

Preliminary Aspects

1. Through this report, the National Institute of Human Rights (NHRI), an autonomous state agency, created by Law No. 20,405 of 2009, whose mission is the promotion and protection of the human rights of people living in Chile, follows up on the observations that the Committee on the Elimination of Racial Discrimination made to the State of Chile in September 2013 (CERD / C / CHL / CO / 19-21). The purpose of this document is to provide relevant information on the progress and pending issues regarding the application of the International Convention on the Elimination of All Forms of Racial Discrimination in the country, with the purpose of having this background considered in the 100th session in which the combined 22nd and 23rd periodic reports of Chile will be examined.²

Human Rights Institutionalality

2. In 2012, the **National Institute of Human Rights** was recognized with Class A accreditation by the International Committee for the Coordination of National Human Rights Institutions, currently the Global Alliance of National Human Rights Institutions (GANHRI). On the occasion, and to advance in full compliance with the Paris Principles, the Sub-Committee on Accreditation recommended that the State increase the financing granted to the NHRI, in order to progressively improve its operations and fulfillment of the mandate, and incorporate a legal provision to grant functional immunity to the members of the higher body with respect to the actions carried out in their official capacity, with the aim of promoting their independence and reducing the possibility of external interference. Regarding the first recommendation, as of 2015, there was a significant increase in the annual budget of the NHRI³, which allowed it to gradually increase its national presence, having currently offices in 15 of the 16 regions of the country.⁴ Regarding the second recommendation, to date the required legal modification has not been made.
3. On April 25, 2019, Law No. 21,154 was published in the Official Gazette that designates the National Institute of Human Rights as the **National Mechanism for Prevention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (MNPT)**, a milestone which

¹ Approved by the Council of the INDH on October 28, 2019, during the ordinary session N° 501.

² Article 3, numeral 8 of Law No. 20,405, establishes that it will be up to the Institute to "cooperate with the United Nations, regional institutions and institutions of other countries that are competent, in the promotion and protection of human rights, informing of it the Ministry of Foreign Affairs."

³ The historical budget of the NHRI, in thousands of pesos, has been the following amounts: 2010 \$ 1,396,541; 2011 \$ 1,817,252; 2012 \$ 2,327,122; 2013 \$ 2,345,356; 2014 \$ 2,348,092; 2015 \$ 4,320,120; 2016 \$ 5,869,563; 2017 \$ 7,036,445; 2018 year \$ 7,605,242; 2019 \$ 8,349,955 (amounts updated to actual values of 2019, in order to make them comparable).

⁴ The Ñuble Region Office that remains to be established will be installed at the end of 2019.

represents an important step towards complying with the provisions of the Optional Protocol to the United Nations Convention against Torture by the State of Chile, ratified in 2009. However, the NHRI is concerned about the opinion issued on April 4, 2019 by the Constitutional Court, an organism that, exercising its work of constitutional control of the bill, declared the jurisdiction contemplated for the experts who will integrate said instance unconstitutional.⁵

4. In January 2018, Law No. 21.067 was published, which creates the **Ombudsman for the Rights of the Child**, and in April of the same year the Senate appointed the first defender, Ms. Patricia Muñoz. The agency aims to disseminate, promote and protect the rights of children and adolescents.
5. In 2008, the bill that created the **ombudsman's office** entered Parliament⁶, and has not shown any progress in its legislative process since 2010.
6. The creation in 2016 of the **Undersecretariat of Human Rights** under the Ministry of Justice and Human Rights, through Law No. 20,885, represents a significant advance in institutional matters. Its main function is to provide advice on the design and development of public policies related to the promotion and protection of human rights. At the end of December 2017, the Undersecretariat presented a draft of the **First National Human Rights Plan 2018-2022** (PNDH), an instrument that responds to the recommendations made to the State of Chile regarding human rights and that contemplates a set of concrete actions, goals, responsible institutions and associated financial resources. In August 2018, this draft Plan began to be subject to revision and methodological adjustments in its actions and indicators, whose modifications were made public on September 5, 2019, when the document was formally entered into the Comptroller General of the Republic for the endorsement of the supreme decree that approves the updated Plan. The NHRI is currently analyzing the scope of the modifications made. Additionally, the NHRI has expressed its concern because the process of reviewing the PNDH project has delayed the accountability process regarding the progress in its implementation, as well as its monitoring that both civil society organizations and the NHRI will carry out ⁷.

Statistics

7. The 2017 **census measurement** included questions that allow having national statistics regarding the number of people who self-identify with any of the nine indigenous peoples

⁵ The majority vote of the Constitutional Court considered that the norm exceeded the constitutional framework and that the international requirements are to protect the independence of the body and not a personal protection that is inherent to jurisdiction, and that said independence was guaranteed by several norms of the law, the main one being that which governs the dismissal or cessation of the position of the experts, which has high demands and, therefore, guarantees the stability of the position. It also considered that there were many national mechanisms that did not have this personal privilege and much less those that did have it. (Recitals 26, 27 and 28). The minority vote, on the other hand, considered that the jurisdiction established was limited to its own functions and did not exceed the constitutional requirements. The existence of the functional jurisdiction, which the NHRI advisers lack, could be considered convenient in the light of the rules established in the Paris Principles. See Global Alliance of National Human Rights Institutions- GANHRI. (2018). General Observations of the Sub-Committee on Accreditation, adopted on February 21, 2018. General Comment 2.3. "Protection against criminal and civil liability for official actions and decisions taken in good faith".

⁶ Legislative Bulletin N°6232-07.

⁷ INDH (2019). Contribution to the List of Prior Issues of the United Nations Committee on Economic, Social and Cultural Rights, Fifth Periodic Report of the State of Chile, paragraph 2.

recognized in the legislation (12.8% of the population), as well as the number of migrants who reside in the country (4.35% people born abroad)⁸. The 2017 Socioeconomic Characterization Survey (CASEN) also included consultations to determine the indigenous and migrant population⁹, providing information on levels of poverty, income, work, social security, health, education and housing disaggregated by ethnic and national origin. However, in both measurements the variable of African descent was omitted, which prevents quantifying the number of people of African descent who inhabit the country and their situation regarding the enjoyment of economic and social rights.

8. The strengthening of the **statistical institutional** remains a challenge. In 2015, a bill that created a new national statistical system (Bulletin 10372-03) entered Congress, which aims to generate an autonomous and specialized institutional in the field, and which is in the second constitutional process in the Senate. The initiative arose after a series of questionings of the National Statistics Institute regarding the reliability of the figures delivered in the 2012 Census, the 2013 National Socioeconomic Characterization Survey (CASEN), unemployment figures and the calculation of the Consumer Price Index (IPC).

Definition of discrimination and special measures

9. **Law No. 20,609, which sets measures against discrimination**, establishes a jurisdictional action to punish acts of arbitrary discrimination that, if proven, empowers the court to cease the discriminatory act or to force the omitted act to be carried out, in addition to the determination of a fine for tax benefit. The regulations generally provide for the obligation of state administration bodies to develop measures to prevent discrimination, but not special measures that guarantee full and equal enjoyment of rights, nor specific provisions to compensate victims¹⁰. The recommended reforms that allow reviewing the categories of discrimination considered as “non-arbitrary” have not been carried out¹¹ to adapt the law to the Convention. The State has not evaluated the impact that the regulations have had on the prevention and eradication of ethnic-racial discrimination. Available statistics indicate that from 2012 to 2016, 11 actions have been filed for discrimination based on “personal appearance”¹², but there is insufficient background to establish how many of these cases constitute discrimination against indigenous, migrant and / or Afro-descendant persons.

⁸ Instituto Nacional de Estadísticas (2018). Summary Census 2017 results. Available at: <http://www.censo2017.cl/descargas/home/sintesis-de-resultados-censo2017.pdf>

⁹ Ministry of Social Development. (2017). CASEN Survey Questionnaire. Available at: http://observatorio.ministeriodesarrollosocial.gob.cl/casemultidimensional/casen/docs/Cuestionario_Casen2017.pdf

¹⁰ Notwithstanding that the rule does not expressly provide for remedial measures, persons affected by acts of discrimination have the option of initiating civil actions for compensation of damages.

¹¹ Article 3 of this Law provides that distinctions, exclusions or restrictions based on certain fundamental rights, such as respect and protection of privacy and honor of the person and his family, are reasonable; freedom of conscience; teaching freedom; freedom of expression; right of association; freedom of work; and the right to free economic entrepreneurship.

¹² Directorate of Studies of the Supreme Court. (2017). Statistical analysis of Law 20.609. An outlook from the access to justice five years after its validity. Available at: [file:///C:/Users/sdelpino/Downloads/1258%20Articulo%20An%C3%A1lisis%20Estad%C3%ADstico%20de%20la%20Ley%2020%20609%20Final%20\(1\).pdf](file:///C:/Users/sdelpino/Downloads/1258%20Articulo%20An%C3%A1lisis%20Estad%C3%ADstico%20de%20la%20Ley%2020%20609%20Final%20(1).pdf)

Racial discrimination crimes and racist hate speech

10. **Law No. 20,609** added as a new aggravating circumstance of criminal responsibility to commit or participate in a crime motivated by the categories constituting arbitrary discrimination, among which are the ethnic or racial origin of the victim. In 2017, the bill amending the Criminal Code entered the Congress to incorporate the **crime of incitement to hatred or violence** against the persons it indicates (Bulletin No. 11331-07) and the bill **that typifies the crime of incitement to violence** (Bulletin No. 11424-17,¹³ both are in the first constitutional process in the Chamber of Deputies. On the other hand, in the national legal system there are no typified behaviors that can be described as hate crimes or acts of violence with racial motivation. This regulatory deficit generates a lack of statistical information on investigations, trials and judgments on crimes related to the acts referred to.

