



**International Covenant on  
Civil and Political Rights**

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**Human Rights Committee**

**Seventh periodic report submitted by Chile under article 40  
of the Covenant pursuant to the optional reporting  
procedure, due in 2020\*, \*\***

[Date received: 22 April 2021]

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\* The present document is being issued without formal editing.  
\*\* The annexes to the present report are available on the Committee's web page.



## I. General information on the national human rights situation, including new measures and developments relating to the implementation of the Covenant

1. The State of Chile is submitting its seventh periodic report on the implementation of the International Covenant on Civil and Political Rights (hereinafter the “Covenant”) in Chile under article 40 of the Covenant pursuant to the optional reporting procedure. The report covers the period from August 2014, the month in which the Human Rights Committee issued its previous concluding observations, to 31 December 2020. Additional information concerning events after that date may also be included, as may information and figures for the full calendar year 2014. The State undertakes to make every effort to respond to any questions that it has not been possible to answer in full in this report during the future constructive dialogue with the Committee. The present report was prepared by the Human Rights Secretariat of the Ministry of Justice and Human Rights, with input from 14 additional institutions.<sup>1</sup>

2. This report provides responses to the concerns raised by the Committee in the list of issues prior to reporting issued on 14 August 2019. It also provides details of the mechanisms developed by the State with a view to protecting and promoting the rights enshrined in the Covenant in the context of the two issues that have dominated the national agenda since the publication of the list of issues prior to reporting: namely, the demonstrations of 2019 and their repercussions, including information on the ongoing constitutional amendment process; and the crisis caused by the coronavirus (COVID-19) pandemic, which has had an adverse impact on people throughout the world.

3. The string of civil demonstrations and acts of violence that began in the city of Santiago on 18 October 2019 intensified and spread throughout the country in the following days. From the outset, the Government of Chile maintained a policy of openness and transparency in connection with the events, inviting the Office of the United Nations High Commissioner for Human Rights (OHCHR) and Human Rights Watch to apprise themselves of the situation in the country and the state of human rights protection in this context. These two organizations, as well as the National Institute of Human Rights, the Office of the Ombudsman for Children’s Rights and the Inter-American Commission on Human Rights, issued a series of recommendations for the State that attest to the challenges it faces. To facilitate inter-agency coordination in addressing those challenges, the Expert Advisory Committee on Human Rights was created, and, through the agency of an inter-institutional subcommittee, devised a plan of action to follow up on the more than 100 recommendations received. A progress report on the advancement of measures adopted in response to the recommendations received from national and international human rights bodies in the context of the social protests of 2019 was published in August 2020.<sup>2</sup>

4. Drawn up to address the political and social unrest that the country was experiencing and in response to the mobilization of citizens and the President’s call for action, the Agreement for Social Peace and the New Constitution was signed on 15 November 2019. In it, the signatory political parties agreed an institutional solution to the crisis that entailed holding a referendum, on 25 October 2020, in which a clear majority of the country’s citizens backed the proposal for a new constitution to be drafted.<sup>3</sup> <sup>4</sup> The body tasked with drafting the new Constitution will be known as the Constitutional Convention and will have 155 members,

<sup>1</sup> The judicial authority, Ministry of the Interior and Public Security, Public Prosecution Service, Ministry of Defence, Ministry for Social Development and the Family, Ministry of Education, Ministry of Foreign Affairs, Ministry of Health, Office of the Minister and Secretary General of Government, Ministry of Women’s Affairs and Gender Equity, Prison Service, National Service for Minors and Civil Registry and Identity Service.

<sup>2</sup> <https://ddhh.minjusticia.gob.cl/media/2020/01/Informe-Avance-Recomendaciones.pdf>.

<sup>3</sup> [https://obtienearchivo.bcn.cl/obtienearchivo?id=documentos/10221.1/76280/1/Acuerdo\\_por\\_la\\_Paz.pdf](https://obtienearchivo.bcn.cl/obtienearchivo?id=documentos/10221.1/76280/1/Acuerdo_por_la_Paz.pdf).

<sup>4</sup> <https://www.gob.cl/procesoconstituyente/#>.

due to be elected on May 15 and 16 2021.<sup>5</sup> Special rules will be applied in the election in order to facilitate the participation of independent candidates and ensure parity between men and women among elected members. In addition, a constitutional amendment will be enacted that will reserve 17 seats on the Convention for representatives of indigenous peoples. The Constitution will be submitted to the country's citizens for approval in a second referendum held 60 days after the new text is adopted by the Convention.

5. As regards the coronavirus (COVID-19) situation in Chile, Ministry of Health Decree No. 4/2020, establishing a public health emergency of international concern, was published on 8 February 2020 and the first COVID-19 case in the country was reported on 3 March 2020. To address the health crisis, the authorities launched a coronavirus action plan, a social protection network to support families, the "Paso a Paso" (Step-by-Step) Plan, as part of a gradual deconfinement strategy, and a vaccination plan.

6. As at 19 April 2021, a total of 1,131,340 COVID-19 cases had been recorded in Chile, resulting in 25,277 deaths and 1,060,826 recoveries in confirmed cases.<sup>6</sup> A total of 7,735,162 persons had been vaccinated under the "Yo me vacuno" (I'm getting vaccinated) campaign as at 18 April 2021,<sup>7</sup> placing Chile second in the world ranking in terms of the percentage of its population that is fully vaccinated.<sup>8</sup>

7. During the period under review, the Government of Chile continued its efforts to bring its legislation and institutions into line with international human rights standards. A number of international treaties were ratified, including the Optional Protocol to the Convention on the Rights of the Child on a communications procedure (2015); the International Labour Organization (ILO) Domestic Workers Convention, 2011 (No. 189); the Kampala amendments to the Rome Statute (2017); the Inter-American Convention on Protecting the Human Rights of Older Persons (2017); the Convention relating to the Status of Stateless Persons (1954) and the Convention on the Reduction of Statelessness (1961); the Agreement on the Status and Functions of the International Commission on Missing Persons (2018); the Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women; and ILO Protocol No. 29 to the Forced Labour Convention, 1930 (2021), of 2014.

8. In parallel with these ratifications, human rights institutions have been strengthened. The Human Rights Secretariat, established under Act No. 20.885 to contribute to the promotion and protection of human rights through the design, implementation and evaluation of policies, plans and programmes, became operational in 2017. Its activities include planning and coordinating the implementation of the National Human Rights Plan, the first iteration of which, covering the period 2018–2021, encompassed more than 600 undertakings, organized under 50 goals and grouped into 15 areas. These undertakings correspond to recommendations received from the universal human rights system, the Inter-American system and the National Institute of Human Rights,<sup>9</sup> and are in line with the Sustainable Development Goals. At the end of November 2020, 21.55 per cent of the activities envisaged under the Plan had been completed, 8.72 per cent had not yet started and 62.17 per cent were in progress.<sup>10</sup> The second National Human Rights Plan, covering the period 2022–2025, will be drawn up in the course of 2021.

9. All the functions and powers deriving from transitory article 10 of Act No. 20.405 and Supreme Decree No. 1005 of 1997, on the National Human Rights Programme, including those corresponding to the functions and activities assigned to the National Reparation and Reconciliation Board, have been transferred from the Ministry of the Interior and Public

<sup>5</sup> In view of the health emergency and the increase in Covid-19 cases nationwide, the elections were postponed until May 15 and 16 by Act. No. 21.324.

<https://www.diariooficial.interior.gob.cl/publicaciones/2021/04/07/42923/01/1923954.pdf>.

<sup>6</sup> <https://www.minsal.cl/nuevo-coronavirus-2019-ncov/casos-confirmados-en-chile-covid-19/>.

<sup>7</sup> <https://www.gob.cl/yomevacuno/>.

<sup>8</sup> <https://ourworldindata.org/grapher/share-people-fully-vaccinated-covid>. Update as at 19 April, 15:30 (London time).

<sup>9</sup> The National Human Rights Plan and the related follow-up reports are available at:

<https://planderechoshumanos.gob.cl/>.

<sup>10</sup> No information is recorded for 7.57 per cent of the activities envisaged.

Security to the Human Rights Secretariat. Thus, general responsibility for human rights is now concentrated in the Secretariat.

10. In addition, in January 2019, responsibility for coordinating the National Action Plan on Business and Human Rights was transferred from the Ministry for Foreign Affairs to the Human Rights Secretariat. The aim of this plan, which was launched in 2017,<sup>11</sup> is to incorporate a human rights-based approach into the daily work of companies through the adoption of the United Nations Guiding Principles on Business and Human Rights. The National Action Plan on Business and Human Rights encompasses 146 undertakings involving 17 public institutions.<sup>12</sup> Its implementation is overseen by the Interministerial Committee on Business and Human Rights chaired by the Ministry of Justice and Human Rights and composed of representatives of nine ministries.<sup>13</sup> The second iteration of the plan is currently being drawn up.

11. Other institutions established in the period include the Ministry of Women's Affairs and Gender Equity, under Act No. 20,820 of 2015; the Ministry of Cultures, Arts and Heritage, under Act No. 21.045 of 2017; the Office of the Undersecretary for Children, under Act No. 21.090 of 2018; and the Specialized Protection Service for Children and Adolescents, under Act No. 21.302 of 2021. A bill creating the National Service for Access to Justice and the Office of the Ombudsman for Victims of Crime (Bulletin No. 13991-07) is currently before the Chamber of Deputies and is being accorded the highest priority.

12. An important milestone in the period was the enactment of Act No. 21.120, recognizing and protecting the right to gender identity, in 2018. This Act regulates the procedure for changing a person's registered sex and registered name in cases where their birth certificate does not correspond or is not consistent with their gender identity.

13. With regard to autonomous institutions, the national human rights institution now has a presence in all regions of the country. Act No. 21.154 of 2019 designated the National Institute of Human Rights to serve as the national human rights institution and provided for the establishment of a committee of experts within the Institute that has the powers and resources to conduct regular preventive visits to persons deprived of liberty, thereby ensuring compliance with the Paris Principles in terms of the Institute's functional and financial independence. In addition, the Office of the Ombudsman for Children's Rights was established under Act 21.067 (2018) as an autonomous State agency having a legal personality and its own funds and resources.

14. In order to enhance the internal processes involved in implementing the recommendations made in the Committee's previous concluding observations, Chile has entered into a programme of cooperation with Paraguay with a view to replicating in Chile the Paraguayan system for following up on international human rights recommendations known as SIMORE PLUS. The technology underlying SIMORE PLUS – a computerized system for monitoring treaty body recommendations developed by the Paraguayan authorities – is being shared with Chile within the framework of this cooperation programme, and the installation of the platform and training in its use within participating institutions are expected to be completed by the end of 2021.

15. A total of 1,186 Supreme Court judgments issued between 13 August 2014 and 1 January 2021 in which the Covenant was invoked have been identified.<sup>14</sup> Of this total, 470

<sup>11</sup> The National Action Plan and the corresponding follow-up reports are available at:

<https://ddhh.minjusticia.gob.cl/plan-de-accion-nacional-de-derechos-humanos-y-empresas>.

<sup>12</sup> These include the Office of the Superintendent for the Environment, Chilecompra (the public procurement division of the Ministry of Finance), the Public Health Institute, the Organisation for Economic Co-operation and Development (OECD) National Contact Point, the Environmental Impact Assessment System, the National Institute of Human Rights and the Research Division of the Supreme Court.

<sup>13</sup> Ministry of Justice and Human Rights; Ministry of Foreign Affairs; Ministry of Economic Affairs, Development and Tourism; Ministry for Social Development and the Family; Ministry of Labour and Social Security; Ministry of the Environment; Ministry of Mining; and Ministry of Energy.

<sup>14</sup> Supreme Court Documentation Centre. Supreme Court judgments. Data search criteria: (i) Date: between 13 August 2014 (date on which the Human Rights Committee issued its concluding

correspond to decisions on appeals of rulings handed down in the high courts in cases involving the protection of fundamental rights; 251 are decisions on appeals of rulings of courts of appeals in *amparo* proceedings; 231 correspond to appeals for the annulment of criminal sentences; 132 are decisions on appeals in cassation on form and substance in civil cases; and 67 are decisions on appeals in cassation on form and substance in criminal cases. The remaining judgments correspond to passive and active extradition cases, applications for review and other proceedings not registered in accordance with the classification used by the Supreme Court Documentation Centre. Annex I contains a more detailed analysis of the application of the Covenant by the judicial authority.

## **II. Specific information on the implementation of articles 1 to 27 of the Covenant, including with regard to the previous recommendations of the Committee**

### **A. Constitutional and legal framework within which the Covenant is implemented (art. 2)**

16. The State of Chile maintains the declaration made at the time of accession to the Optional Protocol to the International Covenant on Civil and Political Rights on an individual communications procedure as well as the reservation entered when ratifying the Second Optional Protocol.

### **B. Counter-terrorism measures (arts. 2, 14 and 26)**

17. Bulletin No. 9.692-07, consolidated with Bulletin No. 9.669-07 (2014), has been approved by the Senate in general and the bill is currently at the first reading stage before the Constitutional Committee. Since the presentation of initial views in April 2018, the Commission has met on seven occasions, the last time being on 23 October 2018. Various commentators including professors of criminal law gave opinions at these meetings. It was agreed that the Commission should work with a committee of experts, but no progress has since been made in this connection.

18. The definition of terrorist acts contained in the bill remains that proposed in the Message from the Executive, which reads as follows: “Any organization or group shall be considered to be a terrorist criminal association if, through the perpetration of premeditated offences, provided these correspond to those established in articles 141, 142, 150A, 315, 316, 391, 395, 396, 397 and 398 of the Criminal Code and articles 5, 5 (b) and 6 of Act No. 12.927 or the offence of placing explosive and incendiary devices established in Act No 17.798, the organization or group is seeking to undermine or destroy the democratic institutional order, to seriously disrupt public order, to impose demands on the political powers in office, to wrest decision-making authority from these powers or to instil generalized fear of loss or deprivation of fundamental rights among the population”.

