 6th Oral Court, Case N° 64-2017, which convicts him to 23 years of prison, but is not yet firm because the defense filed an appeal for annulment.

the Oral Criminal Court of Temuco, in the context of the new oral trial for the Luchsinger-Mackay case<sup>43</sup>. A legislative initiative is now being discussed in Parliament to modify the anti-terrorist law<sup>44</sup>.

***Prior consultation and ILO Convention N° 169 (Recommendations 121.70-121.75)***

Although prior consultation processes have been implemented in recent years<sup>45</sup>, the State must regulate the obligation to conduct prior consultations in accordance with the principles established by international law, through an institutionalized mechanism, in order to guarantee the principles of legality and legal certainty. The INDH has recommended reviewing Supreme Decree N° 66 of 2014 that regulates the prior consultation of indigenous peoples, in order to establish adequate discussion periods, avoid parallel consultation processes and ensure proper coordination between the various bodies of the State Administration, so as to enable an effective participation of the peoples. The INDH has also verified that the National Congress does not have a mechanism for the consultation of legislative measures that may affect indigenous peoples<sup>46</sup>.

***Companies, human rights and indigenous peoples (Recommendations 121.177- 121.184)***

In the period covered by this review, the involvement of investment projects of companies that affect the rights of indigenous peoples has continued. The INDH Map of Socio-Environmental Conflicts in Chile shows that to date, of the total 125 conflicts identified, in 43 of them the parties involved claim that indigenous lands and territories have been affected<sup>47</sup>. The INDH hopes that the National Action Plan for Human Rights and Businesses (Plan de Acción Nacional de Derechos

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<sup>43</sup> Oral Court of Temuco, RIT 150-2017. The whole sentence was released on June 11, 2018, and applies to two of them the penalty of life imprisonment and to the third one (recognized as “compensated informer” 5 years of probation. The defenses have 10 days from that date to file appeals for annulment, which if successful, could generate a replacement sentence or a new oral trial.

<sup>44</sup> The bill to modify the anti-terrorist regime (Bulletin 9692-07), mentioned in the State Report, was consolidated in 2015 with another project presented by a group of senators (Bulletin 9669-07). The new government that took office on March 11, 2018 presented indications to said consolidated project, that is based, in its turn, on a project presented during President Piñera’s previous term (2010-2014), Bulletin 7207-07.

<sup>45</sup> Between 2014 and 2015 an Indigenous Consultation was conducted where proposals for the creation of the Ministry of indigenous peoples and the Council of indigenous peoples were addressed, under the responsibility of the Ministry of Social Development, and the proposal for the creation of the Ministry of Culture and Heritage, which will be carried out by the National Council for Culture and the Arts. In 2017 the Indigenous Constituent Consultative Process was held, focused on the measures to be included in the draft of the New Constitution, particularly those related to the constitutional recognition and effective political participation.

<sup>46</sup> The INDH has also recommended reviewing, with the participation of the indigenous peoples, the Regulation of the Environmental Impact Assessment Service contained in Supreme Decree N° 40 of 2013, which regulates indigenous consultation in the context of the Environmental Impact Assessment System so as to modify it in accordance with human rights standards.

<sup>47</sup> Involvement of indigenous lands or territories: this indicates whether the claimants involved in the socio-environmental conflict claim that indigenous lands and territories have been affected, even if these are not part of the land registry of the National Corporation of Indigenous Development (Corporación Nacional de Desarrollo Indígena).

Humanos y Empresas) will be a space that, with the participation of indigenous peoples, will allow addressing the impact generated by companies on their rights<sup>48</sup>.

***Migrants (Recommendations 121.178-121.182)***

In April 2018, a new immigration policy was announced<sup>49</sup>. This policy is made up of three main elements: approval of a migration law, adoption of administrative measures with immediate effects and an extraordinary regularization process<sup>50</sup>. The INDH values this announcement; however, due to certain aspects of the bill that is being processed in the National Congress<sup>51</sup> and the adoption of administrative measures, effects may be caused which will tend to limit migration from certain countries, especially Haiti, without addressing the objective material conditions that motivate such measures.

In terms of migrants, the current regulatory framework grants the administrative authority a discretionary margin to decree the expulsion of immigrants, contains discriminatory rules and does not establish sufficient legal guarantees for an adequate defense.

On the other hand, the practice of mass retentions and expulsions of migrants from the international airport of Santiago has been established<sup>52</sup>.

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<sup>48</sup> The National Action Plan for Human Rights and Businesses considers the creation of a multi-stakeholder committee with representatives of the civil society, trade unions, business sector, indigenous peoples, academia and INDH in order to evaluate the progress and make recommendations for the effective implementation of the Plan

<sup>49</sup> Presidency Press. President Piñera presents reform to “guarantee a safe, orderly and regular migration”. Available at: <https://prensa.presidencia.cl/comunicado.aspx?id=73015> [Last accessed: April 7, 2018.]

<sup>50</sup> Ministry of the Interior and Public Security. Minutes on immigration reform and national immigration policy. Available at: [https://cdn.digital.gob.cl/filer\\_public/b0/09/b0099d94-2ac5-44b9-9421-5f8f37cf4fc5/nueva\\_ley\\_de\\_migracion.pdf](https://cdn.digital.gob.cl/filer_public/b0/09/b0099d94-2ac5-44b9-9421-5f8f37cf4fc5/nueva_ley_de_migracion.pdf) [Last accessed: April 7, 2018.]

<sup>51</sup> Among the aspects of the bill on migration, the following are elements of special concern: the bill does not establish guarantees for the protection of data nor does it forbid that they may be used for merely persecutory purposes or purposes of another kind that may affect rights recognized to immigrants; the bill simplifies and expedites the process of expulsion in those cases of immigrants who have violated the migratory law, establishing a maximum period of seven days for the processing of legal appeals that can be filed for the review of their cases.

<sup>52</sup> On March 6, 2018, a team of the INDH verified at the Santiago International Airport “Arturo Merino Benítez” the conditions in which a group of 62 people proceeding from Haiti who, at their arrival in the country, had been retained by personnel of the PDI. During those four days they remained in very poor conditions. A remedy of protection filed against this measure by the movement Movimiento Acción Migrante was rejected in first instance by the Court of Appeals of Santiago (Case 299-2018), but was then accepted by the Supreme Court, who considered insufficient the criteria used to deny them entry to the country<sup>52</sup>. Due to the same facts, plus other similar ones observed *in situ* on March 7, 19, 23 and 27, 2018, there is a remedy of protection filed by the INDH, still pending process.