Equality before the courts and access to justice

11. It is necessary to reinforce the measures implemented to guarantee **access to justice for indigenous peoples**. In the 2018 Annual Report, the NHRI addressed violence against rural and rural indigenous women and noted that they face obstacles to accessing the justice system in case of domestic violence, associated with social exclusion and ethnic discrimination that they have historically suffered and factors such as geographical isolation, lack of cultural and territorial relevance of the services delivered and distrust of state institutions responsible for providing protection to women living in violence.¹⁴

Constitutional recognition and consultation with indigenous peoples

12. In Chile, indigenous peoples lack constitutional recognition. Since the installation of the NHRI in 2010 “[...] the absence of constitutional recognition of the pluriculturality of the State and society has been a concern, in addition to the lack of public policies and institutionality to address relations with the indigenous peoples of the country”,¹⁵ and that is why the Institute has urged on several occasions to correct these deficits and generate instances of dialogue.¹⁶

¹³ In the “Report of the Bill that Typifies the Crime of Incitement to Violence (Bulletin No. 11424-17)”, the NHRI expressed its technical opinion on the initiative, pointing out that “the need to incorporate other reasons such as “political ideas” or “skin color” or “physical appearance” is noted, in order to establish greater protection for groups that, due to the social situation, could be affected by acts of violence. Available at: <https://bibliotecadigital.indh.cl/handle/123456789/1139>

¹⁴ INDH. (2018). Annual Report Situation of Human Rights in Chile. Violence against rural and rural indigenous women: invisible and marginalized, pages 16-53.

¹⁵ INDH. (2015). Annual Report Situation of Human Rights in Chile. Intercultural relations and human rights. p. 189.

¹⁶ On July 21, 2014, the NHRI Council delivered to the Executive Power a proposal focused on “undertaking a high-level dialogue process between representatives of indigenous peoples and the State in Chile, aimed at overcoming the situation with a short, medium and long focus, and to establish the bases for a new intercultural coexistence in the country, that overcomes, or at least contributes to a better management of the conflicts that exist today. [...] The status and characteristics of the recognition of indigenous peoples in the Political Constitution of the State, the rights of participation of these peoples in the State, the spaces for their autonomy, rights over their lands, territories and resources, and the right to define their own

Although there are several legislative initiatives on the subject that have been entered into Congress, none of them have been approved or are currently being processed¹⁷. The only initiative that has made some progress in its discussion during 2019 is the bill that “Recognizes the original peoples and the multicultural nature of the Chilean Nation” (Bulletin No. 10281-07), introduced in 2015, and that is still in the first constitutional process.

13. The creation of an **institutional framework that promotes and protects the rights of indigenous peoples** remains a pending debt of the State. In 2016, the Executive entered two bills: the one that creates the Ministry of Indigenous Affairs (Bulletin No. 10687-06)¹⁸ and the one that creates the National Council of Indigenous Peoples and the Councils of Peoples (Bulletin No. 10526), both are in the second constitutional process in the Senate.
14. Challenges remain regarding the adoption of an **indigenous consultation** regulation through an inclusive and participatory process, legitimized by indigenous peoples.¹⁹ Supreme Decree No. 66 of the Ministry of Social Development, published in the Official Gazette on March 4, 2014, which approves the regulations governing the Indigenous Consultation Procedure contemplated in ILO Convention No. 169, repealed Supreme Decree No. ° 124, of September 4, 2009, of the Ministry of Planning, which “called for a broad rejection of lowering international standards in this area”²⁰. The Institute has publicly expressed its appreciation of the efforts made by the Executive Branch in order to equip itself with instruments that provide legal certainty in relation to prior consultation procedures. However, and given that the application of Decree No. 66 has not been exempt from problems and criticism by indigenous sectors, the NHRI has recommended revising, with the participation and consultation of indigenous peoples, said decree in order to achieve a regulation that encourages greater degree of acceptance of indigenous peoples.²¹
15. Since the ratification of Convention No. 169 of the International Labor Organization (ILO) in 2008, more than 129 indigenous consultation processes have been carried out in the country, of which 89 have been completed²². Of these consultations, the NHRI has participated as an

development priorities, were identified as suggestions.” INDH. (2015). Annual Report Situation of Human Rights in Chile. Rights of indigenous peoples: territories and prior consultation. p. 233.

¹⁷ Other similar legislative initiatives are Bulletin No. 5324-07 (2007), Bulletin No. 8438-07 (2012), Bulletin No. 11289-07 (2017), Bulletin No. 11873-07 (2018), Bulletin No. 11939 -07 (2018), Bulletin No. 11617-07 (2018).

¹⁸ The technical opinion of the NHRI appears in the document “Report on the Bill that Creates the Ministry of Indigenous Peoples. Bulletin No. 10.687-06”. Available at: <https://bibliotecadigital.indh.cl/handle/123456789/1176>

¹⁹ Regarding the indigenous consultation, in 2013 the NHRI indicated that “[...] it should not be exclusively dedicated to an implementing regulation. The law should expressly contemplate indigenous consultation mechanisms. This is consistent with the obligation to adapt internal legislation to human rights standards and specifically to ensure that the prior consultation is incorporated transversely to the legislation that regulates the entire process of design, concession and implementation of exploration and exploitation projects of natural resources in indigenous territories. This additionally requires reviewing and adapting the related sector legislation.” INDH (2013). The duty of prior consultation in the Proposal for Regulation of the Environmental Assessment System. Minute approved by the Council of the National Institute of Human Rights on May 13, 2013, Extraordinary Session No. 152. p.31. Subsequently, the recommendations of the NHRI have focused on adapting the existing regulations to the standards applicable in the matter.

²⁰ INDH (2014). Annual Report Situation of Human Rights in Chile. Rights of indigenous peoples: territories and prior consultation. p. 246.

²¹ Ibidem.

²² Facultad de Derecho de la Universidad de Chile (2019). “Sistematización y análisis de experiencias del ejercicio del derecho de consulta previa desde la institucionalidad en Chile”.

institution observer of the process in 6 of them.²³ On May 22, 2019, began the Indigenous Consultation regarding 11 measures²⁴ aimed at reforming Law No. 19,253 (Indigenous Law), a process that in its first stage was observed by the NHRI²⁵. Among the main findings of the observation made, from the perspective of the indigenous organizations represented, it is worth mentioning the lack of confidence on the part of the indigenous peoples in the process due to rejection or doubts raised by the impact of the measures consulted on their rights with respect to of the use of their lands and territories; criticisms about the dissemination of the call to the communities; inadequacies in the information given to the people participating in the meetings; malaise and fear as a result of the police contingent present at the meeting places; and the inclusion of indigenous public officials in consultation meetings as participants²⁶. In response to the criticisms and incidents that occurred during this first stage, the Ministry of Social Development announced that the process will be suspended until an evaluation of the relevant experience and adjustments is made.

16. The NHRI has presented amicus curiae in four cases related to **investment projects that could affect indigenous communities, contributing to the applicable international standards of prior consultation**. The first refers to the lithium exploitation projects in the Salar de Atacama that

²³ The processes are: 1) Consultation of Consensus Board. Available at:

<https://bibliotecadigital.indh.cl/bitstream/handle/123456789/588/Informe.pdf?sequence=4>

2) Ministry of Indigenous Peoples and Council of Indigenous Peoples. Available at:

<https://bibliotecadigital.indh.cl/bitstream/handle/123456789/818/Informe.pdf?sequence=1>

3) Ministry of Culture, Arts and Heritage. Available at:

<https://bibliotecadigital.indh.cl/bitstream/handle/123456789/863/Informe.pdf?sequence=1>

4) About the Salar del Huasco National Park. Available at:

<https://bibliotecadigital.indh.cl/bitstream/handle/123456789/1152/informe.pdf?sequence=1>

5) Rapanui National Park. Available at:

<https://bibliotecadigital.indh.cl/bitstream/handle/123456789/929/Informe-rapa-nui.pdf?sequence=1>

6) Ministry of the Environment. Available at:

<https://bibliotecadigital.indh.cl/bitstream/handle/123456789/1150/informe.pdf?sequence=1>

²⁴ The measures to be consulted are: 1) Enable indigenous communities to receive or generate individual domain titles; 2) Allow that the Real Right of Use and Real Right of Enjoyment can be constituted in individual title of dominion; 3) Remove the minimum subdivision restriction of 3 hectares by applying the general subdivision rules; 4) Allow the sale of indigenous lands among indigenous people from 5 years after their delivery; 5) Regulate the mechanism for swapping indigenous lands to clarify and specify their conditions; 6) Allow the realization of contracts of leases, bail bonds or mediations in indigenous lands for a term of up to 25 years; 7) Allow alternative and voluntary mechanisms to repair indigenous land problems; 8) Allow access to benefits associated with indigenous quality only to persons with indigenous quality acquired by article 2 letters a) and b) of Law No. 19,253; 9) Higher requirements for the constitution of new indigenous communities; 10) Allow Indigenous Associations to be constituted by a minimum of 2 members; 11) Allow Indigenous Associations to apply for the indigenous development fund.