19. The proposals mentioned in the second follow-up report ([CCPR/C/CHL/C0/6/Add.2](#), para. 3) have not yet been incorporated into the bill because they have still to be voted upon by the Committee.

20. With respect to measures to ensure that persons charged with terrorism offences are afforded all procedural guarantees under article 14 of the Covenant, the procedures involved in the investigation of terrorist offences are regulated by the guarantees of fundamental rights established in the Constitution and the standard rules of criminal procedure established in the Criminal Procedure Code. Specifically, the procedural guarantees enshrined in article 14 of the Covenant are protected as follows: Court established by law (Constitution, art. 19 (3) and Criminal Procedure Code, art. 2); Principle of presumption of innocence (Constitution, art. 19 (3) and Criminal Procedure Code, art. 4); Right to be tried without undue delay (Criminal

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observations on the sixth periodic report of Chile) and 1 January 2021. Document content search: (i) All: International Covenant on Civil and Political Rights.

Procedure Code, art. 282); Right to be present at the trial and to defend oneself (Constitution, art. 19 (3) and Criminal Procedure Code, arts. 8 and 285); Right to be assisted by an interpreter free of charge (Criminal Procedure Code, art. 291); Right not to be forced to testify against oneself or to confess guilt (Criminal Procedure Code, art. 98); Right to have the accused's status as a minor taken into account and to measures to foster his or her social rehabilitation (Act No. 20.084); Right to appeal against conviction (Criminal Procedure Code, Title IV, Volume 3); Right not to be tried twice for the same offence (Criminal Procedure Code, art. 1).

21. With regard to the implementation of Act No. 18.314, the Public Prosecutor's Office has identified six cases that were either registered in the Prosecution Support System or subject to a court ruling in the period under review. A total of 34 persons – 24 men and 10 women, all of full legal age – were involved in these six cases. The outcome of the proceedings differed for each person, with only one being convicted under article 2 (4), in conjunction with articles 1 and 3, of Act No. 18.314. A breakdown of this information, together with the judiciary's case law on the matter, is included in annex II.

22. A search conducted via the Documentation Centre's website identified four judgments handed down in the period covered by this report (2014 to 2020) in which the Supreme Court ruled on appeals for the annulment of proceedings and judgments in cases in which Act No. 18.314 had been applied, and in which the grounds set out in article 373 (a) of the Criminal Procedure Code (infringement of rights or guarantees protected under the Constitution and international treaties) were invoked. In all of the judgments identified, the Court failed to find a violation of these guarantees, either because the appeal was dismissed,<sup>15</sup> or because, although the appeal was admitted,<sup>16</sup> there were other grounds for annulment.

23. The Supreme Court reinforces the general scope of the law by requiring courts to ensure that the grounds on which they base their decisions exclude any analysis that might lead the ethnic origin of the accused to be considered a factor in the penalty.<sup>17</sup>

### C. Non-discrimination and equal rights for men and women (arts. 2, 3, 17 and 26)

24. In terms of cases admitted and resolved before courts of first instance in connection with the application of the Anti-Discrimination Act (No. 20.609), 481 cases were admitted in the period 2012–2020 and 60 per cent of them (293 cases) were resolved at first instance in the same period.

<i>Courts of first instance</i>										
<i>Anti-Discrimination Act</i>	2012	2013	2014	2015	2016	2017	2018	2019	2020	<i>Total</i>
Cases admitted	13	32	57	79	64	72	70	66	28	481
Cases resolved	-	14	35	39	49	49	47	33	27	293

25. In the period 2013–2020, 185 appeals related to discrimination were admitted in courts of appeal and 163 of them were resolved. The detail of these cases is as follows:

<i>Appeal courts</i>										
<i>Anti-Discrimination Act</i>	2013	2014	2015	2016	2017	2018	2019	2020	<i>Total</i>	
Cases admitted	4	19	24	42	33	25	31	7	185	
Cases resolved	3	14	28	29	39	19	22	9	163	

<sup>15</sup> Supreme Court, judgment of 13 June 2018, Roll No. 5.397–2018 and judgment of 21 December 2015, Roll No. 21.546–2015.

<sup>16</sup> Supreme Court, judgment of 9 January 2014, Roll No 15.187–2013 and judgment of 10 October 2018, Roll No 15.163–2018.

<sup>17</sup> Supreme Court, joined cases Roll Nos. 40.863-17, 40.860-17, 40.862-17 and 40.864-17 dated 19 October 2017.

26. Lastly, as at February 2020, there were 37 cases before the Supreme Court, of which 28 were appeals on substance, 4 were appeals on form and substance, 4 were complaint proceedings and one was an appeal in cassation on form.

<i>Type of appeal</i>	<i>Total</i>
Appeals in cassation on substance	28
Appeals in cassation on form and substance	4
Complaints	4
Appeals in cassation on form	1
<b>Total</b>	<b>37</b>

27. The aggravating circumstances introduced to article 12 (21) of the Criminal Code<sup>18</sup> by Act No. 20.609 have been recognized in the criminal information system since July 2015. As at 29 February 2020, a total of 13 cases involving these aggravating circumstances had been taken to trial and all of them had resulted in convictions. Details of cases brought before the Supreme Court in application of Act No. 20.609 and cases that involve these aggravating circumstances are given in annex III.

28. The State has taken numerous steps to prevent and combat violence and discrimination, especially violence and discrimination based on sexual orientation or gender identity. The Observatory for Citizen Participation and Non-Discrimination<sup>19</sup> has been tasked with strengthening citizen participation at the governmental level, promoting a culture that recognizes and respects diversity and fostering equal rights and dignity for all human beings, and is working to guarantee spaces free from arbitrary discrimination. It also designs, promotes and coordinates training programmes for government officials, including programmes that promote citizen participation and non-discrimination.

29. To gather input for the amendment of Act No. 20.609, the Observatory undertook a programme of work involving expert roundtables and regional dialogues with various civil society organizations.

30. The second citizen consultation on discrimination in Chile took place in December 2019 and January 2020. This nationwide exercise used both face-to-face and online consultation methodologies and obtained input from a total of 67,309 persons,<sup>20</sup> of whom 85 per cent participated in person and 15 per cent took part online. Most of the work was carried out in the field since the aim was to raise awareness of Act No. 20.609 and its importance.

31. To expand on the work that the Observatory has been carrying out in follow-up to the second consultation, a communication campaign intended to foster a change in mentality, behaviour and the treatment of members of the lesbian, gay, bisexual, transgender, intersex and queer community was launched on 18 December 2020. The campaign was based on the hashtag slogan #YoTeRespeto (I respect you), its target audience was the population in general, and it was run on social networks and radio stations.

32. With regard to gender-related training and awareness-raising activities for members of the judiciary, a module on gender stereotypes has been included in the Judicial Academy's training programme since 2015 and gender-related courses have featured in its skills development programme since 2016. The Academy has also produced support materials for members of the judiciary, including a guidance document on international regulations related

<sup>18</sup> Act No. 20,609, art. 17, introduced the following regulation: "Amendment to the Penal Code. The following paragraph is hereby added to article 12:

"21. Committing or participating in the offence when motivated by the victim's ideology, political opinion, religion or beliefs; the nationality, race, ethnicity or social group to which the victim belongs; their sex, sexual orientation, gender identity, age, descent, personal appearance, or any illness or disability from which they suffer".

<sup>19</sup> Created under the Office of the Minister and Secretary General of Government in 2013.

<sup>20</sup> Note that the participants in the consultation did not constitute a representative sample.



to equality, non-discrimination and gender<sup>21</sup> in 2016 and another on national and international disability-related regulations<sup>22</sup> in 2018. An international seminar on specific treaty-based protection for human rights was held in 2017 and included a workshop on gender and sexuality.<sup>23</sup>

33. Since 2015, with support from the Office for Women of the Supreme Court of Argentina, the Supreme Court has trained up 72 members of the judiciary, of whom 42 are junior-level staff, to serve as monitors who give workshops on gender awareness, domestic violence and human trafficking. To date, these staff members have repeated the workshop 17 times and 341 further staff members have received training. In addition, in the period 2015–2017, in conjunction with the National Service for Women and Gender Equality, the Supreme Court provided funding for 37 junior-level judicial officers, 45 expert advisors and 4 legal professionals to complete a course on tools for addressing violence against women.

34. As part of efforts to increase knowledge of the gender equality and non-discrimination policy that was adopted by the full bench of the Supreme Court in 2018, the Technical Secretariat for Gender Issues has organized various awareness-raising activities, including gender awareness talks that were attended by 226 judicial personnel.

35. To raise awareness of sexual harassment in the Chilean judiciary, in 2017 three seminars were held on the concept and characteristics of sexual harassment, good practices and challenges, and a prevention and information campaign on sexual harassment was run during which visual materials were displayed in the Courts of Justice Palace in Santiago and posters, leaflets and a video were distributed.<sup>24</sup>

36. Details of the activities carried out in 2019 and 2020 by the Judicial Academy and the Technical Secretariat for Gender Issues are included in annex IV. The Judicial Academy's activities included, for example: the formulation of a gender equality and non-discrimination plan in 2019; the incorporation of specific courses on gender, equality and non-discrimination in its training, skills development and specialization programmes; the development of teaching materials; and the accreditation of external training on the subject. The Technical Secretariat, for its part, has continued to organize training activities and issue publications, including a handbook of good practices for incorporating a gender perspective in judgments and, to support the implementation of Act No. 21.120, a guide to guaranteeing the exercise of the right to gender identity for users and members of the justice service, which explains the key content of the regulations and provides an introduction to certain documents and the main international standards.

37. A total of 851 Carabineros officers have completed a training course on the Anti-Discrimination Act (No. 20.609) run by the Observatory for Citizen Participation and Non-Discrimination.<sup>25</sup>

38. In the field of education, the State education system, which is regulated by Act No. 21.040 of 2017, has a remit to provide a high-quality State education that is secular, pluralistic and free of charge and promotes social inclusion, equity, tolerance and respect for diversity and freedom. Its guiding principles are quality, guaranteed access, equal opportunities, inclusivity in educational initiatives and developing citizenship and republican values.

39. The Inclusion, Citizen Participation and Gender Equity Unit was established by Ministry of Education Exempt Resolution No. 179.<sup>26</sup> Circular No. 768, on the rights of girls, boys and transgender students in charter schools, defines the concepts of gender identity, gender expression and transgenderism;<sup>27</sup> sets out guiding principles for the application of a

<sup>21</sup> Available online at: [http://www.academiajudicial.cl/Otros.aspx?id\\_menu=104](http://www.academiajudicial.cl/Otros.aspx?id_menu=104).

<sup>22</sup> Available online at: [http://www.academiajudicial.cl/Mobile/Otros.aspx?id\\_menu=111](http://www.academiajudicial.cl/Mobile/Otros.aspx?id_menu=111).

<sup>23</sup> The other workshops at the seminar covered constitutional and treaty-based interpretations of fundamental rights and the rights of children and adolescents.

<sup>24</sup> For more information, consult: <https://www.youtube.com/watch?v=futElPnCzYA>.

<sup>25</sup> Under a cooperation agreement concluded between the Office of the Minister and Secretary General of Government and Carabineros de Chile available at: [https://www.carabineros.cl/transparencia/Resoluciones/ResolEx\\_457\\_03122019.pdf](https://www.carabineros.cl/transparencia/Resoluciones/ResolEx_457_03122019.pdf).

<sup>26</sup> Repealing Exempt Resolution No. 9304, 2019.

<sup>27</sup> Office of the Superintendent of Education, 2017.



rights-based approach; and sets requirements and establishes a procedure for recognition of the gender identity of lesbian, gay, transgender, bisexual and intersex students in educational institutions, incorporating basic support measures such as providing for the use of a social name in educational spaces and a legal name in official documents, and for personal presentation and use of sanitary facilities according to gender identity.

40. Other measures taken by the Ministry of Education to prevent and combat violence and discrimination based on sexual orientation or gender identity within the educational system include:

- Communications campaigns: (i) “Eduquemos con Igualdad” (Let’s educate with equality), 2016, YouTube; (ii) “Educación libre de sexismo” (Sexism-free education), 2018, Facebook, Instagram and Twitter; (iii) Campaign against cyberbullying “Hay palabras que matan” (Words can kill), 2018.
- Training for in-service teachers.<sup>28</sup>
- Reporting on the educational system with gender analysis.
- Commissioning of research studies.
- Organization of seminars within the school system.<sup>29</sup>
- Distribution throughout the educational system of the guidance document on the inclusion of lesbian, gay, bisexual, transgender and intersex persons in the Chilean educational system that accompanies Circular No. 768 (2017). This document provides suggestions for safeguarding the rights of lesbian, gay, bisexual, transgender and intersex students and offering assistance in the event that they lack family support as well as educational guidance and learning objectives for addressing these issues. The central themes of the document, which was drawn up from a human rights perspective, are dignity of the human person, safeguarding equality, non-discrimination, and the recognition and promotion of citizen participation.
- Distribution of educational materials on sexuality, relationships and gender to municipal educational establishments throughout the country, including stories for children that show women and girls in roles that counter existing biases and stereotypes.
- Talks for secondary school students on the prevention of HIV/AIDS and sexually transmitted infections with a focus on sexuality, relationships and gender education (2018–2020) at which male and female condoms were distributed.<sup>30</sup>
- Publication of a procedural handbook for addressing sexual harassment in school education (2020).
- Promotion of a gender-based approach in student entrepreneurship projects in higher education, with eligibility conditions including quotas for underrepresented population groups such as gender and sexual minorities (2017–2019).

<sup>28</sup> (i) e-learning course “Hombre y Mujer= ¿en aula?” (Man and Woman = in the classroom?) 2016–2017; (ii) Training on gender, sexuality and sexual diversity for in-service teachers, 2018–2019; (iii) Computer science course for teachers incorporating a gender approach, 2020; (iv) Inclusive school management course with a focus on gender equity and diversity, 2020; (v) Part online, part on-site training on the gender approach for qualified teachers, 2020. Common topics: concepts and characteristics of unequal gender relations, gender violence at school, diversity, the gender perspective in the classroom.

<sup>29</sup> (i) The gender perspective. Incorporation in school management tools, 2017; (ii) Sexuality, harassment, abuse and statutory rape, 2017; (iii) Education on sexuality, relationships and gender, guidelines for the design and implementation of a programme of work, 2017; (iv) Leaflets on violence, protection and inclusion; discrimination and sexual abuse, 2017; (v) National school coexistence policy, 2015–2018, (online dissemination); (vi) Curricular opportunities and sexuality, relationship and gender plans, Ministry of Education, 2020. All these documents take an educational, inclusive, participatory and rights- and gender-based approach.

<sup>30</sup> In 2020, the talks took place online and no condoms were distributed owing to COVID-19.

- Publication of a procedural handbook for addressing sexual harassment in higher education: suggestions for drafting (2016).

41. In the field of health, technical guidelines for updating or developing a protocol for the treatment and registration of transgender persons were issued in 2019 to support the implementation of Ministry of Health Circular No. 21. The aim of this Circular is to reduce inequalities, gaps and barriers in the provision of health care for transgender persons, specifically in terms of access to treatment and registration.<sup>31</sup>

42. With regard to article 373 of the Criminal Code, a bill to repeal this article was brought before the Chamber of Deputies by parliamentary motion<sup>32</sup> on 13 December 2007. However, the bill was shelved in May 2010 after being dismissed by a majority of the members of the Constitutional, Legislative and Justice Committee, and no new bills addressing this matter have since been introduced. Notwithstanding the foregoing, with regard to the application of the aforementioned article, no Supreme Court rulings citing its provisions were identified on the Documentation Centre's web page and a search of the same database identified 20 appeal court rulings on appeals for annulment lodged against first-instance criminal court rulings in cases involving the application of article 373 in the period from January 2014 to December 2020. A review of each of these rulings individually revealed that 16 of them were related to acts with a sexual connotation in which men were accused of subjecting women to improper touching, acts of exhibitionism and other conduct of this type. In two of the rulings, it was not possible to identify the sex and sexual orientation of the persons involved, and another two concerned acts with a sexual connotation involving men. In one of these last two rulings, the defendant was convicted of the offence defined in article 373 of the Criminal Code,<sup>33</sup> but in the other the criminal offence in question was not applied.<sup>34</sup>

43. The bill to amend various legal texts in order to permit the marriage of same-sex couples in conditions of equality<sup>35</sup> was brought before the Senate by parliamentary motion on 5 September 2017. The bill received overall approval on 15 January 2020 and is currently at the first reading stage before the Senate Constitutional, Legislative, Justice and Regulatory Committee, without being accorded priority. Notwithstanding the foregoing, Act No. 20.830 (2015) created a legal institution known as a civil union agreement that allows persons of the same sex to enter into such unions.

44. The bill to repeal article 365 of the Criminal Code in order to guarantee equal rights for all persons irrespective of their sexual orientation was brought before the Chamber of Deputies by parliamentary motion on 3 September 2009, but there has been no further legislative development since.<sup>36</sup> However, on 6 July 2020, a new bill also aimed at the repeal of article 365 of the Criminal Code was submitted to the Chamber of Deputies (Bulletin No. 13.631-07). The two bills are both at the first reading stage and have not been accorded priority.

45. Act. No. 21.120, recognizing and protecting the right to gender identity, provides that persons aged between the ages of 14 and 18 years may apply to have their registered name and registered sex changed through the intermediary of their legal representatives, or one of their representatives, as chosen by the adolescent concerned. An oral hearing is then organized at which both the adolescent and their parents or representatives are present. The adolescent may exercise their right to be heard directly before the judge and an expert advisor, in order to attest to their consent to the change, and will be asked which first name or names they wish to replace those appearing on their birth certificate. All persons between the ages of 14 and 18 years have the right to be heard at all stages of the proceedings. Subsequently during the oral hearing, the parties summoned to appear will also be heard and the evidence admitted by the court will be presented. The final decision must be well founded and must take account of all reports submitted during the proceedings. The decision may be challenged

<sup>31</sup> Circular No. 21, reiterating instructions for the care of transgender persons within the public health-care network. Ministry of Health, 14 June 2012.

<sup>32</sup> Bulletin No. 5565-07.

<sup>33</sup> Antofagasta Appeals Court. Judgment of 6 May 2019. Roll No. 123-2019.

<sup>34</sup> Rancagua Appeals Court. Judgment of 23 January 2020. Roll No. 1065-2019.

<sup>35</sup> Bulletin No. 5565-07.

<sup>36</sup> Bulletin No. 6685-07.

in accordance with the system of appeals available for family matters. If the court approves the application in its final decision, it will instruct the Civil Registry and Identity Service to amend the birth certificate, provided there are no appeals pending.

46. In the case of applications from married persons, irrespective of whether they are of full legal age, the application will be heard by the court competent to rule on family matters in the jurisdiction of the domicile of either of the spouses, as chosen by the applicant. The court will rule on the application for a change of sex in its final judgment and, if the application is accepted, will declare the termination of the marriage in the same act. The distribution of personal effects and property resulting from the termination of marriage, as established in the final judgment, may be challenged using one of the legal remedies available for family matters. If the court approves the application in its final decision, it will instruct the Civil Registry and Identity Service to rectify the birth and marriage certificates, requesting that both the sex and name, or only the sex, as applicable, are changed.

47. Lastly, with regard to the possibility of maintaining the marriage bond after the change of registered name and/or registered sex, it is recalled that the bill to amend various legal texts in order to permit the marriage of same-sex couples in conditions of equality is currently under consideration and that this bill offers the best solution to the aforementioned problem, which contravenes the core principle underpinning Act No. 21.120.

48. With regard to steps taken to adopt legislation that explicitly upholds the principle of equality between men and women, Bulletin No. 11.758-07 is still at the second reading stage before the Senate Constitutional, Legislative, Justice and Regulatory Committee and its adoption has been put on hold until the constitutional amendment process is completed.

49. One of the Government's priorities is to eliminate all acts of discrimination that remain lawful in the State's legal order and may engender situations of discrimination and inequality. With this end in mind, a bill to amend the Civil Code and other laws is under consideration that will modify the current community marital property regime (Bulletin No. 7.567-07). This bill is at the second reading stage before the Special Senate Committee responsible for considering bills related to women's affairs and gender equality.

50. With regard to women's representation in senior management positions in the public and private sectors, the commitment made in respect of their representation on the boards of State enterprises has been more than fulfilled; overall, at the end of 2020, women accounted for 48 per cent of board members in such enterprises.

51. As mentioned above, on 24 March 2020, the National Congress adopted a constitutional amendment that introduces transitory provisions to the Constitution with a view to guaranteeing gender parity among candidates for election to and the resulting elected members of the Constitutional Convention that will be formed to draft the new Constitution. Chile will thus become the first country to carry out a constitutional amendment process in which the drafting body will be composed of a similar number of men and women. In addition, among other initiatives, the Ministry of Women's Affairs and Gender Equity, in conjunction with the Association of Chilean Municipalities, is putting together an empowerment guide for women candidates for political leadership positions that is intended to support them in their aspirations to enter public office.

52. With regard to equal pay, the Ministry of Women's Affairs and Gender Equity, in conjunction with the Ministry of Labour, is studying the content of Bulletin No. 9.322-13, amending the provisions of the Labour Code related to discrimination between and equal pay for men and women. This bulletin is at the second reading stage, whereas parliamentary motions Nos. 12005-07 and 11629-13 are still at the first reading stage.

#### **D. Violence against women (arts. 2–3, 6–7 and 26)**

53. Under Act No. 20.820, the Ministry of Women's Affairs and Gender Equity was given responsibility for working with the President of the Republic to design, coordinate and evaluate policies, plans and programmes to promote gender equity and equal rights and

eliminate all forms of arbitrary discrimination against women.<sup>37</sup> The National Service for Women, which was renamed the National Service for Women and Gender Equity, retained responsibility for the implementation of policies. Law-ranking Decree No. 1 of 2016 of the former Ministry for Social Development, provided that the Ministry of Women's Affairs and Gender Equity would take on its duties on 1 June 2016.

54. An interministerial committee for equal rights and gender equity has been established to mainstream a gender perspective in all State actions. Its role is to help to implement policies, plans and programmes aimed at achieving equal rights for women and men. A ministerial advisory council comprising 10 experts has also been set up.

55. Regarding statistical information, disaggregated by age, nationality and ethnic group, on the number of registered complaints concerning any of the various forms of violence against women, annex V contains figures from the Public Prosecution Service on the number of cases of domestic violence reported between January 2014 and January 2021 in which the victim was a woman and was the partner or former partner of the perpetrator or had had a child with him, together with an indication of whether the case was ongoing or had ended. Overall, 504,752 cases were reported during the period in question, involving a total of 467,551 victims. The same annex includes a statistical breakdown from the Public Prosecution Service of reports of domestic violence received between 2018 and 2020.<sup>38</sup> Annex VI sets out information from the Carabineros on cases of violence against women reported between August 2014 and January 2021. Annex VII contains nationwide figures from the Carabineros, disaggregated by offence, age and nationality, on victims of unlawful duress and torture in sexual contexts.

56. In January 2020, the bill on the right of women to a violence-free life was released by the Special Senate Committee responsible for examining initiatives and processing bills related to women and gender equality. As decided by the Committee, the bill was sent to the Senate Constitutional Committee for review of some of its content. The bill creates a new criminal offence of habitual abuse of women in intimate contexts, which is separate from the offence of habitual abuse under the Domestic Violence Act (No. 20.066), and makes liable to punishment any man who commits the offence against a woman who is or has been his spouse or civil or common-law partner, with whom he has had a child or with whom he has or has had a non-cohabitating relationship. The bill is currently in the second stage of review before the Senate Constitutional Committee and has the highest priority.

57. Act No. 21.013 eliminates the requirement for a preliminary finding by a family court that the conduct in question is habitual in cases of habitual abuse in domestic contexts (article 14 of Act No. 20.066) and thereby allows a complaint or suit to be filed directly with the police, the Public Prosecution Service or the relevant Guarantees Court.

58. Act No. 21.212 ("Gabriela's Law") was enacted in March 2020. It redefined and expanded the offence of femicide, creating the following categories: (1) intimate femicide, which makes liable to punishment any man who kills a woman who is or has been his spouse or live-in partner or with whom he has had a child or has or has had an emotional or sexual non-cohabiting relationship; and (2) gender-based femicide, which applies to cases where the victim is killed because of her refusal to enter into an emotional or sexual relationship with her killer; the victim engages or has engaged in prostitution or any other sex-related work or trade; the offence was committed after the victim was subjected to some form of sexual violence on the basis of her sexual orientation or gender identity or expression; or the offence was committed in any type of situation in which there was a clear relationship of subordination because of the unequal power relations between the attacker and the victim or there was a clear discriminatory motive.

59. The Ministry of Women's Affairs and Gender Equity works in coordination with the Carabineros to promote a gender-oriented approach to police work and ensure that the rights of women are protected. These efforts have taken the form of support to increase the

<sup>37</sup> The other duties of the Ministry of Women's Affairs and Gender Equity are set out in article 3 of the Act.

<sup>38</sup> All statistics presented therein were reported by the Public Prosecution Service to the Gender Studies and Training Division of the Ministry of Women's Affairs and Gender Equity.

Carabineros' institutional capacity to address gender issues (Carabineros Equal Opportunity Department); training on gender-based violence;<sup>39</sup> training on the gender and human rights perspectives as applied to police work,<sup>40</sup> including a training programme organized with the United Nations Entity for Gender Equality and the Empowerment of Women (UN-Women); informational materials;<sup>41</sup> and technical support for the Carabineros' reform process, in connection with which the Ministry of Women's Affairs and Gender Equity is working with the Reform Coordination Unit to ensure that a cross-cutting gender approach is applied to the process, with a view to ensuring that the institution and its officers are able to respond to the different safety needs of women and men and girls and boys.

60. The Carabineros is now using the Level I Manual of Policing Techniques for Carabineros<sup>42</sup> that expressly brings the Covenant into police work. The Manual places an emphasis on the right to life and the prohibition of torture and other cruel, inhuman or degrading treatment or punishment and clearly sets out the special police protection that women, as a vulnerable group, must be afforded. According to the Carabineros' records, since 2016, 46,132 officials have received training based on the Manual through the Carabineros' National Human Rights Programme. In addition, a total of 1,236 officials have completed an online training course offered by the Office of the Undersecretary for Human Rights on the basis of a cooperation agreement between the Office and the Carabineros, and 583 participated in a training workshop organized by UN-Women, the Ministry of Women's Affairs and Gender Equity and the Carabineros.

61. Within the framework of General Order No. 1.426 of 2001 of the Director General of the Carabineros,<sup>43</sup> General Order No. 2.477 of 24 March 2017 provided for the creation of family rooms at the police stations handling the highest number of these cases. In these rooms, a gender perspective is applied and differentiated and personalized assistance is provided to victims of domestic violence, violations of the rights of children and adolescents and older persons, violence against women and sexual crimes. Today there are 60 such rooms around the country.

62. Information on training in the judicial branch was provided in connection with the previous point and is contained in annex IV.

63. Since 2017, the Public Prosecution Service has been developing a comprehensive policy aimed primarily at incorporating a gender perspective into all areas of its work, including criminal investigations, with a view to more efficiently combating gender-based violence, as well as into all its internal administrative processes. To this end, it has put in place the following:

<sup>39</sup> (i) The course entitled "Tools for Addressing Violence against Women", in which 5,000 police officers participated, and training for senior officers of the Carabineros on the gender perspective in police work and the handling of cases of violence against women; (ii) training for judges in the judicial branch to raise their awareness of gender and violence and enable them to provide appropriate assistance to victims; and (iii) skills-building for stakeholders directly involved in prevention and providing care to victims, including members of the judiciary, Public Prosecution Service, Public Criminal Defender Service, Carabineros, investigative police and Forensic Medical Service, to allow them to respond more effectively.