²⁵ The Ministry of Social Development planned 131 indigenous consultation meetings for the first stage of the consultation. Of these, the NHRI regional headquarters teams observed 59 meetings, out of the total.

²⁶ In the observation report, the NHRI concluded that “[...] the Indigenous Consultation is a vital instrument in the relationship of indigenous peoples and the State of Chile, and it is therefore convenient to review, in the light of this experience, Decree No. 66 and strengthen this mechanism with the participation of the incumbents”. INDH (2019). Indigenous consultation observation Indigenous Law 2019 coordinated by the Ministry of Social Development and Family, p. 16.

would affect the Atacameño communities in the Antofagasta Region;²⁷ the second case is related to the approval of the incorporation of blastings in the exploitation of coal that “Mina Invierno” carries out in the Riesco Island, a territory claimed by the Kawésqar communities in the Magallanes Region and the Chilean Antarctic;²⁸ the third is related to an assignment of approximately 8,000 hectares, executed by the Ministry of National Assets to the Chilean Army in the Arica and Parinacota Region, in territory claimed by the Aymara Communities²⁹ and the fourth case refers to the granting of aquaculture concessions in the same territory on which the declaration of the Coastal Marine Protected Space of Indigenous Peoples (ECMPO) was requested, in accordance with Law No. 20,249 that creates the Coastal Marine Space of Indigenous Peoples, by communities of the Kawésqar people on the perimeter of Riesco Island, commune of Río Verde, Magallanes Region.

Ancestral lands

17. In the 2014 Annual Report, the NHRI noted that “[the approach to restitution and delimitation of indigenous lands has been characterized by its slowness, and in relation to one of the tools used for the acquisition of land in conflict, it has been found by the National Corporation of Indigenous Development that it has favored speculative practices, [...] moving away from the standard consisting of the application of models aimed at guaranteeing and protecting said lands, as essential spaces for the survival of the original peoples”³⁰. Other problems identified are the lack of an updated cadastre, which includes the unsatisfied demand regarding indigenous lands and territories³¹, and the accusations about “lack of probity in the management of resources destined to solve land problems”³² weighing on the National Corporation for Indigenous Development (Corporación Nacional de Desarrollo Indígena - CONADI).

On the other hand, the NHRI found in the Mission of Observation report at Alto Biobío the ignorance, on the part of the State, of the traditional occupation of the lands made by the Pehuenche communities in Alto Biobío, because “[in practice the CONADI has failed to use the land purchase mechanism of article 20, letter b³³, of Law 19.253, with those indigenous

²⁷ INDH. (2018). Amicus Curiae On Protection Resource Filed by the Atacameñas and Collas Indigenous Communities. Available at: <https://bibliotecadigital.indh.cl/handle/123456789/1167>

²⁸ INDH. (2018). Amicus Curiae on the Coal Extraction Project of Mina Invierno on Riesco Island. Available at: <https://bibliotecadigital.indh.cl/handle/123456789/1179>

²⁹ INDH. (2018). Amicus Curiae On Ancestral Land Protection Resource of the Chucuruma or Socoroma Indigenous Community. Available at: <https://bibliotecadigital.indh.cl/handle/123456789/1135>

³⁰ INDH (2014). Annual Report Situation of Human Rights in Chile. Rights of indigenous peoples: territories and prior consultation. p. 243

³¹ In 2018 CONADI requested the Comptroller's Office to carry out a cadastre to determine the land titles granted to communities and those that are still pending, from 1994 onwards, a request that the agency declined in the absence of information and means of contrast available to perform the audit.

³² INDH (2014). Annual Report Situation of Human Rights in Chile. Rights of indigenous peoples: territories and prior consultation. p. 244.

³³ Letter b) of Article 20 of Law 19,253 points out that the State must: “Finance mechanisms that allow the resolution of land problems, especially when complying with resolutions or transactions, judicial or extrajudicial, relating to indigenous lands in which there are solutions on indigenous lands or transferred to the indigenous peoples, ensuing from the land titles or recognized by commissioner titles or other assignments or assignments made by the State in favor of the indigenous peoples”. Land disputes that are intended to be resolved through this procedure are associated with cases of land of historical or recent

communities that, for different reasons, do not have land titles or equivalent formal documents that allow them to prove the ownership of the land”.³⁴

The NHRI reiterates the information provided to the Committee in 2013³⁵, that “the restitution and recognition of territorial rights continue to represent one of the main sources of tension between the State and indigenous peoples, which expresses the political and institutional inadequacies to face the demand for restitution. This has been reflected in the occupation of properties by indigenous communities that claim ancestral rights over their lands and territories, and in this context of mobilization, the impact on the right to physical and psychological integrity of indigenous people due to the disproportionate use of force by police officers”³⁶³⁷. Similarly, the NHRI has called for a comprehensive approach to the problem, in order to overcome the public security approach that has prevailed so far, and intervene in structural causes through political solutions.³⁸

18. The 2014 Annual Report noted concern about the potential impact of investment projects on the livelihoods of indigenous peoples in the country. Diverse communities “have had to face the effects in their territories, of projects that they consider, threaten not only their cultural and religious manifestations, but their survival as peoples. Thus, mining, hydroelectric, and forestry companies that have subsidies from the State have built their productive infrastructure on lands that indigenous peoples claim as their own [...]. The NHRI has indicated that the satisfaction of the country's productive needs cannot be done at the expense of the denial of the rights of indigenous peoples.”³⁹ In the same vein, the Inter-American Court of Human Rights has indicated that “[by ignoring the ancestral right of the members of indigenous communities over their territories, other basic rights, such as the right to cultural identity and the very survival of indigenous communities and their members, could be affected”.⁴⁰ On the other hand, the modifications introduced in 2010 to Law No. 19,300 on environmental bases and the new regulation of the Environmental Impact Assessment System issued in 2012, which regulated the duty of indigenous consultation within the framework of the environmental evaluation of investment projects, did not contemplate the legitimization of the representative institutions of the indigenous peoples that participate in consultation processes to file a claim resource against the resolution of environmental qualification in case they consider that the right of consultation

occupation, which do not have a title in their favor. INDH (2014). Annual Report Situation of Human Rights in Chile. Rights of indigenous peoples: territories and prior consultation. pp. 239-240.

³⁴ INDH. (2019). Report Observation Mission of Alto Biobío. Available at: <https://bibliotecadigital.indh.cl/handle/123456789/1194>

³⁵ INDH. (2013) Supplementary Report Committee on the Elimination of Racial Discrimination, paragraph 55.

³⁶ INDH. (2017). Human Rights, Police Function and Public Order Program 2016 Report. p. 108.

³⁷ The NHRI filed before the Temuco Court of Appeals, on March 9, 2018, a constitutional action for protection, Case N°32-2018, in favor of the AMDH girl, three years old and of B.H.N. and others, who were evicted from the ranch The Prosecutor, claimed by the Malle Koche Lof Mariluán Community, of Lower Malleco, currently commune of Collipulli.

³⁸ INDH (2016), Public statement of the NHRI Council on the intercultural conflict in La Araucanía, paragraph 5. Available at: <https://www.indh.cl/declaracion-publica-del-consejo-del-indh-sobre-el-conflicto-intercultural-en-la-araucania/>

³⁹ INDH (2014). Annual Report Situation of Human Rights in Chile. Rights of indigenous peoples: territories and prior consultation. p. 245.

⁴⁰ IDH Court (2014). Indigenous Peoples Kuna de Madungandí and Emberá de Bayano and their members v. Panama, paragraph 18.

or other rights have been violated.⁴¹ For this reason, the NHRI is concerned that the above prevents the effective access of indigenous peoples to justice, to which is added the concern for the effective access of indigenous peoples to environmental justice for the purpose of requesting compensation for environmental damage.