<sup>40</sup> Since February 2020, the Ministry of Women's Affairs and Gender Equity has been helping to provide online training to Carabineros officers working primarily in evidence gathering units in the Santiago Metropolitan Region and in units focused on maintaining public order. The activities have involved theoretical presentations and practical workshops and focused on the identification and critical analysis of the facts of legal cases in Chile that could constitute discrimination, torture and sexual violence against women, men and members of the LGBTIQ+ community, with the aim of allowing participants to become adept in police conduct that complies with human rights standards.

<sup>41</sup> (i) Brochure on the rights of women in detention; and (ii) online information capsule to reinforce protocols on procedures for detaining women.

<sup>42</sup> General Order No. 2490 of 11 May 2017.

<sup>43</sup> The General Order provides for the creation and implementation of special units in all police stations in the country where specially trained staff handle proceedings involving minors and provide personalized assistance to victims of domestic violence and sexual crimes and family members of missing persons.

(a) A special unit on human rights, gender-based violence and sexual crimes<sup>44</sup> and prosecutors specialized in domestic violence and sexual crimes, including violence against women;

(b) An observatory on gender-based violence;

(c) An institutional management commitment (gender management goal) and an expert committee on gender within the Public Prosecution Service;

(d) Guidelines and a protocol on domestic violence. In November 2017, the Public Prosecution Service, the Ministry of the Interior and Public Security, the Ministry of Women's Affairs and Gender Equity, the Carabineros, the investigative police and the National Service for Women and Gender Equity signed an agreement and protocol for the immediate protection of women experiencing domestic violence within a relationship (female victims of domestic violence who are or were married to or cohabiting with the offender or have had a child with him).

64. Given the importance of making a timely assessment of the risk that a woman faces at the time she files a complaint, the institutions mentioned above agreed to use unified initial risk assessment guidelines, which are applied by police or Public Prosecution Service personnel depending on the institution that receives the complaint. By doing so, they help to ensure immediate assistance and contribute to the timely and effective adoption of appropriate initial protection measures and actions that are consistent with the real level of risk that the victim is facing. The guidelines are structured as a questionnaire in which each question has an assigned points value. The purpose of the questionnaire is to obtain information on the existence of risk factors associated with the situation of violence reported. The questionnaire provides an indicator of the quantitative level of risk, which is automatically calculated using a predefined algorithm, allowing the level of risk to then be classified as critical/high, medium or low. Once the level of risk has been determined, protective measures and actions that are in line with the classification assigned are taken, as set out in the protocol.

## **E. Voluntary termination of pregnancy and reproductive rights (arts. 3, 6,7, 17 and 26)**

65. Since 2017, the Division of Health-Care Network Management has been coordinating with local technical teams on a regular basis in connection with the implementation of Act No. 21.030, which provides that voluntary termination of pregnancy is no longer a criminal offence in three situations. These three situations are the following:

- Situation 1: The woman's life is at risk, and the termination of the pregnancy would eliminate this risk. As this situation can arise at any point during the pregnancy, the ability to terminate the pregnancy, if the woman so desires, is subject to no restrictions relating to gestational age.
- Situation 2: The embryo or fetus suffers from a deadly acquired or genetic congenital condition that makes independent life outside the womb impossible. Since such a condition can be diagnosed at any point during the pregnancy, in this situation as well the ability to terminate the pregnancy, if the woman so desires, is subject to no restrictions relating to gestational age.
- Situation 3: The pregnancy is the result of rape and the woman is not more than 12 weeks pregnant. In the case of girls under the age of 14, the pregnancy may be terminated provided that the girl is not more than 14 weeks pregnant.

66. The Department of Health Statistics and Information of the Ministry of Health has provided nationwide information for this report in connection with the implementation of Act

<sup>44</sup> Resolution No. 2078 of October 2017 expanded the competence of the former Special Unit on Sexual Offences and Domestic Violence of the Attorney General's Office to include human rights and gender-based violence.

No. 21.030.<sup>45</sup> Annexes VIII and IX contain updated Ministry of Health figures for the period, and annex X contains the figures provided by the Public Prosecution Service.

67. The Ministry of Health has taken the following steps to safeguard rights in cases of voluntary termination of pregnancy:

- A national technical standard on assistance and comprehensive care for women in one of the three situations set out in Act No. 21.030 was prepared by the Division for Disease Prevention and Control in 2018.
- Circular C2 No. 02, which sets out guidelines for identifying the situations provided for in Act No. 21.030, was issued on 5 March 2019.
- The course on the comprehensive care model for women who decide to undergo voluntary termination of pregnancy under Act No. 21.030 has been run for a third time, beginning on 12 May 2020, and is now nearing an end.
- A 120-hour course on Act No. 21.030 and voluntary termination of pregnancy was offered through the Distance Learning System.
- A 27-hour course for paramedics in the public health network that covers Act No. 21.030 and the three situations in which voluntary termination of pregnancy is possible is currently in progress.
- Positions on the psychosocial team assisting in cases of voluntary termination of pregnancy at Parral Hospital were filled in 2019, bringing the number of facilities in the network that provide services through the programme to 70.
- A brief report on cases that fall within the scope of the country's law on voluntary termination of pregnancy is prepared every three months.
- Twice a year, the Division of Health-Care Network Management conducts a centralized survey of conscientious objectors. These activities are described on the website of the Ministry of Health.<sup>46</sup>

68. Regarding the accessibility of other sexual and reproductive health services, access to contraception has been expanded. The 2018 national policy on sexual and reproductive health establishes guidelines for the healthy and comprehensive development of individuals' sexual and reproductive health.<sup>47</sup> The public and private health networks must provide both regular contraceptives and emergency ones such as the morning after pill. To facilitate access to the pill, the relevant regulations were amended in 2015 (Ministry of Health Decree No. 62) to, allow it to be sold without a prescription. The regulations also stipulate that the emergency contraceptive pill must be available through both the public and the private systems. Furthermore, Ministry of Health Circular No. A15/10 specifies that the permission of an adult is not required for access to female and male birth control methods.

69. The Women, Sexuality and Motherhood Programme of the National Service for Women and Gender Equity is designed to foster the autonomy of women and young persons by providing them with tools that encourage decision-making and promote equality between women and men and non-discrimination. Since 2019, the programme has been implemented in 32 communes in the country's 16 regions through four lines of action: (i) cross-sectoral coordination; (ii) coordination with other programmes of the National Service for Women and Gender Equity; (iii) workshops; and (iv) personalized assistance. Workshops held in 2019 and 2020 were attended by 6,117 young persons (this term refers to males and females between 14 and 19 years of age), 7,260 women aged 20 and above and 1,355 pregnant adolescents and adolescent mothers (these adolescents are counted as a separate group and are not included in the category of "young persons"). A total of 8,071 persons aged 14 and

<sup>45</sup> Since this is interactive information, a link to the website where a breakdown of these cases can be found is being provided: <https://www.minsal.cl/reporte-ley-ive/>.

<sup>46</sup> Web page of interest: <https://www.MINSAL.cl/ley-n21-030-a-2-anos-de-su-entrada-en-vigencia-ive/>.

<sup>47</sup> Act No. 20.418/2010 on Comprehensive Sex Education provides that: "Every individual has the right to freely choose and have access to any authorized female or male birth control method, without any coercion, in accordance with his or her beliefs or upbringing."



above received personalized assistance. In addition, 5,818 persons aged 14 and above participated in day-long events to promote prevention as a part of integral health.

70. In 2018, the Judicial Academy approved the inclusion of a course on reproductive rights in its skills development programme.

#### **F. Children with variations of sex characteristics (intersex) (arts. 7, 17, 24 and 26)**

71. Ministry of Health Circular No. 18 of 22 December 2015 addresses certain aspects of health care for intersex boys and girls, stipulating that “unnecessary procedures to ‘normalize’ intersex boys and girls, including irreversible genital surgeries, should be ceased until the children are old enough to make their own decisions about their bodies.”

72. An option is available on the record of birth to indicate that the sex of the child is “indeterminate”. According to the Civil Registry and Identity Service, there is no record of any registration being refused with respect to newborns whose record of birth indicates that their sex is indeterminate.

#### **G. Right to life, prohibition of torture and other cruel, inhuman or degrading treatment or punishment (arts. 6–7)**

73. The judicial branch has taken several steps to prevent impunity for the human rights violations that occurred during the dictatorship. One such step was the creation, in 2014, of the National Coordination Office for Cases of Human Rights Violations, which is responsible for registering and processing human rights cases and reassigning them to appellate court judges known for their experience and expertise in such matters who assume exclusive responsibility for the relevant investigations. In its decision of 4 May 2018 (AD 570–2018), the full bench of the Supreme Court appointed judge Ricardo Blanco to serve as National Coordinator, in compliance with its duties, under its decision of 13 May 2009 (AD 28–2009), to oversee and review the progress of proceedings involving human rights violations that occurred between 11 September 1973 and 10 March 1990. On 16 May 2019, the full bench decided to make changes that bolstered the organizational structure of the Coordination Office and, with support from staff members of the Supreme Court’s Legal Studies Division, its capacity to carry out research related to the objectives of the Coordination Office and transitional justice in the country.

74. The judicial branch, through the coordinating judge, the Coordination Office and the information technology department of the Administrative Department of the Judiciary, is working to implement the Human Rights Case Processing System and thus ensure that such cases are properly monitored and registered. The system will allow for various statistics to be generated and is expected to be implemented by April 2021.

75. In addition, in 2020, the Metropolitan University of Technology ran an introductory course on human rights and transitional justice for all civil servants working on proceedings addressing human rights violations. At the same time, an annual round table was set up for court clerks, judges and representatives of other State entities involved in the processing of such cases (including the Forensic Medical Service, the Human Rights Brigade of the investigative police and the Carabineros).

76. In statistical terms, as at 22 January 2020, there were a total of 1,502 open cases of this type, of which 76.5 per cent (1,149 cases) were in the preliminary stage (see annex XI, table 1). In the past year (2020), 91 cases were filed, of which 80 are being processed (annex XI, table 2). Table 3 of annex XI presents the number of cases filed at first instance between 2014 and 2019. In 2020, 51 decisions, containing 156 convictions, were handed down at first instance (annex XI, tables 4 and 5). The Coordination Office reported on 12 February 2021 that there had been 3,106 convictions at first instance between 2014 and 2020 (annex XI, table 6). In addition, between 2014 and 2020, the Supreme Court decided 353 appeals in cassation on questions of both substance and procedure relating to decisions handed down in

cases involving human rights violations that occurred during the dictatorship.<sup>48</sup> Of these, 223 decisions related to convictions or acquittals, with the conviction being upheld or the acquittal being overturned in 210 cases, giving a total of 686 convictions. In 103 appeals, the ruling dealt with the appropriateness of the damages awards; in a further 27 appeals, the ruling concerned the suspension or dismissal of a case or the statute of limitations for the offence.

77. Regarding the application of article 103 of the Criminal Code, which allows for progressive or partial reductions of the statute of limitations and thus for possible reductions in sentence, 17 decisions have been identified in which the Court found that such reductions could be applied in cases involving this type of offence. In the remaining decisions, the Court either found that such reductions should not be applied in cases involving crimes against humanity or did not rule on the matter.

78. The bill to amend the provisions of Act No. 19.992, establishing a reparations pension and granting other benefits to the persons indicated therein, that relate to the records compiled by the National Commission on Political Prisoners and Torture is undergoing its second constitutional review in the Senate and is under general discussion. No legislative progress has been reported since January 2018. The bill is not currently a priority.

79. Regarding the steps taken to repeal the Amnesty Act (Decree-Law No. 2191), and without prejudice to the parliamentary motions that have been introduced (Bulletins No. 4162-07, No. 9748-07 and No. 9773-07),<sup>49</sup> the National Human Rights Plan includes an undertaking to prepare a report on the possible legal consequences of repeal. This report is now in the final stage of review by the relevant authorities.

80. One of the focuses of the National Human Rights Plan is “memory and dictatorship”, which covers 55 activities under three goals. The first goal is for all the necessary steps to be taken to investigate human rights violations committed during the dictatorship and punish those responsible; the second is for a comprehensive reparation policy to be put in place for all victims of the dictatorship; and the third is for the historical memory of the systematic mass violations of human rights to be preserved, ensuring that this shared history is safeguarded and that the public institutions responsible for the restoration, conservation and dissemination of this legacy coordinate their efforts. Of these 55 activities, 20 per cent have been completed, 5.45 per cent have not been started and 74.55 per cent are being implemented.<sup>50</sup>

81. In relation to the implementation of the national mechanism for the prevention of torture, in accordance with the fourth transitory article of Act No. 21.154, which designates the National Institute of Human Rights as the national mechanism for the prevention of torture and other cruel, inhuman or degrading treatment or punishment, the financial resources needed for the mechanism to operate will be set out in the relevant Budget Act.

82. Regarding the appointment of the members of the national mechanism for the prevention of torture, article 5 of the Act mentioned above provides that the Committee for the Prevention of Torture will have seven members, who will have the status of experts, carry out the tasks set out in the Act, serve on a full-time basis and be subject to the first paragraph of article 12 of Act No. 20.405 on the National Institute of Human Rights. It also states that the experts will be selected on the basis of a public competition organized by the civil service office, in accordance with the rules governing the selection process for senior civil servants at the first level of hierarchy. The Senior Civil Service Council will prepare a shortlist of three candidates to be proposed to the Council of the Institute, which will appoint the experts by a simple majority of its members, remaining sensitive to the issue of gender balance, the multidisciplinary approach and the level of representation of the country’s indigenous peoples and ethnic and minority groups. The experts will serve four-year terms and may be reappointed.

83. The national mechanism for the prevention of torture is now being put in place. In accordance with article 2 (2) of Act No. 20.405, which created the National Institute of

<sup>48</sup> Historical memory website of the judicial branch: <http://mhd.pjud.cl/ddhh/pdf/ddhh.pdf>.

<sup>49</sup> There has been no movement in the legislature on any of these.

<sup>50</sup> According to a November 2020 report that lists the 55 activities: <https://planderechoshumanos.gob.cl/reportes-de-avance>.

Human Rights, the amendment to the regulations of the Institute required to incorporate the rules of operation of the Committee for the Prevention of Torture was submitted to the Ministry of Justice and Human Rights for adoption by Supreme Decree, in compliance with the international principles applicable to national human rights institutions.

84. The figures on human rights training for Carabineros based on the Level 1 Manual of Policing Techniques for Carabineros have already been mentioned. In addition, 11 officers participated in a train-the-trainers course on preventing, investigating and punishing acts of torture that was organized at the request of the Working Group for the Prevention of Torture, placed under the direction of the Human Rights Centre by the Education Subcommittee coordinated by the National Institute of Human Rights, and delivered in 2020 by the University of Chile.

85. With respect to training, the Ministry of Defence reports that the basic human rights training programme has been in place since 2018. It includes a unit on the legal foundations of human rights, which covers international human rights declarations, principles and treaties, and another on criminal law in human rights, which addresses international criminal jurisdiction in human rights matters, international criminal jurisdiction in security matters, individual criminal responsibility and command responsibility, crimes against humanity, war crimes and crimes of genocide. In 2018 and 2019, 4,947 uniformed personnel received human rights training under this basic programme.

86. In 2018, the Ministry began working with the Armed Forces to design a specialized programme of human rights education that would contribute to the in-service human rights training of Armed Forces personnel as part of an in-service training plan that was launched in 2020. In 2020, 2,128 members of the Armed Forces received human rights training through the basic and specialized programmes.

87. The Carabineros has reported the following administrative updates, which give expression to the prohibition against torture and other cruel, inhuman or degrading treatment or punishment. As in General Order No. 2.490, which has already been mentioned, under General Order No. 2.635 of 1 March 2019, on the maintenance of public order, the Covenant is considered to form part of the international human rights standards on police work, and this consideration has been incorporated into related protocols. Furthermore, this content is regularly reshared through electronic documents and in-person and online training. In addition, on 1 March 2019, the Carabineros issued Circular No. 1.832 on the use of force and firearms, which draws on the Code of Conduct for Law Enforcement Officials, particularly article 5 thereof.<sup>51</sup>

88. The Human Rights Unit<sup>52</sup> of the Ministry of Defence, formally created in application of the National Human Rights Plan, has been empowered not only to respond to orders issued by the judiciary but also to ensure that human rights are respected, protected and promoted in defence sector institutions.

89. With regard to the human, financial and technical resources that the Public Prosecution Service has rolled out for use in investigating offences of institutional violence, the Attorney General, by Decision No. 2.078 of October 2017, expanded the mandate of the former Special Unit on Sexual Offences and Domestic Violence to include issues relating to human rights and gender-based violence. Consequently, one of the main purposes of the new Human Rights Office is to support prosecutors in the investigation of violent offences committed by public officials, which could, as such, engage the international responsibility of the State. To this end, the Attorney General, together with the Special Human Rights Unit, has appointed human rights officers to serve as specialist advisers to the offices of regional attorneys general and to support regional and deputy attorneys general in criminal investigations.

90. Following the enactment of Act No. 20.968 of 11 November 2016, which defines the offence of torture and cruel, inhuman or degrading treatment and places an emphasis on investigation, the procedures for investigating cases of torture and unlawful duress and other

<sup>51</sup> General Assembly resolution 34/169.

<sup>52</sup> Exempt Resolution No. 1595/586 of 5 November 2018.

cruel treatment and abuse committed against individuals had to be adapted and updated. Official Memorandum No. 895/2017, setting out the procedures to be followed when dealing with acts constituting torture and other cruel treatment, was thus issued in 2017. The procedures were updated and expanded in 2019, by Official Memorandum No. 037, which set out the procedures for dealing with cases of institutional violence. On 15 January 2019, the Attorney General issued General Instruction No. 37, setting out the procedures to be followed by prosecutors when investigating cases of torture and other cruel, inhuman and degrading treatment or punishment as well as other forms of institutional violence. The General Instruction applies to acts constituting torture and other cruel, inhuman or degrading treatment that are committed by public officials in the performance of their duties and/or by persons acting either in an official capacity or at the instigation of or with the consent or acquiescence of a public official.

91. In October 2019, there was an increase in the number of offences related to institutional violence reported. In response, the Public Prosecution Service took the decision to designate prosecutors to focus primarily on human rights issues within regional attorney general's offices<sup>53</sup> and create human rights teams (composed of the regional attorney general, human rights adviser, prosecutors designated to focus on human rights issues and heads of regional victim and witness support units). Thanks to these steps, cases can now be handled in a consistent manner and the most serious cases can be prioritized. In addition, the Special Human Rights Unit of the Attorney General's Office has held regular coordination meetings with the regional human rights teams and has issued reports, notes, guidance and other documents.

92. In the period from January 2014 to June 2018, the Public Prosecution Service investigated the following reports of excessive use of force by police.

	<i>"Acts of torment and duress committed by public employees" (in force until 22 November 2016) and "Acts of torture committed by public officials" (in force from 22 November 2016 to June 2018)</i>	<i>"Acts of unlawful duress committed by public employees, art. 150 D"</i>
<b>1. Reports filed:</b>	<b>1 187</b>	<b>2 070</b>
<b>2. Total victims registered:</b>	<b>1 666</b>	<b>2 639</b>
2.1 Children and adolescents	273	402
2.2 Adult women	1 377	2 202
2.3 Older women	16	35
<b>3. Resolution</b>		
<b>3.1 Other resolution:</b>	<b>285</b>	<b>367</b>
Consolidation with another case	269	361
Administrative nullification	4	6
Other grounds for termination	12	0
<b>3.2 Judicial outcome</b>	<b>457</b>	<b>49</b>
Reparatory agreement	2	2
Authorization not to investigate	29	30
Acquittal	95	2
Conviction	173	8
Conditional stay of proceedings	30	0
Dismissal	61	7
Dismissal, art. 240	67	0
<b>3.3 Non-judicial outcome</b>	<b>1 339</b>	<b>844</b>

<sup>53</sup> Regional attorney general's offices of Metropolitana Sur, Metropolitana Occidente, Metropolitana Centro Norte, Arica y Parinacota, Antofagasta, Atacama, Coquimbo, O'Higgins, Biobío, Araucanía, Los Lagos and Los Ríos.

	<i>“Acts of torment and duress committed by public employees” (in force until 22 November 2016) and “Acts of torture committed by public officials” (in force from 22 November 2016 to June 2018)</i>	<i>“Acts of unlawful duress committed by public employees, art. 150 D”</i>
Suspension of case	1 044	781
Decision not to proceed for lack of evidence	205	51
Lack of jurisdiction	90	6
Prosecutorial discretion	0	6

93. In the period from January 2018 to December 2020, the Public Prosecution Service investigated the following reports of excessive use of force by police.<sup>54</sup>

	<i>“Torture” (in force from July 2018 to December 2020)</i>	<i>“Unlawful duress” (in force from July 2018 to December 2020)</i>
<b>1. Reports filed:</b>	<b>599</b>	<b>20 481</b>
<b>2. Total victims registered:</b>	<b>841</b>	<b>24 366</b>
2.1 Children and adolescents	168	3 902
2.2 Adult women	647	19 642
2.3 Older women	9	261
2.4 No information	17	561
<b>3. Resolution</b>		
<b>3.1 Other resolution:</b>	<b>182</b>	<b>4 042</b>
Consolidation with another case	176	3 830
Administrative nullification	3	65
Other grounds for termination	3	145
<b>3.2 Judicial outcome</b>	<b>66</b>	<b>672</b>
Reparatory agreement	6	1
Authorization not to investigate	2	302
Acquittal	6	19
Conviction	28	77
Conditional stay of proceedings	11	50
Dismissal	10	188
Dismissal, art. 240	3	35
<b>3.3 Non-judicial outcome</b>	<b>392</b>	<b>11 624</b>
Suspension of case	201	10 317
Decision not to proceed for lack of evidence	190	1 273
Lack of jurisdiction	1	10
Prosecutorial discretion	0	24

94. Information on those affected by offences of “unlawful duress and acts of torture in sexual contexts”, based on figures from the Carabineros, can be found in annex VIII.

95. The Ministry of Defence points out that the joint armed forces protocol for handling complaints of sexual and workplace harassment was adopted under Exempt Resolution No.

<sup>54</sup> Disaggregated data cannot be provided on the institutions with which the accused are affiliated because the Prosecution Support System does not contain a specific field in which this information can be entered. Therefore, the cases reported here are presented in terms of offences that involve public officials, without other factors being considered.

6,800/398 of 12 June 2018. From April 2019 to December 2020, 283 complaints of workplace or sexual harassment were received. Of this number, 273 resulted in summary administrative inquiries, with 136 now having been resolved.

96. Since 18 October 2019, the investigative police and the Carabineros have initiated, either ex officio or in response to complaints, 1,277 administrative proceedings to determine responsibility in operations to maintain public order during demonstrations. As at 31 December 2020, 16 employees had been dismissed and a further 26 had been disciplined. Most of the investigations were still ongoing.

97. Data on acts of torture carried out during demonstrations or protests cannot be disaggregated from the Public Prosecution Service figures mentioned above. Regarding the steps taken to prevent excessive use of force by the police, please refer to the amendments to the Carabineros protocols mentioned in the present report. In addition, rules on the use of force were adopted under Ministry of Defence Decree No. 8 of 2020, which indicates that “for the purpose of ensuring public order and redressing or preventing any harm or threat to national security, senior defence officials will issue instructions on the use of force by military units during constitutional states of exception in times of disaster, emergency or siege”.

## H. Treatment of persons deprived of their liberty (art. 10)

98. Regarding the accommodation capacity of places of deprivation of liberty and the number of inmates actually housed, the Prison Service reported the following figures as at 29 January 2021:

<i>Type of detention</i>	<i>Total places</i>	<i>Effective population</i>
24 hours a day (excluding juvenile sections)	41 935	38 880
Juvenile sections	683	42
Education and Labour Centres	1 029	760

99. The National Service for Minors has provided tables on available places and occupancy in juvenile justice centres for the period July 2019–September 2020 (see annex 12).

100. The total number of persons in pretrial detention, including those in police custody and those awaiting trial, stood at 13,216 as at 29 January 2021. This represents 33.7 per cent of the total number of persons deprived of their liberty. Figures for the juvenile justice centres run by the National Service for Minors are contained in annex 12.

101. A national prison infrastructure investment plan was launched in 2018. Its aim is to improve the state of prison infrastructure and ensure basic levels of habitability and security for prisoners and Prison Service employees while providing a strategic planning tool that serves as the basis for the design and implementation of future infrastructure investment initiatives. Among other reasons, the plan was drawn up to achieve 2 of the 12 goals set out in the Government’s policy for the modernization of the Prison Service.<sup>55</sup> It comprises a set of investment initiatives to be implemented over four- and eight-year periods, depending on their priority, and is focused mainly on delivering comprehensive infrastructure solutions in traditional prisons forming part of the closed subsystem.

<sup>55</sup> Namely, “to prepare a register of the physical infrastructure of the prison system, identifying areas that might be suitable for expansion, remodelling, replacement, the construction of annexes, demolition or other projects, in order to set baselines and close gaps in terms of overcrowding”; and to give continuity to the design and implementation of the Life of Dignity Plan, with the goal of providing decent living conditions for prison employees and inmates, including through infrastructure solutions.

102. The plan encompasses the following initiatives:<sup>56</sup>

(a) Maintenance of prison infrastructure. This component involves improving and maintaining prison infrastructure in order to ensure minimum standards for prisoners in terms of safety, sanitation and access to basic services, and thus their dignified treatment;

(b) Installation of fire protection systems. The initial scope of this initiative has been expanded in view of the need to design new fire protection systems for prisons where existing systems were either out of service or not operating according to their original design;

(c) Maintenance of fire protection systems. Planned preventive and corrective maintenance of existing fire prevention systems in prisons nationwide;

(d) Electrical systems standardization programme. The main purpose of this programme is to bring all electrical installations in prisons into compliance with the regulations in force. At present, some installations are not compliant either because equipment is obsolete or has reached or is nearing the end of its useful life, or because of the improvised solutions sometimes implemented by inmates;

(e) Maintenance plan for critical systems and equipment. An annual preventive maintenance plan for mechanical systems and equipment, to be implemented in the operational prisons of the closed subsystem, the buildings of all regional directorates and six buildings of the National Directorate of the Prison Service. These systems and equipment are vitally important for the continued functioning of facilities and buildings.

103. In 2019, a total sum of 12,163,348,097 pesos (Ch\$)<sup>57</sup> was invested in 419 projects (see annex 13, table 1) relating to sanitary improvements for prisoners and staff, the improvement of electrical systems in prisoner and staff areas, the comprehensive structural improvement and general maintenance of prisons and the maintenance of fire protection systems. In 2020, a total sum of Ch\$ 7,342,765,083<sup>58</sup> was invested in 448 projects (see annex 13, table 2).

104. A prison infrastructure maintenance and improvement plan<sup>59</sup> was formulated in 2020. Its main objective is to keep prison buildings, facilities, systems, mechanical equipment and supplementary structures in a good state of structural and operational repair and thus to ensure optimal living conditions, security and operability over time. The necessary resources for its implementation will be requested in the 2022 preliminary budget.

105. Another significant advance was the establishment of an expert committee, led by the Office of the Undersecretary for Human Rights and composed of representatives of 23 State institutions, international organizations and civil society organizations, to study the situation of children living with their mothers in prisons and of pregnant women deprived of their liberty.<sup>60</sup> The committee identified the critical issues affecting these women and children, as a group requiring special protection, and proposed specific measures to address or improve their situation. Its specific objectives include studying the infrastructure of mother and child units and living conditions within them, including children's access to health and education.