19. The map of socio-environmental conflicts of the NHRI indicates that there are 38 **conflicts in the country located in indigenous lands or territories**, mainly related to the mining sector (39%), energy (39%) and fisheries and aquaculture (11%)⁴². The NHRI has expressed concern about potential violations of the social, cultural, religious and spiritual practices of indigenous peoples that could be generated by certain productive or extractive activities. Thus, for example, it is worth mentioning the eventual installation on the banks of the Pilmaiquén River, commune of Río Bueno, of a hydroelectric power station near a Mapuche cemetery and ceremonial site.⁴³ Similarly, as a result of the worsening of the red tide that caused the dumping of decomposing salmon into the sea in 2016, the NHRI carried out an Observation Mission to the commune of Chiloé, an instance in which it found that “[the enjoyment of collective rights linked to culture, the worldview of the Williche people and the customary use of sea resources were affected”.⁴⁴

The Counter-Terrorism Act and excessive use of force by agents of the State against indigenous peoples

20. The NHRI does not have updated statistics, disaggregated by ethnic origin, on the application of **Law No. 18.314 (Anti-Terror Law)** and does not have information on monitoring actions by the State regarding possible discriminatory effects of the regulations on indigenous peoples. The available figures indicate that between 2000 and 2016, there were 21 cases in which attempts were made to apply the Anti-Terrorist Law, with 108 people charged⁴⁵. Of the nine convicted persons, all of Mapuche origin, seven convictions were left without effect by order of the Inter-

⁴¹ Law No. 19,300 was modified and updated through Law No. 20,417 of 2010. For its part, the current Regulation of the Environmental Impact Assessment System is contained in Supreme Decree No. 40 of 2012, issued by the Ministry of the Environment, which entered into force on December 24, 2013.

⁴² Map of Socio-Environmental Conflicts, available at: <https://mapaconflictos.indh.cl/#/>

⁴³ INDH, “INDH Los Ríos visits Mapuche communities on alert for hydroelectric installation in Pilmaiquén”, July 11, 2019. Available at: <https://www.indh.cl/indh-los-rios-visita-a-comunidades-mapuche-en-alerta-por-instalacion-de-hidroelectrica-en-pilmaiquen/>

⁴⁴ INDH. (2016). Observation Mission Socio-environmental Situation Los Lagos Region, p. 60. Available at: <https://bibliotecadigital.indh.cl/handle/123456789/1140>

⁴⁵ Villegas Díaz, Myrna. (2018). Tratamiento jurisprudencial del terrorismo en Chile (1984-2016). Política criminal, 13(25), 501-547. Available at: <https://dx.doi.org/10.4067/S0718-33992018000100501>

American Court of Human Rights,⁴⁶ and the other two convictions fall on the same person.⁴⁷ Subsequently, on May 5, 2018, three people of the Mapuche people were sentenced by the Temuco Oral Criminal Court, under the Oral Trial for the Luchsinger-Mackay case⁴⁸, sentences that were finally annulled by the Supreme Court, which re-qualified the facts as a fire crime resulting in death, without the qualification of “terrorist”.⁴⁹

21. Currently, three legislative initiatives to **modify the anti-terrorism law** are being discussed at Congress, which are jointly processed and are in the Senate, in the first constitutional process⁵⁰. These reforms maintain the bulk of the procedural institutions characteristic of Law No. 18,314, among which the extension of the time of detention, the secrecy of pieces of the investigation for up to 6 months, reserved witnesses and compensated denunciation stand out. Additionally, in 2019, the Executive entered a new project, known as the “short anti-terrorism law” (Bulletin 12.589-07), focused on procedural aspects, making Article 226 bis applicable to the investigation of crimes under Law No. 18.314 “Special investigation techniques” of the Criminal Procedure Code.⁵¹ It is a matter of concern that if the “short law” is passed, it will be possible to apply techniques such as undercover agents and controlled deliveries in relation to a criminal figure that is not well defined. In addition, the NHRI is concerned that the modification of Law No. 18,314 has not yet been complied with, five years having elapsed since the presentation of the projects that tended to reform it completely. Together with this there remain problems regarding the poor definition of the terrorist crime, which violates the principles of legality and crime definition; and exceptional standards that represent a decrease in due process standards.⁵²
22. Regarding **police abuses against members of indigenous peoples**, between 2013 and 2018, the NHRI filed 30 complaints for crimes of torture and illegitimate constraints, three complaints under the Camilo Catrillanca case for homicide, attempted homicide and obstruction of the

⁴⁶ Inter-American Court of Human Rights. (2017). Case of Norín Catrimán et al. V. Chile, judgment of May 24, 2014. In addition to the aforementioned violation of Articles 9 and 8.2 of the American Convention on Human Rights, in this judgment the Court also declares the violation by the State of Chile of Art. 24 (principle of equality and non-discrimination); of Art. 8.2 f) (right of the defense to interrogate witnesses and obtain the appearance of witnesses who could shed light on the facts; Arts. 7.1, 7.3 and 7.5 (right to personal liberty, not to be subjected to arbitrary detention and not to suffer custody under conditions not adjusted to international standards; Art. 13.1 (freedom of thought and expression); Art. 23 (political rights); and Art. 17.1 (right to family protection). The ruling states that there are no elements that allow the Court to determine that there has been a discriminatory application of the anti-terrorism law to the detriment of the Mapuche people or their members. It also adds that the reasoning and grounds of the sentences denote stereotypes and prejudices that configured a violation of the principle of equality and non-discrimination and the right to equal protection of the law.

⁴⁷ Raúl Castro Antipán was a police intelligence informant, and in both cases he accepted his responsibility in abbreviated trials. Judgment of the Guarantee Court of Victoria of October 22, 2010, RUC 0900969218-2 and Judgment of the Guarantee Court of Temuco of September 14, 2012, RUC.: 0900697670-8.

⁴⁸ Temuco Oral Criminal Court, RIT 150-2017.

⁴⁹ In addition to the aforementioned sentences, in June 2018, Juan Flores Riquelme was convicted as the author of a terrorist offense for the placement and detonation of explosive devices at a subway station in the city of Santiago in September 2014.

⁵⁰ The bill to modify the anti-terrorism regime (Bulletin 9692-07) was recast in 2015 with another bill submitted by a group of senators (Bulletin 9669-07). In 2018, the Executive Branch presented indications to said consolidated project, which in turn are based on a project presented in 2010 (Bulletin 7207-07).

⁵¹ Incorporated in 2016, through Law No. 20,931.

⁵² INDH (2011). Annual Report Situation of Human Rights in Chile. Law that determines and sanctions terrorist behaviors. p. 110.

investigation, and 35 appeals for protection by police actions against Mapuche people in the three regions where the conflict between the State and the Mapuche people occurs (Araucanía, Los Ríos, Biobío). Of the total legal actions, 25 of them were received by the Courts, which specially instructed the police regarding the need to respect the established legal procedures, in particular regarding the possibility that their actions affect children and teenagers. The NHRI considers that the judicial processing of the criminal actions filed has an average processing time of one year and a half, evidencing the need to accelerate the investigative processes without losing their thoroughness and rigor.

The NHRI considers that **indigenous women** constitute a special protection group that faces multiple discrimination and greater vulnerability to abuses by state agents. In this regard, it is worth mentioning three serious cases of violence against Mapuche women, which express in a paradigmatic way the intersectionality of sexual and racial discrimination, and which respond to a systematic pattern of structural discrimination by the State against the Mapuche people. The first is the case of Mrs. Lorenza Cayuhán, a Mapuche woman deprived of liberty who remained handcuffed while in labor in 2016⁵³. It was on account of these facts that the NHRI filed a complaint for the crime of torture, and then filed an appeal for annulment of the trial that acquitted the accused persons that was accepted by the Court of Appeals of Concepción, an instance that required performing a new legal process. The second case was that of Machi Francisca Linconao, an ancestral and spiritual Mapuche authority, who was the first to denounce before the national courts the breach of ILO Convention 169 in 2008, by filing a remedy of protection to the Supreme Court with the aim of preventing the illegal logging of native forests that threatened the planting of medicinal plants used by the Mapuche People, which was accepted by the court. In January 2013, she was violently arrested and forced to change her clothing, which violated her hierarchy and traditions as a Mapuche spiritual authority. The arrest occurred due to her alleged participation in the murder of the Luchsinger-Mackay couple, being charged with the crime of fire resulting in a terrorist death, for which she spent nine months in custody,⁵⁴ being acquitted in a first trial that culminated in October 2017 and in a second trial, whose sentence was published in May 2018. Thirdly, there is the case of the Mapuche vegetable growers, which historically have commercialized the agricultural products they grow in the public highway and that product of a municipal ordinance, based on the control of informal commerce, have been prevented from continuing with their traditional subsistence activities in the city of Temuco. The measure has generated various public demonstrations by those affected and led to the filing of a constitutional protection action by the NHRI for the events that occurred on August 9, 2019, when 14 protesters were detained and unjustifiably and arbitrarily deprived

⁵³ On December 1, 2016, the Supreme Court accepted the appeal for protection filed by the NHRI and the Public Criminal Ombudsman in favor of the rights of Ms. Cayuhan, resolving that “in the sub judice case there is a paradigmatic situation of intersectionality in discrimination, where there is a confluence of cross-linked factors of discrimination that mutually reinforce each other and negatively impact the protected person, since she received an unfair, denigrating (sic) and degrading treatment, given her status as a woman, pregnant and in labor, deprived of liberty and belonging to the Mapuche ethnic group, which unnecessarily put her health and life at risk, as well as that of her child, all in contravention of the national and international regulations in force in the matter. These rules have warned that the convergence of multiple forms of discrimination increases the risk of some women becoming victims of compound discrimination (...)”. Supreme Court, Case N° 92975-2016.