106. The critical issues identified were grouped into five main areas: (i) the absence of a specific regulatory framework; (ii) difficulties in accessing basic services; (iii) the legal situation of children; (iv) protecting and strengthening family ties; and (v) the situation of children who have left prison, in the absence of support and follow-up programmes. The committee received 120 proposals for solutions, which were condensed into 27 actions to be taken in the short, medium and long term. The committee's final report, which was issued in

<sup>56</sup> These initiatives are constrained by and conditional upon the annual budgets allocated to the Prison Service. Resources for their implementation were requested in the 2021 preliminary budget but were not approved owing to spending cuts caused by the COVID-19 pandemic.

<sup>57</sup> Equivalent to US\$ 16,850,944, according to the observed dollar exchange rate on 1 April 2021 (Ch\$ 721.82) provided by the Central Bank of Chile, available at: <https://si3.bcentral.cl/indicadoresiete/secure/indicadoresdiarios.aspx>.

<sup>58</sup> Equivalent to US\$ 10,172,558, according to the observed dollar exchange rate on 1 April 2021 (Ch\$ 721.82) provided by the Central Bank of Chile, available at: <https://si3.bcentral.cl/indicadoresiete/secure/indicadoresdiarios.aspx>.

<sup>59</sup> Official Communication No. 689 of 26 October 2020.

<sup>60</sup> <https://ddhh.minjusticia.gob.cl/media/2019/07/29.07.2020-Informe-Mesa-Interinstitucional.pdf>.



July 2020, designated the responsible institutions and established a follow-up committee composed of representatives of the Office of the Undersecretary for Justice, the Prison Service and the Office of the Undersecretary for Human Rights.

107. The document entitled “*Inversión en Infraestructura 2019–2020*” (Investment in infrastructure 2019–2020) that is annexed to this report (annex 14), and was prepared by the infrastructure and investment unit of the National Service for Minors, provides details of investment in juvenile justice centres.

108. In 2019, the Prison Service compiled a situation report describing sanitary conditions inside prisons. For a better understanding of the data it contains, it should be noted at the outset that the information was collected from 85 facilities of the closed subsystem (including outsourced units) and has been grouped by subject area as follows:

(a) Cleaning and household waste collection. Facilities are generally clean and orderly, although household waste was being disposed of in containers that, in some units, showed signs of deterioration; the health department of the Prison Service therefore provided resources in the last quarter of the year to improve the situation. However, ad hoc garbage rooms – for which only outsourced units have a health authorization – still have to be fitted out.

(b) Functioning of toilets and supply and disposal of drinking water. Generally, toilets are sufficient in number and function adequately; wastewater disposal via the sewerage system is also adequate. However, due to the age or infrastructure of buildings, damage caused by users and other reasons, several prisons still do not have 24-hour access to sanitary facilities;<sup>61</sup>

(c) Collection of hospital waste. The collection of hospital waste from various infirmaries and health facilities is usually adequate; this type of waste is considered hazardous and, under current regulations, must be disposed of separately from domestic waste. The fitting out of hospital waste disposal rooms is still pending, since only the outsourced units, Arica pretrial detention centre (Arica and Parinacota Region) and Curicó and Linares prisons (Maule Region) have received the necessary health authorizations. Authorizations for Talagante (Metropolitan Region) and Rengo (O’Higgins Region) pretrial detention centres are being processed;

(d) Pest control. Since 2019, the health department of the Prison Service has had additional resources to invest in pest control services. This has resulted in an immediate improvement in pest control at the regional level, with coverage extended to buildings in the open system and administrative buildings and more frequent and extensive services in the closed system. Pest control standards have therefore generally improved, and problems have persisted only in certain specific locations.<sup>62</sup> The budget has also allowed for the contracting of specialized services such as pigeon and bat control at some facilities (Linares prison and the building of the Administration and Finance Subdirectorate, Metropolitan Region) and septic system services (Vilcún Education and Labour Centre, Araucanía Region).

109. In addition, a requirement has been introduced whereby only companies with the relevant health authorization may provide sanitation services for prisons.

<sup>61</sup> Calama pretrial detention centre and Antofagasta women’s prison (Antofagasta Region); Chañaral and Copiapó prisons (Atacama Region); Ovalle pretrial detention centre (Coquimbo Region); Casablanca pretrial detention centre (Valparaíso Region); Linares and Talca prisons and Chanco pretrial detention centre (Maule Region); Bulnes prison and Quirihue, San Carlos and Yungay pretrial detention centres (Ñuble Region); Arauco, Lebu, Los Ángeles and Mulchén pretrial detention centres and Concepción prison (Biobío Region); Curacautín and Pitrufquén pretrial detention centres and Temuco women’s prison (Araucanía Region); Río Bueno prison (Los Ríos Region); and Cochrane prison (Aysén Region).

<sup>62</sup> Rodent control problems at Copiapó prison and Ovalle pretrial detention centre; insect control problems at Taltal pretrial detention centre (Antofagasta Region), Copiapó prison, Ovalle pretrial detention centre, Chillán prison (Ñuble Region) and Punta Arenas prison (Magellanes Region); and microbial control problems at Ovalle pretrial detention centre and Angol pretrial detention centre (Araucanía Region).

110. Regarding access to health care for persons deprived of their liberty, all prisons have a health unit that provides primary care, while secondary and tertiary care are provided by the public health services. All persons admitted to prison undergo a health examination so that details of their medical history can be recorded and any illnesses or health problems identified. If a problem is identified, the person is immediately referred to the health unit for professional care or, if necessary, to one of various health programmes. The services provided by prison infirmaries are listed in annex 13, table 3.

111. The Ministry of Health has gradually built up a forensic psychiatry network to provide care for persons deprived of their liberty who are being held under a court-ordered security measure because they are exempt from criminal liability (Code of Criminal Procedure, art. 481). The network provides appropriate accommodation for such persons, preventing their imprisonment in a general facility. The network has two types of units for accused persons suspected of having a mental illness who are temporarily hospitalized under a court order (of the Code of Criminal Procedure, art. 464): the accused persons assessment units attached to three health services; and the forensic psychiatry transit units located in three prisons in different regions.

112. Regarding the use of isolation cells, the Prison Service has adopted international human rights standards and the recommendations of national and international human rights organizations. To this end, it implemented Exempt Resolution No. 4247 of 10 May 2013, establishing criteria for the use of isolation and solitary confinement as punishments in closed prisons, which laid down rules for the application of such punishments and reasonable use of isolation cells. This resolution provides that such punishments must be underpinned by guarantees of a rational and fair procedure that respects the principles of due process, in accordance with article 4 of the Prison Regulations (Ministry of Justice Decree No. 518), which state that the operation of prisons is subject to the guarantees and limits established by the Constitution, the international treaties ratified by Chile and in force, national laws and their implementing regulations, and court rulings. The resolution also requires the proper application of disciplinary procedures and rational and proportionate use of the punishments set forth in the regulations, thus harmonizing these rules with international human rights standards.

113. Exempt Resolution No. 4247 further stipulates that the rules must be applied impartially, without discrimination on grounds of birth, race, political opinion, religious belief, social status or any other circumstance. The Prison Service must endeavour to ensure the effective enjoyment of human rights, to the extent compatible with a person's prisoner status, and thus that no prisoner is subjected to torture or cruel, inhuman or degrading treatment, in word or deed, or to the unnecessarily strict implementation of the Prison Regulations.

114. The Resolution also states that the imposition of solitary confinement must be reasonable and proportionate to the misconduct and the purposes of the disciplinary procedure. It must always be an exceptional measure, imposed by the prison director when there is no other more lenient way to achieve the intended purpose, and only for the time strictly necessary. The punishment should thus be applied only as a last resort, in the event of serious breaches of the prison rules.

115. Under article 82 of the Prison Regulations, the prisoner in question must be notified that he or she is being punished for conduct constituting a breach of the internal regulations. Whether on remand or convicted, prisoners must be heard and a written record of the hearing, including any explanations or justifications that may be given, must be kept.

116. Exempt Resolution No. 4247 also establishes that remand prisoners are protected by the principle of presumption of innocence and, accordingly, that conditions of pretrial detention must be such that it does not take on the characteristics of a sentence or give rise to restrictions beyond those necessary to prevent escape and guarantee the safety and integrity of other persons inside the facility.

117. Article 14 of the Exempt Resolution states that prisoners who commit any of the serious disciplinary offences set forth under article 78 of the Prison Regulations may be punished, depending on the seriousness of the act, with one of the following measures:

(a) Deprivation of visits or correspondence with the outside world for up to one month;

(b) Solitary confinement in an isolation cell, for up to four weekends, from the time prisoners' cells are unlocked on Saturday until they are locked on Sunday;

(c) Placement in an isolation cell for a period not exceeding 10 days. Before imposing a punishment of solitary confinement, the prison director must consider the prisoner's medical history in order to determine whether the punishment might pose a risk to his physical or psychological integrity.

118. The Exempt Resolution also reiterates article 86 of the Prison Regulations, which states that prisoners placed in isolation cells must receive a visit each day by the prison director, the physician or paramedic and, if they so request, a minister of their religion, each of whom must record in writing if the prisoner has been subjected to corporal punishment or if there has been any failure to comply with the Prison Regulations.

119. All these rules, together with the education, training and development plans prepared and implemented by the relevant units as part of an ongoing effort to modernize the Prison Service, have led to a considerable reduction in the use of this type of punishment, as can be seen in the following historical table:

<i>Punishment</i>	<i>2017</i>		<i>2018</i>		<i>2019</i>		<i>2020</i>	
	<i>Number</i>	<i>%</i>	<i>Number</i>	<i>%</i>	<i>Number</i>	<i>%</i>	<i>Number</i>	<i>%</i>
Solitary confinement	6 850	21.03	7 062	21.02	5 177	15.83	3 637	12.60

120. The percentages given for each year refer to solitary confinement punishments as a proportion of all punishments imposed, considering all types of punishment laid down in the Prison Regulations.

121. Exempt Resolution No. 4247 further stipulates that the Prison Service's Unit for the Promotion and Protection of Human Rights must keep regular records of the use of solitary confinement in Chilean prisons. According to data provided by the Prison Service's Statistics Unit, solitary confinement was used as a punishment 3,637 times nationwide in 2020, with an average duration of 5.19 days.

122. As part of the modernization of the Prison Service, a new computer tool, the Prisoner Misconduct and Penalties System, has been developed to systematize data and procedures in closed and semi-open prisons. The objective is to standardize the application of penalties for disciplinary offences laid down in the Prison Regulations and to keep a systematic record of these penalties. The tool was trialled in March 2019, with training sessions held throughout Chile to explain its purpose and content. Subsequently, the document formats produced by the platform were standardized and adapted to include all necessary information for all disciplinary measures, thus ensuring their correct administration in accordance with the law and the Prison Regulations. The system was launched in all prisons on 7 July 2020.

123. The judiciary monitors the situation of persons deprived of their liberty, with prosecutors attached to the courts of appeal making ordinary and extraordinary visits to prisons within their jurisdiction. The purpose of these visits is to verify that the Prison Regulations are being duly observed, to confirm that prisons are providing convicted inmates with study, work and rehabilitation opportunities to facilitate their social reintegration, and to ensure that the dignity of all persons is duly respected. In 2019, prosecutors conducted 69 ordinary visits and 5 extraordinary visits to prisons. In 2020, owing to the pandemic, these visits were conducted by videoconference and telephone (67 ordinary visits and 6 extraordinary visits).

124. Similarly, the Operations Subdirectorate of the Prison Service has developed a monitoring system whereby prisons report on situations of special significance every two weeks. Prosecutors are thus able to follow any special situations that might arise in prisons within their jurisdiction. These situations might pertain, for example, to infectious diseases, violent deaths, hunger strikes, riots, assaults on inmates, fires and other incidents.

125. For the purposes of cooperation and sharing information about efforts to combat the pandemic in prisons, a reporting system was set up for prosecutors' offices and the facilities within their respective jurisdictions. The system includes forms through which individual facilities are asked to share details of their efforts to comply with the regulations and instructions as well as internal communiqués containing guidance for addressing the contingency, safeguarding prisoners' health and respecting their fundamental rights. Prosecutors report the information collected to the Public Prosecution Service on a weekly basis.

126. To safeguard the rights of persons deprived of their liberty, members of their families and prison staff, the Ministry of Justice and Human Rights drew up the "Justicia te Cuida" (Justice cares for you) coronavirus action plan for the justice sector,<sup>63</sup> consisting in a protocol with measures for the prevention and containment of the pandemic among the target groups served by the Ministry and the agencies under its purview. The Prison Service<sup>64</sup> and the National Service for Minors<sup>65</sup> also drew up specific institutional action plans.

127. Specific measures taken included: (i) the approval of a commutation system that allows older persons, pregnant women, women with children under 2 years of age and persons convicted of minor offences to serve their sentences under house arrest;<sup>66</sup> (ii) the nationwide introduction of a messaging system for prisoners and their families;<sup>67</sup> and (iii) the introduction of a "humanitarian" video call system that allows prisoners to keep in touch with their families when isolating due to COVID-19.

128. Lastly, during a special meeting, the Expert Advisory Committee on Human Rights – a body created by the Interministerial Committee on Human Rights – collected information on pandemic response measures adopted to date by participating institutions.

## I. Trafficking in persons (art. 8)

129. Regarding the prevention of trafficking in persons and the protection and support of victims, the Aliens and Migration Department of the Ministry of the Interior and Public Security, as the technical secretariat of the Inter-Sectoral Working Group on Trafficking in Persons, works with multiple institutions to tackle this offence. The Working Group's website<sup>68</sup> lists its constituent institutions and provides information on the various action plans, guides and protocols formulated by the State, which attest to its efforts to prevent and eradicate trafficking in persons.

130. The Aliens and Migration Department grants temporary visas to victims of trafficking,<sup>69</sup> thus regularizing their residence in Chile – a measure conducive to the restitution of their violated rights, to their social integration, and to their participation in the investigation. Immigration advice is provided to trafficking victims who require it. During 2019 and 2020, 13 and 11 visas, respectively, were processed under article 33 bis of Decree-Law No. 1094, all within a short space of time and at no cost to the recipient. Between 2011 and 2020, 164 such visas were processed. Should the victim wish to return to his or her country of origin, the Department carries out the necessary migration procedures to facilitate his or her regular departure from Chile, thus assisting the return of victims in accordance with international standards.

<sup>63</sup> [https://www.minjusticia.gob.cl/media/2020/03/Plan\\_Accion\\_V3.pdf](https://www.minjusticia.gob.cl/media/2020/03/Plan_Accion_V3.pdf).

<sup>64</sup> [https://www.gendarmeria.gob.cl/corona\\_2020.html](https://www.gendarmeria.gob.cl/corona_2020.html).

<sup>65</sup> <https://www.sename.cl/web/index.php/plan-coronavirus-sename/>.

<sup>66</sup> Act No. 21228 granting a general commutation owing to the COVID-19 pandemic in Chile: <https://www.bcn.cl/leychile/navegar?idNorma=1144400>.

<sup>67</sup> <https://www.minjusticia.gob.cl/crisis-sanitaria-ministerio-de-justicia-implementa-a-nivel-nacional-sistema-de-mensajería-con-familiares-de-internos-y-llamada-humanitaria-para-privados-de-libertad-en-aislamiento-por-covid-19/>.

<sup>68</sup> <http://tratadepersonas.subinterior.gov.cl/mesa-intersectorial/#:~:text=E1%20Decreto%20Decreto%20Exento%20N%20C2%B0,Personas%20con%20acciones%20en%20prevenci%20C3%B3n%2C>.

<sup>69</sup> Pursuant to article 33 bis of Decree-Law No. 1094.

131. In 2020, the Department held two virtual training courses on the prevention and detection of trafficking in persons, which were attended by more than 200 people.

132. The Public Prosecution Service carried out the following trafficking-related activities during the reporting period:

- In 2014, it organized workshops on the gender perspective, trafficking in persons and sexual exploitation, which were attended by 92 of its prosecutors and officials from the southern, northern and central zones and the Santiago Metropolitan Region. It also held the first national day-long workshop on the offences addressed by Act No. 20507 (trafficking in persons and migrant smuggling), which was attended by 60 prosecutors, heads of regional victim and witness support units, legal advisers and lawyers from all over Chile.
- In 2017, it held a national day-long workshop on the offences set forth in Act No. 20507, in which 58 prosecutors, assistant prosecutors, advisers, and professionals from regional victim and witness support units took part.
- In 2018, it held a day-long workshop on the offences set forth in Act No. 20507, attended by 18 advisers – who support the prosecutors investigating such cases – from all over Chile.
- In 2020, the United Nations Office on Drugs and Crime delivered an online course on trafficking, attended by 120 prosecutors, assistant prosecutors, legal advisers and professionals from regional victim and witness protection units from all over Chile. The course comprised three modules: understanding trafficking in persons; the process of trafficking in persons; and identification and care of victims.

133. In addition, the Public Prosecution Service issued Official Memorandum No. 841-2020, which annulled Official Memorandum No. 575/2015 and established criteria for action against trafficking in persons, migrant smuggling and unlawful association to commit these offences. This memorandum provides that, in view of their complexity, cases involving these offences should be investigated by prosecutor's offices or units specializing in highly complex crime or, failing that, by prosecutors specializing in the investigation of organized crime, in order to facilitate their prosecution. The memorandum was adapted in the light of changes introduced by Act No. 20507 that related to the use of video recordings in investigations and established standards of care and protection for the victims of these crimes. It also addressed crimes of corruption in connection with trafficking in persons and migrant smuggling. Several aspects related to international cooperation and the issuance of visas to victims were updated and supplemented.

134. The Inter-Sectoral Working Group on Trafficking in Persons publishes up-to-date official statistics on investigations initiated in connection with trafficking in persons on its website.<sup>70</sup> These statistics indicate that between 2011 – when Act No. 20507, establishing trafficking in persons as a criminal offence, was enacted – and 31 December 2019, 44 cases of trafficking in persons were investigated and 267 victims identified. In addition, the following cases were investigated in 2020 (and thus are not included in the published statistics):

- Case 1: Labour trafficking/forced labour; the victim was an adolescent girl of Bolivian nationality
- Case 2: Labour trafficking/forced labour; the victims were two Thai women
- Case 3: Labour trafficking/forced labour; the victim was a Vietnamese woman

135. The number of complaints of trafficking in persons that were received during the reporting period (including complaints grouped with a previous complaint concerning the same facts and excluding complaints erroneously classified in the Prosecution Support System as related to trafficking in persons) was as follows:

<sup>70</sup> <http://tratadepersonas.subinterior.gov.cl/media/2020/05/Informe-estadi%CC%81stico-Trata-de-Personas-2011-2019.pdf>.

<i>Year</i>	<i>Number of complaints</i>
2014	36
2015	38
2016	43
2017	41
2018	70
2019	89
2020	53

136. Regarding the sentences handed down to perpetrators, the annual breakdown was as follows:

2014	Terms of imprisonment ranging from 541 days to 3 years and 1 day were handed down in cases of trafficking in persons with adult victims, in summary proceedings in which the defendants accepted a plea bargain.
2015	A sentence of 3 years and 1 day was handed down in summary proceedings.
2016	A sentence of 3 years and 1 day was handed down after a trial in a case with adolescent victims; in another case, which did not involve a repeat offence, the court handed down a sentence of 5 years.
2017	A sentence of 3 years and 1 day was handed down in summary proceedings.
2018	A sentence of 3 years and 1 day was handed down after a trial, despite a repeat offence; in another trial involving a repeat offence, the court handed down a sentence of 10 years and 1 day.
2019	A sentence of 3 years and 1 day was handed down in summary proceedings.
2020	A sentence of 8 years' imprisonment was handed down after a trial in a case with adolescent victims, which did not constitute a repeat offence; sentences ranging from 3 years and 1 day to 5 years were secured in summary proceedings.

137. The shelter for trafficked women and exploited migrants known as the “Casa de Trata” (Trafficking Home) assisted 25 women during 2019, of whom 13 were receiving pre-admission support, 4 were newly admitted and 8 were still living there after having been admitted in 2018. Between January and October 2020, 2 women received pre-admission support and 13 received psychosocial and legal support. Of these 15 women, 14 (or 93.33 per cent) were foreign nationals.

138. Within the framework of the National Plan of Action against Trafficking in Persons 2018–2020, the National Service for Minors included a course entitled “Trafficking in Persons: Conceptualization, Detection and Referral of Child and Adolescent Victims” in its annual training plan. This training was aimed at officials of the Service’s directly administered centres, regional directorates and National Directorate and 74 persons took part.

139. Furthermore, in July 2020 the Inter-American Children’s Institute (Organization of American States) and the National Coordinator responsible for implementation of the Intersectoral Protocol on Assistance for Victims of Trafficking in Persons (attached to the Office of the Undersecretary for Crime Prevention of the Ministry of the Interior and Public Security) were requested to provide expert input for a workshop on violence, commercial sexual exploitation and trafficking in persons, which was attended by 74 child protection professionals of the National Service for Minors.

140. In November 2020, the National Service for Minors developed an updated 2021 version of the Intersectoral Protocol and an annex to the Protocol concerning the referral mechanism for suspected cases of sex trafficking of children and adolescents.

141. The executive secretariat coordinating the implementation of the third framework for action against the commercial sexual exploitation of children and adolescents resumed its activities in January 2020, drawing up a joint workplan for the Ministry of Justice and Human Rights and the National Service for Minors that set out the actions needed to bring the third framework process (2017–2019) to a close. These actions included gathering information from the various participating institutions and sectors on the fulfilment of their commitments under the third framework. At the same time, it was decided that the Office of the Undersecretary for Children of the Ministry for Social Development and the Family should also be engaged in the process, given its role in preventive and awareness-raising activities benefiting children. In implementing this action plan for the prevention and eradication of violence against children and adolescents, the Government was looking to encourage a cultural shift, placing a clear emphasis on prevention, and to use the baseline scientific evidence, data and studies resulting from the process to inform public policies and build prevention programmes coordinated by inclusive intersectoral authorities.

142. The National Service for Minors' service offering includes specialized protection programmes intended to protect children against ill-treatment, serious sexual abuse and commercial sexual exploitation, respectively, and a general protection programme that ensures legal representation for child and adolescent victims. All of these programmes offer comprehensive support for child victims of offences of this kind, which might involve seeking reparation on their behalf and/or representing them in legal proceedings. Annex 15 shows the number of places available on these programmes.

143. Between January 2020 and 31 December 2020, five cases of sex trafficking in which the victims were children or adolescents were recorded in the national database of the National Service for Minors.<sup>71</sup>

144. Lastly, the annual Trafficking in Persons Report of the United States Department of State indicates that Chile continues to meet the minimum standards for the elimination of severe forms of trafficking in persons, thereby maintaining its Tier 1 ranking.

## **J. Right to a fair trial and independence of the judiciary (art. 14)**

145. To strengthen the internal and external independence of the judiciary, since 2014 the full bench of the Supreme Court has been making important changes to the regulations governing the organization of the judicial profession. It has adopted various resolutions and procedural rules with a view to developing an open competition process for candidates for positions in the judiciary that has clear, transparent bases, uses digital platforms, is well regulated, fosters objectivity and places the emphasis on the merit of new candidates. Resolution AD-626–2019 of the full bench of the Supreme Court, dated 7 June 2019, established that “[t]he purpose of the appointments system, which covers procedure as well as the decision-making process, is to eliminate the possibility of discretionary appointments and extend the objective parameters by which appointments should be guided (...). The constitutionally and legally recognized principles of preference to seniority and merit, equality, non-discrimination, inclusion, transparency, openness, ethical conduct, integrity and probity shall be strictly respected in the preparation of shortlists and the rankings awarded in competitions.”

146. In Resolution No. 184-2014, the Supreme Court set out detailed regulations for the appointments system provided for in the Constitution, foreseeing an open competition process for the majority of positions that comprises the following stages: (a) invitation to participate in the competition and preparation of a list of screened candidates; (b) preparation of a list of successful candidates, shortlist, list of nominees or single-person proposal; and (c) appointment. Rules were established for each stage of the process to ensure that the principles of preference to seniority and merit, equality, non-discrimination, inclusion, transparency, openness, ethical conduct, integrity and probity are strictly respected in the preparation of

<sup>71</sup> Information contained in the database regarding children and adolescents and their care is supplied by projects and residences administered directly by the National Service for Minors or by accredited partner agencies.



shortlists and the rankings awarded in competitions, in line with the requirements set out in Resolution No. AD-626-2019 of the full bench of the Supreme Court, dated 7 June 2019.

147. The adoption of various resolutions regulating other matters related to careers in the judiciary in line with the foregoing, including, in particular, the appointment of new judges, transfers, exchanges and qualifications, constituted further advances during the reporting period.<sup>72</sup>

## **K. Treatment of aliens, including refugees and asylum seekers (arts. 12, 13 and 14)**

148. The Migration and Aliens Act (No. 21.325) was prioritized by the Government and published on 20 April 2021.<sup>73</sup> The Act provides for the following developments:

(a) The new Migration and Aliens Act represents a significant change from the older Aliens Act. Under the new Act, the State will promote the rights of foreign nationals and clearly establish their duties and obligations, thereby bringing national law into line with the international commitments assumed by Chile. This new focus is reflected in the articles contained in section II of the Act, which set out the following fundamental protective principles: respect for and the promotion and guarantee of rights (art. 3); the best interests of the child and adolescent (art. 4); informed migration procedures (art. 5); integration and inclusion (art. 6); safe, orderly and regular migration (art. 7); the value of migration for the State (art. 8); non-criminalization (art. 9); the *pro homine* principle (art. 12); equality of rights and obligations (art. 13); labour rights (art. 14); the right of access to health services (art. 15); access to social security and State benefits (art. 16); access to education (art. 17); the right of access to home ownership (art. 18); family reunification (art. 19); due process (art. 21); and the development and establishment of national policy on migration and aliens (arts. 22–23).

(b) With regard to the non-criminalization of immigration, irregular migration is expressly considered not to constitute an offence (art. 9). In line with the explicit recognition of migrants' fundamental rights, and in view of the ineffectiveness of all attempts to criminalize unlawful entry, the Act introduces mechanisms for regularizing the situation of migrants who enter and remain in Chile irregularly as well as administrative expulsion mechanisms, as measures of last resort, in order to discourage irregular border crossings. The Act also provides for a strengthening of procedures and the recognition of guarantees of due process in every entity responsible for carrying out checks and adopting measures that affect the immigration status of foreign nationals.

(c) The Act takes account of recent advances made by the State in the area of migration, such as the establishment of a refugee protection system and the campaign to combat trafficking in persons, which are incorporated into the legal system under Act No. 20.430 on the protection of refugees and Act No. 20.507. The Act also updates the protection afforded to foreign nationals seeking political asylum. In short, it provides the tools required to implement a migration policy better suited to the needs of today's migrants.

(d) The Act envisages substantial improvements to institutions, public policy instruments, procedures and official information. To this end, it provides for the establishment of a national migration service and regional directorates that will make it possible to standardize procedures and processing times throughout the country by

<sup>72</sup> Particularly important were the following Supreme Court resolutions: Resolution No. 38-2014; Resolution No. 182-2014, setting out procedural rules concerning the qualifications of members of the judiciary; Resolution No. 184-2014, establishing procedural rules for the judiciary's appointment system; Resolution No. 199-2014, correcting Resolution No. 182-2014 of 18 November 2014; Resolution No. 142-2015, establishing the consolidated text of the procedural rules concerning the qualifications of members of the judiciary of 31 August 2015; Resolution No. 144-2016, amending the procedural rules for appointments; Resolution No. 179-2015 on the judiciary's appointments system, and Resolution No. 182-2017, establishing procedural rules to ensure labour inclusion in the judiciary.