⁵⁴ INDH, “Public Declaration of the NHRI Council regarding the situation of Machi Francisca Linconao”, January 2, 2017. Available at: <https://www.indh.cl/declaracion-publica-del-consejo-indh-ante-la-situacion-de-la-machi-francisca-linconao/>

of liberty for more than 7 hours, during which they remained in precarious conditions, an action that was accepted by the Temuco Court of Appeals ⁵⁵.

23. Among the most serious events that occurred recently, is the murder of **Camilo Catrillanca**, which cannot be considered separately from other similar events that occurred in the past. ⁵⁶ The 24-year-old Mapuche community member died on November 14, 2018 due to a bullet shot by police officers who participated in an operation, and were part of the so-called “Jungle Comando” of the Carabineros Space Operations Group. The case had a profound impact on the country, as both police and government authorities initially argued that it was a confrontation, later clarifying that there was concealment of the truth by police authorities. For these facts, the NHRI has filed four complaints to pursue the criminal liability derived from them: a complaint for the murder of Camilo Catrillanca; a second action for the obstruction to the investigation that the police that participated in the operation that culminated with the death of the young Mapuche would have carried out; a third for the frustrated homicide of the 15-year-old Mapuche teenager M.A.P.C. who accompanied Camilo Catrillanca at the time of his death, who observed the whole event; and a fourth complaint, filed jointly with the Ombudsman for Children, for the tortures suffered by M.A.P.C. after being arrested by police in the operation that ended the life of Camilo Catrillanca. Currently eight former police officers have been formalized and charged with these events, pending the Oral Trial.
24. The NHRI does not have updated information regarding **human rights training for State officials**.⁵⁷ According to the data provided by the Civil Service in 2015, only 9% of the training provided to state administration officials are about human rights ⁵⁸, reaching only 10% of officials that year, a low proportion in relation to the total number of training carried out annually, both in the number of activities, the hours allocated to it and the number of officials trained. In this regard, the NHRI reiterates its diagnosis that these trainings are insufficient to install a comprehensive notion of human rights and for the adequate understanding of their responsibilities as representatives of the State in their daily public service work.⁵⁹ Notwithstanding the above, it should be noted that since 2016 Carabineros maintains a National Training Program on Human Rights applied to the police function, called “Techniques for the protection of life and respect for Human Rights”, which is valued by the NHRI for its massiveness (11,000 officials have been trained every year⁶⁰) and the preparation of instructors. However, it is still required that the training instances are linked with the process of initial training of non-

⁵⁵ Protection Case N° 164-2019.

⁵⁶ Other similar cases are those of Álex Lemún Saavedra, 17, shot in the head by Major Marco Aurelio Treuer, Carabineros official (November 2002); Matías Catrileo Quezada, 23, killed by a shot in the back by the Second Corporal of Special Forces of Carabineros, Walter Ramírez (January 2008); Jaime Mendoza Collío, 24, shot in the back by the Special Forces carabinero, Patricio Jara Muñoz (August 2009). In all these cases, the young people were participating in peaceful actions of symbolic occupation of territories claimed as ancestral, and after their deaths the first official versions of the State framed these crimes in “clashes”.

⁵⁷ The NHRI requested, through Official Letter No. 244, dated May 10, 2018, updated information on the matter to the Civil Service of the Senior Public Administration, and no response was obtained.

⁵⁸ Official Letter 1118, of May 4, 2015. In total, the government reports 10,318 trainings to its officials during 2015, of which 931 (9%) are training related to HRE issues and 9,387 (91%) are not related to this matter. Of the total 277,094 hours taught, only 20,989 (8%) correspond to issues related to human rights.

⁵⁹ INDH (2012). Annual Report Situation of Human Rights in Chile. Human rights education. p. 307.

⁶⁰ Although the number of trained personnel is significant, it is not possible to estimate the proportion of officials of Carabineros de Chile who have been trained in human rights with respect to the total, since the staffing of the institution is secret, as established by Article 436 of the Code of Military Justice.

commissioned officers and officers and that they are provided, in a significant proportion, by external specialists.

Indigenous languages and education

25. Regarding **intercultural education**, the NHRI values the realization of a National Indigenous Consultation on Curriculum Bases by the Ministry of Education, in which it was agreed to adjust the curriculum and change the name of the existing subject to “Language and Culture of the Original Ancestral Peoples” from first to sixth grade⁶¹. However, in 11 regions of the country, Mapuche communities withdrew from the Indigenous Consultation because they consider that the proposal to implement the subject only in schools with 20% of students belonging to indigenous peoples, is at the expense of the linguistic right of the children, and the revitalization of native languages.⁶² Currently, the proposal to create the aforementioned subject is being analyzed by the National Board of Education for its subsequent approval⁶³, and its implementation committed to begin in 2020.
26. Chile lacks a regulatory framework for **linguistic rights**⁶⁴, and policies for the **protection of indigenous cultural heritage**, especially of intangible cultural heritage and traditional knowledge, are generally weak. In 2014, the Bill for the General Law on Linguistic Rights of the Original Peoples of Chile (Bulletin No. 9424-17) was introduced in Parliament. It establishes a series of guarantees, obligations and sanctions, as well as a proposal for a protection-oriented institutionality and promotion of the linguistic rights of indigenous peoples. The initiative is in the first constitutional process and has not had any progress since March 2016. In June 2019, the Executive introduced in Congress a bill that modifies institutionality and improves the mechanisms of protection of cultural heritage (Bulletin No. 12712- 24), an initiative that was not previously consulted with indigenous and Afro-descendant peoples, omitting their participation in the National Heritage Councils and introducing changes in Law No. 19,300 on General Bases of the Environment in the articles regulating the protection of cultural heritage in the Environmental Impact Assessment System.

⁶¹ The measure to consult was the proposal of Curricular Bases from 1st to 6th grade for the subject of Language and Culture of Indigenous Peoples, which has been prepared by the Ministry of Education through a participatory process with educational actors of indigenous peoples, and whose purpose is to promote intercultural education and the learning of the language and culture of these peoples in schools throughout the country, considering all the peoples recognized by the Indigenous Law: Aymara, Quechua, Licanantai, Colla, Diaguita, Rapa Nui , Mapuche, Kawésqar and Yagan. The consultation began in July 2018 and its development was at a regional level up to Stage 4, Regional Dialogue, which ended in January 2019.

⁶² Radio Cooperativa, “Agrupaciones de 11 regiones se bajaron de consulta sobre asignatura de Lengua Indígena” (Groups of 11 regions declined to participate in the consultation on the subject of Indigenous Language), March 29, 2019. Available at: <https://www.cooperativa.cl/noticias/pais/pueblos-originarios/agrupaciones-de-11-regiones-se-bajaron-de-consulta-sobre-asignatura-de/2019-03-29/162910.html>

⁶³ After the indigenous consultation, the Ministry of Education introduced for its evaluation the proposal of Curricular Bases for the subject of Language and Culture of the Ancestral Original Peoples to the National Council of Education (autonomous body responsible for its approval) on July 18, 2019. The Ministry expects it to be approved during the second half of 2019 and start its implementation in 2020.

⁶⁴ The technical opinion of the NHRI is presented in the document “Report on the Bill for the General Law on Linguistic Rights of the Original Peoples of Chile. Bulletin 9424-17”. Available at: <https://bibliotecadigital.indh.cl/handle/123456789/1147>

27. The **Indigenous Scholarships** awarded by the Ministry of Education have a 79% coverage.⁶⁵ The Indigenous Residency Scholarship awarded by the National School Aid and Scholarship Board (JUNAEB) of the Ministry of Education as part of the Scholarship and Student Assistance Program does not allow adequate financing of the maintenance of vulnerable indigenous students studying in a commune other than their family residence.⁶⁶ The Indigenous Scholarship⁶⁷, on the other hand, also grants low amounts to students of different educational levels.
28. As for **measures to promote indigenous educators**, one appreciates the fact that the Comptroller General of the Republic approved Supreme Decree DS No. 301 of 2017 which enables and regulates the teaching function of Traditional Educators, and establishes that they are members of the indigenous communities, which are chosen and validated by them to exercise the teaching function in the subject of Indigenous Language.⁶⁸

Marginalization of indigenous peoples

29. **Indigenous peoples face various obstacles and gaps in the enjoyment and exercise of their human rights.** According to data from the CASEN 2017 survey, poverty and extreme poverty amounts to 14.5% in people of indigenous origin, a figure that is 6.5 percentage points higher than in the non-indigenous population. 16.5% of the indigenous population has poor access to basic services in their homes, 10 percentage points over the non-indigenous population. The average schooling corresponds to 10.3 years in the indigenous population and 11.2 years in the non-indigenous population, with a considerable gap in access to higher education (12.3% and 20.5%, respectively). In the field of health, 29.5% of indigenous people reported having had problems obtaining health care, in contrast to 24.9% of the non-indigenous population. In the same way, the absence of mechanisms that promote the political participation of indigenous peoples is confirmed, since their presence in representative positions is deficient.
30. Challenges persist regarding the generation of national statistics that account for the situation of indigenous women, since the available data do not perform a simultaneous disaggregation of the ethnicity and sex variables. Figures referred to in the 2018 annual report of the NHRI,

⁶⁵ Ministry of Social Development (2016). Social Program Monitoring Report. Indigenous Scholarship. Available at: <https://bit.ly/2BQhliO>

⁶⁶ The monetary contribution destined to pay for the lease of a room or boarding house for indigenous students reaches the annual amount of \$ 967,000 per student, payable in 10 installments (except in the Magallanes Region and the Chilean Antarctic, with \$ 1,268,400), which implies \$ 96,700 monthly for ten months. Ministry of Education, National Board of School Assistance and Scholarships. (2019). Comprehensive Management Balance year 2018. Available at: http://www.dipres.gob.cl/597/articles-188315_doc_pdf.pdf. As a reference, it should be mentioned that, an average lease fluctuates around \$ 200,000 per month, according to statistics from the Ministry of Housing and Urban Planning, available at <https://www.observatoriourbano.cl/>

⁶⁷ The Indigenous Scholarship implies a freely available monetary contribution destined to support the financing of the expenses generated by the study for indigenous children and young people who attend basic, secondary and higher education. The amount is \$ 98,000 annually for basic education; \$ 203,000 for annual high school education; and \$ 638,000 annually for higher education. As a reference it is important to consider that for single-person households the poverty line stood at \$ 165,137 per month, according to updated data from August 2019.

⁶⁸ In this way, traditional educators are recognized and certified as teachers for a series of legal effects, within the framework of the Indigenous Language Sector, which the Ministry of Education has implemented in the last 8 years.

indicate that multidimensional poverty in indigenous women is 48% higher than the national parameter and that their income is 11% lower compared to that received by women at the national level⁶⁹. Other data indicate that 47% of indigenous women participate in the labor market, compared to 71% of indigenous men, unemployment in indigenous women is 45% higher than in men, and the gender gap in the indigenous population doubles that observed at the national level⁷⁰. Although there are no national statistics on the number of women in local and national representation positions disaggregated by ethnicity, the proportion remains low. For example, currently the Chamber of Deputies has two indigenous deputies, confirming the absence of special measures that foster their presence in decision-making positions.

31. The gaps in the enjoyment of rights faced by indigenous peoples in the country have as a complement negative **prejudices and stereotypes** towards this population. In 2017, through an opinion study of national representativeness, the NHRI found deep-rooted perceptions that “indigenous peoples are not characterized by being hard-working (63.1%) or pleasant (71.7%), neither humble (65.7%), nor educated (73.4%), nor supportive (69.3%); and that part of its members tend to be violent (81.6%), rebellious (82.9%), lazy (69.1%), strange (65.2%) and unpleasant (67.4%) people”⁷¹. These results show the urgency of implementing communication campaigns that eradicate ethnic prejudices that sustain discrimination against indigenous peoples.

Afro-descendants

32. In April 2019, Law No. 21,151 was approved, which “[granted] **legal recognition to the Chilean Afro-descendant tribal people**, and their cultural identity, language, historical tradition, culture, institutions and worldview”. Among the most relevant aspects of this law, there are: [a] The national education system will endeavor to contemplate a programmatic unit that allows students adequate knowledge of the history, language and culture of Afro-descendants, and promote its artistic and cultural expressions from the preschool, basic, middle and university level (article 4); [b] Chilean Afro-descendants have the right to be consulted through ILO Convention No. 169, whenever it is planned to enact legislative or administrative measures that may directly affect them (Article 5); [c] The State shall endeavor to include the Chilean Afro-descendant tribal people in the national population censuses (Article 6).⁷²
33. In addition to the provisions of article 6 of Law 21,151 regarding **the inclusion of the Afro-descendant variable in census measurements**, the National Statistics Institute has indicated to the NHRI that the identification of this population is a subject that will be incorporated into the questionnaire of the next Population and Housing Census to be carried out in 2022. For these purposes, during the phases of preparation, execution and dissemination of the 2022 Census,

⁶⁹ I INDH (2018). Annual Report Situation of Human Rights in Chile. Violence towards rural and indigenous women, pp. 24-25.

⁷⁰ Data prepared by RIMISP from the public databases of the CASEN Survey 2015. Available at: <https://rimisp.org/mujeresyterritorios/>

⁷¹ INDH. (2017). Annual Report on the situation of Human Rights in Chile 2017. Racial discrimination manifestations in Chile: a study of perceptions, pp. 13-32

⁷² In accordance with article 7 of Law 21,151, aspects related to education and census measurements may be regulated more specifically by one or more decrees (administrative instruments), issued within a period of one year from the date of publication. As of the closing date of this report, these regulations had not been published.

instances of intercultural participation with indigenous peoples and Afro-descendant tribal peoples have been contemplated⁷³.

34. Given the lack of statistical information to diagnose the situation of the Afro-descendant population of the country, no special programs and measures directed towards this group have been implemented.⁷⁴

Migrants

35. INE estimates indicate that by 2018 the migrant population residing in the country amounted to approximately 1,200,000 people⁷⁵, which face significant **gaps in the enjoyment and exercise of their human rights**. Data from the CASEN 2017 survey⁷⁶, indicate that multidimensional poverty is 4 percentage points higher than in Chilean people. Regarding access to education, 76.4% of children attend basic education and 59.6% attend secondary education, 15 percentage points below the national average. 15.8% of migrants lack health-care coverage, in contrast to 2.3% of the national population. On the other hand, overcrowding amounts to 20.6% of households, 15 percentage points higher than the national average.⁷⁷ Similarly, 32.2% of households in which the head of household is a migrant declared that some of their members were discriminated against or treated unfairly, compared to 12.7% of Chilean households⁷⁸.
36. **Measures to educate and sensitize** the population to combat prejudice and stigmatization towards migrants have been insufficient. The NHRI has been able to demonstrate through the application of the first national survey on perceptions and manifestations of racism in Chile in 2017, and the national survey of human rights of 2018, expressions of rejection and intolerance towards the migrant population living in the country⁷⁹.
37. Currently, the **bill on Migration and Foreigners** (Bulletin 8970-06) is being processed in parliament and is in the second constitutional process. This project constitutes an important advance, since it recognizes the equal rights of migrants, labor rights, the right of access to health, social security, education and housing. Notwithstanding the foregoing, the NHRI has specified that it contains some rules to address migration that could produce situations in which

⁷³ Oficio N°1370, del Instituto Nacional de Estadísticas.

⁷⁴ INDH (2014). Informe Anual Situación de los Derechos Humanos en Chile. Derechos de las personas afrochilenas. pp. 296-297.

⁷⁵ Aninat, I.; Vergara, R. (2019). Inmigración en Chile. Una mirada multidimensional. Santiago, Chile, Fondo de Cultura Económica.

⁷⁶ Ministerio de Desarrollo Social (2018). Inmigrantes, Síntesis de resultados CASEN 2017.

⁷⁷ Las personas migrantes enfrentan graves discriminaciones en el acceso a la vivienda (cobros de arriendos abusivos, dificultades de acceder a programas de subsidio, denegación de acceso a la vivienda por su país de origen, etc.). Ante las dificultades de acceso, una proporción significativa vive en precarias condiciones de habitabilidad, ya sea en campamentos o en cités. Los denominados conventillos o cités “corresponden a viviendas mínimas –en tamaño y calidad– agrupadas en un pasaje compartido, y en general construidas por la beneficencia pública de fines del siglo XIX y principios del siglo XX. Se caracterizan por tener un mal estado de conservación y una deficiente calidad de servicios higiénicos. En la actualidad son habitadas por familias en su mayoría inmigrantes que habitan normalmente hacinadas, las que experimentan condiciones de arrendamiento usualmente arbitrarias y/o insuficientemente reguladas.” INDH. (2013). Informe Anual sobre la situación de los derechos humanos en Chile 2013, p. 197.

⁷⁸ Ministerio de Desarrollo Social (2018). Inmigrantes, Síntesis de resultados CASEN 2017.