<sup>73</sup> Available at:

<https://www.diariooficial.interior.gob.cl/publicaciones/2021/04/20/42934/01/1930044.pdf>.

centralizing analysis but decentralizing guidance, inclusion and the provision of benefits and promoting horizontal and vertical coordination with civil society, municipalities and regional governments. The Act is designed to foster flexible, lean and efficient institutions that adopt a comprehensive approach to migration, taking local considerations into account through the regional directorates but leaving operational matters to the national directorate (art. 157). It also provides for the establishment of the Migration Policy Council as a multisectoral body responsible for advising the President of the Republic, through the Minister of the Interior and Public Security, on the formulation of national policy on migration and aliens and the update of its content and definitions in accordance with national requirements (art. 160).

(e) Lastly, the Act promotes regular migration as a necessary mechanism for bringing the legal status of foreign nationals residing in Chile into line with that of Chilean nationals. To this end, it envisages the establishment of a flexible range of visas (art. 70) that allows for appropriate control and planning, in conjunction with local and regional governments, that is conducive to migrants' integration and labour development.

149. The Act is intended to establish appropriate tools for protecting migrants' rights, establishing their duties and obligations, promoting their active integration into Chilean society and improving their living conditions by granting them access to social and economic benefits in accordance with the international commitments assumed by the State and the guidance issued by the International Organization for Migration.

150. With regard to case law on expulsion, denial of entry and rejection of applications for residence visas, in settling appeals against rulings on constitutional actions for protection and *amparo* related to migration and aliens, the Supreme Court has ruled, inter alia: on the reasonableness of, and grounds for, administrative acts involving the expulsion of foreign nationals;<sup>74</sup> on the requirement for decisions to take complainants' personal and family circumstances into account;<sup>75</sup> and on the requirement for the administrative authority to justify decisions to deny entry to the country and reject applications for residence visas.<sup>76</sup>

151. The Supreme Court's judgment of 21 March 2018 on the prohibition of entry of 72 Haitian nationals by the investigative police at Santiago Airport is also relevant in connection with this last point. In the judgment, the Court referred to the need for the police to conduct an individual examination of each application for entry in order not to infringe the principle of prohibition of collective expulsion enshrined in article 13 of the Covenant and the right to equality before the law.<sup>77</sup>

152. With regard to measures taken to ensure access to efficient refugee status determination procedures, the Aliens and Migration Department has been making improvements since 2018. These improvements, which continued throughout the reporting period, have involved changes to the internal management of migration affairs with a view to improving flows and enhancing efficiency. In addition, under a joint initiative with the Modernization Unit, documents are now being digitized in order to improve productivity and the protection of migration-related data. Lastly, in view of the health situation in 2020, some asylum-related procedures, such as data updates and electronic stamping, have been computerized and can henceforth be carried out via the website of the Aliens and Migration Department.

153. The actions undertaken by the Aliens and Migration Department are in compliance with the principle of non-refoulement of asylum seekers and refugees, which is also enshrined

<sup>74</sup> For example, the judgment of 7 March 2017 (Roll No. 7147-17).

<sup>75</sup> Judgment of 16 February 2017 (Roll No. 3990-2017).

<sup>76</sup> Supreme Court. Judgments of 21 September 2017 (Rolls No. 39.353-2017 and No. 39.351-2017); 26 September 2017 (Roll No. 39.485-2017); 26 April 2018 (Roll No. 7500-2018); 21 March 2018 (Roll No. 4292-2018); 26 March 2018 (Roll No. 7501-2018), and 31 May 2018 (Roll No. 10.858-2018). These judgments were analysed in the article "*Derechos humanos de las personas migrantes como límites a la facultad de excluir*", prepared by the Directorate of Research of the Supreme Court, available at <http://decs.pjud.cl/articulo-derechos-humanos-de-las-personas-migrantes-como-limites-a-la-facultad-de-excluir/>.

<sup>77</sup> Supreme Court. Judgment of 21 March 2018. Roll No. 4292-2018, para. No. 3.

in Act No. 20.430. Furthermore, the Supreme Court recognizes this principle in its reasonings, as is shown, *inter alia*, by a recent ruling on the situation of Venezuelan migrants.<sup>78</sup>

## **L. Freedom of thought, conscience and religion (art. 18)**

154. No information is available on the adoption of legislation that recognizes the right of conscientious objection to military service.

## **M. Measures to protect children (arts. 7 and 24)**

155. The second stage of the “Chile Reconoce” (“Chile Recognizes”) project, which was completed in 2018, involved contacting children and adolescents who had been registered as children of non-resident aliens before the criterion used to define a non-resident alien was changed in order to inform them of their right of access to the nationality determination procedure. With the completion of the second stage, the identities of 100 minors were confirmed, bringing the project to an end. In all, the birth certificates of 2,023 persons in this situation were rectified between 2015 and the first half of 2020.

156. The State is progressively rolling out a comprehensive protection system for the rights of children that is composed of:

- The Office of the Undersecretary for Children, whose main role is to ensure the comprehensive promotion and protection of the rights of children. Among other functions, the Office advises the President of the Republic on children’s issues; administers, coordinates and supervises the intersectoral child-related management systems and subsystems; and conducts training and awareness-raising activities on the rights of children and adolescents and the exercise of these rights.
- The Civil Society Council on Childhood,<sup>79</sup> which is a consultative body of the Ministry for Social Development and the Family. The Council is made up of children, adolescents and representatives of civil society and academia and is responsible for ensuring that the views of citizens are reflected in public policy on children and adolescents, thereby contributing to inclusive governance.
- The Interministerial Committee for Social Development, Families and Children,<sup>80</sup> which, *inter alia*, is responsible for approving the draft national policy on childhood and adolescence and its corresponding action plan and updates, all of which were formulated by the Office of the Undersecretary for Children.
- The Ministry for Social Development and the Family, which, in 2019, amended the law establishing the Ministry for Social Development to convert it into the Ministry for Social Development and the Family<sup>81</sup> and thus consolidate its role as the institution responsible for designing and implementing policies, plans, and programmes on social equity and/or development, with a view to promoting social mobility, integration and participation in national life on the basis of equal opportunity.
- The Office of the Children’s Ombudsman, whose purpose is to raise awareness of and to promote and protect the rights of children.
- The National Service for the Specialized Protection of Children and Adolescents, which, together with the National Service for the Social Reintegration of Young Persons, is to replace the current National Service for Minors. The aim of the new service will be to provide specialized protection to children and adolescents whose rights have been seriously undermined or violated, and to their families, to restore their rights, to grant them reparation for harm suffered and to prevent new violations.

<sup>78</sup> Roll No. 14494-21.

<sup>79</sup> Exempt Resolution No. 4 of 2018, which provided for the adoption of the regulations governing the constitution and operation of the Council and defines its specific functions.

<sup>80</sup> Article 16 bis, Act No. 20.530.

<sup>81</sup> Act No. 21.150.

The main changes being made to the National Service for Minors include greater specialization, a new focus on the family, more stringent requirements for accredited partners, enhanced oversight and monitoring, increased requirements for public and private staff, and programming improvements.

- The bill on the establishment of the new National Service for the Social Reintegration of Young Persons, amending Act No. 20.084 on adolescent criminal responsibility and other specified regulations,<sup>82</sup> which is at the final review stage.
- The bill on the establishment of the system of guarantees for the rights of children, the purpose of which is to strengthen the universal protection of children's fundamental rights by coordinating all the benefits provided by the State.<sup>83</sup> This bill, which is undergoing its third constitutional reading, is intended to provide the framework for the protection of children's rights through regulations, institutions and policies that comply with the Convention on the Rights of the Child and other international instruments for the protection of human rights.

157. With regard to the internal regulations of the National Service for Minors, the technical standard prohibiting the dissemination of images of children and adolescents receiving assistance through the Service's network was adopted in August 2020 and the protocol for addressing the commercial sexual exploitation of children and adolescents receiving assistance under projects run by the rights protection network was approved in January 2020. The policy for addressing sexual diversity in children and adolescents receiving assistance through the Service is in the final review phase and about to be published. New circulars No. 05 and No. 06, issued to partner agencies and centres directly administered by the Service, respectively, on 6 August 2019, provide instructions on the procedure for responding to acts that may constitute an offence against children and adolescents receiving assistance through the Service in any of the ways specified in the circulars. In addition, an online procedure for following up on such acts, using a module that allows actions to be reported and monitored immediately, has been implemented. The technical standard for the promotion of well-being and the prevention and comprehensive treatment of emotional and behavioural maladjustment in children and adolescents in alternative residential care<sup>84</sup> entered into force on 15 April 2019.

158. In addition to these measures, attention should be drawn to the following legislative advances in the protection of children and adolescents: Act No. 21.160 of 18 July 2019, which provides that sexual offences committed against minors may not be time-barred; Act No. 21.182 of 22 October 2019, which amends the rules set out in Act No. 21.057 on access to the records of videotaped investigative interviews and judicial statements; and Act No. 21.140 of 31 December 2019, which amends Act No. 20.032 and Decree Law No. 2.465/1979, increasing subsidies for residential programmes run by the National Service for Minors, thus doubling government funding for the Service's accredited partner organizations, and introducing new requirements and grounds for disqualification and additional obligations and responsibilities.

## **N. Rights of indigenous peoples (art. 27)**

159. With regard to the constitutional amendment process and the recognition of indigenous peoples, on 14 May 2019 the President of the Republic presented the legislative agenda for indigenous affairs and acknowledged the need to reach agreements that ensure constitutional recognition for the indigenous peoples of Chile. The constitutional amendment

<sup>82</sup> Bulletin No. 11174-07.

<sup>83</sup> Bulletin No. 10315-18.

<sup>84</sup> Document technically approved by the Mental Health Department of the Department of Disease Prevention and Control, Office of the Undersecretary of Public Health; the Mental Health Unit of the Department of Explicit Health Guarantees and Complex Networks of the Directorate for the Management of Support Networks and Mental Health Care of the Primary Care Division, Office of the Undersecretary for Support Networks; the National Service for Minors; and the Ministry of Justice and Human Rights.

process currently under way is expected to give rise to regulations that will grant such recognition.

160. With regard to the bills related to indigenous institutions, the legislative agenda presented by the President of the Republic on 14 May 2019 has resulted in instructions being issued on the bills concerning the establishment of the Ministry of Indigenous Peoples and the National Council of Indigenous Peoples, dated 18 June 2019. The purpose of these bills is to create efficient specialized institutions to address indigenous affairs. The two bills are the result of an indigenous consultation process conducted at the national level between September 2014 and January 2015.

161. Other new legal texts of note include: Act No. 21.273,<sup>85</sup> which amends the Indigenous Peoples Act to ensure recognition of the Chango people as an indigenous people; Act No. 21.151,<sup>86</sup> which grants legal recognition to the Chilean tribal people of African descent; the bill on the establishment of 24 June as the National Day of Indigenous Peoples; and the Presidential instruction on greetings, language and intercultural ceremonies, the purpose of which is to ensure that government officials respect communities' traditions and culture at the time of greeting and taking leave.<sup>87</sup>

162. In line with Supreme Decree No. 66 of the Ministry for Social Development, enacting the regulations for the indigenous consultation procedure in line with articles 6 (1) (a) and 2 of the ILO Indigenous and Tribal Peoples Convention, 1989 (No. 169), 89 consultation processes have been carried out since 2009 and 10 are currently in progress. These consultations, which concern legislative and administrative measures, are held at the local and national levels under the charge of various ministries and services.

163. The environmental impact assessment system contains records of 57 projects involving consultations with indigenous peoples<sup>88</sup> and 663 records of meetings with groups belonging to indigenous peoples within the framework of article 86 of the system's regulations.<sup>89</sup>

164. With regard to the means by which the State recognizes and protects the rights of indigenous peoples to land and water, the Indigenous Land and Water Fund established in application of article 20 of Act No. 19.253 of 1993 offers three possibilities: (a) subsidies for purchasing land for indigenous persons and communities; (b) funding mechanisms for resolving land-related problems; and (c) funding for establishing, regularizing or purchasing water rights.

165. Another important mechanism for protecting the resources and traditional livelihoods of indigenous peoples is Act No. 20.249, which provided for the establishment of marine and coastal areas for indigenous peoples in 2008. The purpose of this Act is to safeguard the customary use of these areas in order to maintain traditions and the use of natural resources by indigenous communities with ties to coastal areas.

166. For more information on this subject, please refer to the report of Chile for the third cycle of the universal periodic review.<sup>90, 91</sup>

<sup>85</sup> 17 October 2020.

<sup>86</sup> 8 April 2019.

<sup>87</sup> 10 November 2020.

<sup>88</sup> Details of the records can be found at [https://seia.sea.gob.cl/pci/proyectos\\_en\\_pci.php?\\_paginador\\_refresh=1&\\_paginador\\_fila\\_actual=1](https://seia.sea.gob.cl/pci/proyectos_en_pci.php?_paginador_refresh=1&_paginador_fila_actual=1).

<sup>89</sup> Details of the records can be found at [https://seia.sea.gob.cl/pci/proyectos\\_en\\_pci\\_reunion.php](https://seia.sea.gob.cl/pci/proyectos_en_pci_reunion.php).

<sup>90</sup> A/HRC/WG.6/32/CHL/1, pp. 3–7.

<sup>91</sup> By way of reference, the 10 indigenous peoples that inhabit the territory, as recognized under the Indigenous Peoples Act (No. 19.253), are the Mapuche, Aymara, and Rapa Nui or Easter Islanders; the Atacameño, Quechua, Colla, Diaguita and Chango communities in the north of the country; and the Kawesqar or Alacalufe and Yámana or Yagán communities of the southern channels.