⁷⁹ INDH (2018). Encuesta Nacional de Derechos Humanos 2018. Available at: <https://www.indh.cl/destacados-2/encuesta-ddhh/>

the human rights of migrants living in the country are not guaranteed, and therefore it has been recommended: to allow people to opt for a visa for work reasons even if they have not applied for it in the country of origin prior to their arrival in Chile; to eliminate the requirement to remain in the country continuously for at least 24 months to access social security benefits and tax benefits; to explain that consular visas must be based on objective and reasonable criteria, bearing in mind the principle of proportionality and respect for human rights; to address the broad nature of the principle of non-refoulement, explicitly mentioning it in articles referring to entry bans and procedures for expulsion or "assisted return"; to exclude from entry bans those people who have committed crimes but have already served their sentence, as well as those who have pending legal proceedings, in order to respect the right to social reintegration and the presumption of innocence, respectively.⁸⁰⁸¹

38. Provisions that limit the **rights of migrants in the labor and economic sphere** persist. On the one hand, companies with more than 25 workers must be composed of 85% of Chileans⁸², as established in the Labor Code in its articles 19 and 20. In addition, migrants who contributed to the pension system can only withdraw pension funds that they saved in their individual capitalization account when they return to their countries of origin, if they have a technical or professional degree.⁸³
39. The NHRI is concerned about **administrative provisions that could restrict rights for Haitians residing in the country** and "generate differentiated treatment by nationality, which if not properly based could be considered discriminatory [...]".⁸⁴ On the one hand, in 2018 the so-called "ordered return humanitarian plan" began to be implemented, which allows the return of foreign people who voluntarily express their intention to return to their country, which in its first stage has given priority to the return of Haitian people, expressly forbidding them to re-enter Chile for 9 years. The Aliens Law (Decree Law No. 1,094) and its Regulations (Decree No. 597), regulate the prohibitions and impediments to entering the country, within which the possibility of creating a new prohibition from an affidavit or any other form of agreement between the foreign person living in Chile and the competent authority is not recognized. On the other hand, in 2018 a tourist consular visa for Haitians was established, without sufficient explanation to substantiate the distinction by nationality, which is granted for a maximum of 30 days - while for the rest of the countries the tourist visa has a duration of 90 days- and with the prohibition of performing remunerated activities during the entire stay.
40. On June 20, 2019, a consular tourist visa for Venezuelan people was established, which was added to the existing humanitarian visa established in April 2018.⁸⁵ Due to the measure a group of approximately 300 people, all of Venezuelan nationality, including families with infants, children and adolescents, remained in the line of concord - within the national territory and

⁸⁰ INDH (2018). Informe sobre Proyecto de Ley de Migraciones y Extranjería (Boletín 8970-06). Available at: <https://bibliotecadigital.indh.cl/handle/123456789/1138>

⁸¹ INDH (2018). Informe Anual Situación de los Derechos Humanos en Chile. Derechos de las personas migrantes y la nueva política migratoria. pp. 75-79.

⁸² INDH. (2013) Informe Complementario Comité para la Eliminación de la Discriminación Racial, párr. 90.

⁸³ Ley N° 18.156 que Establece exención o devolución de cotizaciones previsionales a los técnicos extranjeros y a las empresas que los contraten bajo esa misma ley.

⁸⁴ INDH (2018). Informe sobre Proyecto de Ley de Migraciones y Extranjería (Boletín 8970-06). Available at: <https://bibliotecadigital.indh.cl/handle/123456789/1138>

⁸⁵ Decreto número 237, de fecha 20 de junio del 2019, del Ministerio del Interior y Seguridad Pública, que Establece Visto Consular de Turismo a nacionales de la República Bolivariana de Venezuela, y Oficio circular N° 96, de fecha 9 de abril del 2018 del Subsecretario de Relaciones Exteriores que instruye el otorgamiento a nacionales de la República Bolivariana de Venezuela de un Visado de Responsabilidad Democrática.

close to the border crossing of Chacalluta -, spending the night in one of the lanes of the highway for approximately two weeks, while managing the required visas, because they claimed that they did not have the financial means to stay in Tacna where the nearest Chilean consulate is located. Following this situation, the NHRI paid a **visit to the border crossing of Chacalluta**⁸⁶, confirming the violation of the rights to food, health, access to water and decent living conditions (shelter and lodging) of people who were in a street situation waiting to enter the country, as well as the risks who faced being victims of traffic networks or human trafficking as a significant proportion did not carry the required documentation for the visa, either valid passport or criminal record certificate.⁸⁷ On the other hand, it has been shown that the new visa could hinder family reunification and the entry of children and adolescents who come to meet their mothers or fathers living in the country.⁸⁸ It is worth mentioning that there were obstacles to the institutional work performed by the NHRI at the border, which were denounced to the Internal Government Commission of the Chamber of Deputies in July.⁸⁹

41. Another issue that has required the intervention of the NHRI has been the expulsions carried out for administrative reasons and those deportations to foreign persons with pending judicial or administrative orders, or that were serving sentences in the country⁹⁰, in which there is a violation of due process by not considering real deadlines for filing legal actions. The expulsions have been characterized by high media exposure, by forming groups that, exposed to the press, have been injured in their dignity and for not considering the right to family reunification, the right to social reintegration, or the good behavior of these people in the years they had already lived in Chile. In this regard, the NHRI has filed since 2017 a total of 29 appeals for protection, 18 of which have been accepted by the Courts.
42. As indicated by the NHRI in its previous report to the Committee, the enactment of Law No. 20,507 represents a significant advance both in the definition, investigation and punishment of the crime of **human trafficking**. However, there are still challenges in this area: making progress in the definition of internal trafficking; carrying out legislative modifications that allow the adequate sanction of behaviors that constitute human trafficking, specifically in the context of labor exploitation of children and adolescents; generating statistics of the complaints received and investigated and number of convictions obtained; generating integrated and multisector strategies for prevention; training of technical personnel specialized in human trafficking; strengthening the protection of victims of human trafficking and expanding the national coverage of temporary shelters; strengthening interventions in the area of rehabilitation and social integration of victims, specifically access to physical and psychological health, employment and housing; expediting family reunification for victims who choose to remain in

⁸⁶ The matter was discussed by the NHRI Council in ordinary session No. 491, dated July 8, 2019, Available at: <https://bit.ly/2q2kM93>.

⁸⁷ INDH, "Council Statement on the Situation of Venezuelans at the Borders", July 1, 2019. Available at: <https://www.indh.cl/declaracion-consejo-indh/>

⁸⁸ INDH, "NHRI efforts achieve reunion between Venezuelan children and their mother", October 11, 2019. Available at: <https://www.indh.cl/gestiones-del-indh-logran-reencuentro-entre-ninos-venezolanos-y-su-madre/>

⁸⁹ On July 5, 2019, an institutional vehicle of the NHRI went to the Chacalluta border complex to monitor compliance with the judgment of the Court of Appeals of Arica, which on June 28, ordered that the request for refuge of a Venezuelan citizen be processed. On the occasion, Carabineros fined the institutional vehicle for the alleged refusal to stop. Having taken the records to the Local Police Court of Arica, the court did not consider the violation proven and overruled it.

⁹⁰ Undersecretary of the Interior, "New expulsion operation", May 3, 2019. Available at <http://subinterior.gob.cl/noticias/2019/05/03/nuevo-operativo-de-expulsion/>

Chile; and informing, educating and sensitizing the population regarding the crime of human trafficking⁹¹.

43. In 2015, various civil society and academic organizations filed a constitutional protection action before the Supreme Court to **recognize the Chilean nationality of 161 sons and daughters of foreign passers-by** (it is estimated that the universe of people in this situation could reach 3,500). The Court determined that those 161 persons were registered as Chilean, thereby ending their statelessness situation and, in addition, ordered the National Civil Registry and Identification Service to conduct a search of the rest of the persons in said condition. In order to make known to the public the change in administrative criteria, an inter-institutional body was formed in which government agencies, UNHCR and the NHRI participate. On the other hand, in 2018 Chile ratified the Convention on the Status of Stateless Persons of 1954 and the Convention to Reduce Statelessness Cases of 1961, which represents an important advance in the matter.

Refugees and asylum seekers

44. In terms of refuge, the NHRI has verified numerous cases of people from diverse backgrounds, including Venezuela, Colombia and Cuba, in which the authorities deny them unfounded access to the refugee status determination procedure through the practice of preadmissibility, an act outside the law that hinders the asylum requirements through the imposition of requirements not contemplated in Law No. 20.430 or its regulations, or the unjustified refusal to access the procedure for requesting the refugee status. As a consequence, since 2018 the NHRI has filed 35 protection actions, of which 19 have been accepted, declaring the procedure performed by the authority regarding 221 asylum seekers illegal.

Ratification of treaties

45. The Protocol of San Salvador, the Optional Protocol to the International Covenant on Economic, Social and Cultural Rights and the Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women are pending ratification. Chile has not made the declarations provided for in articles 76 and 77 of the International Convention on the protection of the rights of all migrant workers and their families, recognizing the competence of the Committee to receive communications from member States and individuals, nor has it signed the Global Compact for Safe, Orderly and Regular Migration, or the Regional Agreement on Access to Information, Public Participation and Access to Justice in Environmental Matters in Latin America and the Caribbean (Escazú Agreement).

Amendment to Article 8 of the Convention

46. The State has not ratified the amendment to article 8, paragraph 6, of the International Convention on the Elimination of All Forms of Racial Discrimination.

⁹¹ The NHRI has referred to the challenges in trafficking and human trafficking in its complementary reports to the CERD Committee (2013), CEDAW (2018) and Committee against Torture (2018).

The Durban Declaration and Programme of Action

47. To date, no action plans or other measures have been implemented to apply the Durban Declaration and Program of Action at a national level.

Consultations with civil society organizations

The State did not hold extensive consultations with civil society to prepare the drafting of the official report to the Committee. As described in paragraph 3 of the state report, in January 2018 a meeting was held to present the structure and issues addressed on a practically finalized report, an instance that does not adapt to the guidelines provided by the Committee in order to promote and facilitate the participation of civil society organizations dedicated to the protection of human rights, in particular the fight against racial discrimination, in periodic reports and the follow-up of concluding observations. For its part, in August 2019, the NHRI co-organized a workshop aimed at civil society organizations throughout the country, to promote the delivery of alternative reports for the consideration of the combined 22nd and 23rd periodic reports of Chile.⁹²

⁹² INDH “NHRI participates in training to eliminate all forms of racial discrimination”, August 20, 2019. Available at: <https://www.indh.cl/indh-participa-en-capacitacion-para-eliminar-toda-forma-de-discriminacion-racial/>

RECOMMENDATIONS

Human Rights Institutionalality

1. To continue invigorating the institutionalality of human rights, strengthening both the NHRI and the National Mechanism for the Prevention of Torture in its autonomy, independence and the resources necessary for the fulfillment of its legal mandates.
2. To promote that the legislative debate around the creation of the Ombudsman's Office and other thematic defenders, be oriented to the strengthening of the National Human Rights Institution.
3. To generate all measures to ensure the adequate installation and financing of the Ombudsman's Office, so that it can fulfill its functions effectively.
4. To implement the National Human Rights Plan, safeguarding adequate compliance and monitoring of the actions and commitments therein established.

Statistics

5. The NHRI calls for the National Institute of Statistics to incorporate the Afro-descendant variable in the next census measurement, as well as in other statistical measurement instruments, in order to fill the information gap in this area, which allows for the development of inclusive public policies and that give adequate recognition to the country's diversity.
6. Strengthen the national statistical institutionalality, granting it adequate financing and autonomy to fulfill its functions.
7. The NHRI recommends that all state agencies responsible for the production of statistical information implement the disaggregation of data that evidences the multiple forms of discrimination faced by indigenous, Afro-descendant and migrant people. Specifically, its disaggregation by sex, age, disability situation, rural condition and sexual diversity is requested.

Definition of discrimination and special measures

8. Adapt Law No. 20,609 that establishes anti-discrimination measures to the International Convention on the Elimination of All Forms of Racial Discrimination, specifying the State's obligation to prevent discrimination, repair victims and implement special measures that guarantee full enjoyment and equal rights of all groups.

Racial discrimination crimes and racist hate speech

9. Criminalize any dissemination of ideas based on superiority or racial hatred, any incitement to racial discrimination, as well as any act of violence or any incitement to commit such acts against any race or group of people of another color or ethnic origin, and all assistance to racist activities, including financing.

Equality before the courts and access to justice

10. The NHRI recommends that the Ministry of Justice and Human Rights seek special attention to ensure access to justice for indigenous women, safeguarding that geographic isolation and some cultural elements (including language) do not constitute limitations for these women to exercise this right.

Constitutional recognition and consultation with indigenous peoples

11. The NHRI reiterates its recommendation to the powers of the State to give constitutional recognition to indigenous peoples, as well as to their internationally recognized rights, and to recognize the important role that the State plays in promoting interculturality among the different peoples that inhabit the national territory.
12. The NHRI recommends that the Legislative Power expedite the processing of the Bill that creates the National Council and the Councils of Indigenous Peoples, as well as the Bill that creates the Ministry of Indigenous Peoples, considering the agreements reached with indigenous peoples in the respective consultation processes previously developed.
13. The NHRI recommends that the Executive Power and the Legislature review the coherence between the regulations on the right to prior consultation of indigenous peoples (Supreme Decree 66 and Supreme Decree 40) and international standards with the participation and consultation of indigenous peoples.

Ancestral lands

14. The NHRI urges the Executive Branch to design and implement a comprehensive land policy, with adequate resources. This policy should consider, among other things, i) the adequacy of internal regulations (Law 19.253) in order to recognize, protect and effectively guarantee the rights to the land and territory of said peoples, including those of an ancestral nature, in accordance with how they are conceived in international human rights law; ii) the construction, through a broad political dialogue conducted by the Executive Power, of an updated cadastre that delimits indigenous lands and territories, and iii) the design of suitable mechanisms, culturally relevant, and in accordance with international regulations, to advance in the recognition and protection of the rights of indigenous peoples over their lands and territories.
15. The NHRI recommends that the Executive Branch take the necessary measures so that the investment projects of extractive and productive industries consider human rights standards and guarantee the right to a pollution-free environment, the right to health, the right to indigenous consultation and the right to water, among others. Similarly, it is urged to guarantee access to justice and effective reparation for indigenous peoples, including the possibility of deducting claims against the environmental qualification resolutions of investment projects for the representative institutions of indigenous peoples.

Anti-terrorism law and excessive use of force by state agents against indigenous peoples

16. The NHRI recommends to the co-legislating powers that they introduce reforms to Law No. 18.314 in order to adapt said regulatory body to the international standards that govern the matter.
17. The NHRI recommends that the Ministry of Interior and Public Security ensure that the actions of Carabineros and the Investigation Police fully comply with the respect and protection of human rights, among other situations, during mass demonstrations and when entering indigenous communities, with special attention to the rights of children, adolescents and women.
18. The NHRI calls for ensuring that all cases of police violence are investigated, prosecuted and punished, avoiding the excessive delay of judicial proceedings and granting adequate reparation to the victims and their families.
19. The NHRI recommends that the Executive Power design public policies with the Mapuche people that promote intercultural dialogue and foster peace in conflict zones.
20. The NHRI urges the State Administration bodies to integrate human rights training in the annual training systems for public officials and armed forces, of order and security, provided by external specialists, to ensure specific skills, attitudes and knowledge in relation to the role they play. The State must centrally monitor the training efforts carried out by the institutions and generate support mechanisms for the implementation of actions.

Indigenous languages and education

21. The NHRI calls for the bill that modifies the institutional framework and improves the mechanisms for the protection of cultural heritage (Bulletin No. 12712-24), incorporates prior consultation with indigenous and Afro-descendant peoples, their participation in the National Heritage Councils and mechanisms to protect intellectual property.
22. The NHRI calls for promoting and implementing public policies aimed at strengthening intercultural education and teaching of indigenous languages, in order to promote interculturality and preserve the cultural identity of indigenous peoples.

Marginalization of indigenous peoples

23. Take all necessary measures to protect indigenous peoples against racial discrimination, through the development of policies that promote access to education, economic autonomy, decent housing and health care.
24. In relation to overcoming the situation of poverty and extreme poverty of indigenous peoples, the design and financing - in consultation with indigenous peoples - of specific programs for their overcoming, particularly in rural communities, is recommended.
25. The NHRI recommends the Executive Power, under the coordination of the Ministry of Women and Gender Equity and CONADI, to pay special attention in their public policies to the particular situation of vulnerability of indigenous women, in order to grant them the necessary protection to avoid the multiple discrimination that usually affects them.
26. The NHRI reiterates the recommendation to the three powers of the State to contribute to a culture of human rights in the country, that through public campaigns, training and

education promotes its universal value and respect without discrimination, particularly towards indigenous peoples, migrants and people of African descent.

Afro-descendants

27. Establish policies and measures, including special measures, if necessary, to guarantee equality in the enjoyment and exercise of rights of people of African descent.

Migrants

28. The NHRI reiterates to the co-legislators the urgency of having a regulatory and institutional framework specialized in migration matters, which is responsible for the protection of migrants with regard to multiple forms of racial discrimination, as well as other violations of their rights. This, in order to implement measures that contribute to equal rights and non-discrimination, fully comply with the provisions of the International Convention for the Elimination of All Forms of Racial Discrimination and the International Convention on the Protection of the Rights of All Migrant Workers and their Family Members.
29. The NHRI urges the State to formulate public policies that guarantee the human rights of all migrants and access to social benefits under equal conditions as nationals, and in the case of children and adolescents, without distinction as to their status immigration or that of their mothers or fathers.
30. The NHRI recommends strengthening, through public campaigns and the education system, the valuation of cultural diversity and the contribution to national wealth of a migrant population.
31. The NHRI calls for a review of the prohibitions and impediments to entering the country for people who are eligible for the “Humanitarian Plan of Ordered Return”.
32. The NHRI recommends that the Executive Branch modify the consular nature of tourism visas established for migrants of Haitian origin, to the extent that, in response to the social situation of that country, the requirements established for processing have not been sufficiently founded. and may expose them to a context of greater vulnerability, irregularity and potential trafficking or illicit traffic circumstances.⁹³
33. The NHRI recommends the Executive Power to extend the benefit of the visas of democratic responsibility to all the countries of the region that are in a situation of generalized violence, foreign aggression, internal conflicts, massive violation of human rights or any other circumstance that has seriously disturbed the public order of the country, with the purpose of giving equal access to the protection of the State of Chile to people affected in these contexts.⁹⁴
34. It is recommended that people subject to deportation proceedings be assured of the effective exercise of their right to be heard, to have adequate representation and an adequate time frame to file appeals against expulsion decisions. Likewise, before issuing acts of expulsion and / or abandonment measures, the rights enshrined in the Convention on the Rights of the Child, the principle of family reunification, the principle

⁹³ Recommendation made in the Annual Human Rights Situation Report in Chile, 2018, p.87.

⁹⁴ Ibidem.

of equality and non-discrimination, special situations vis-à-vis persons are called for, who were victims of the crime of smuggling of migrants or human trafficking and the protection of rights of special protection groups.

35. The NHRI calls for fully adapting national legislation on trafficking and human trafficking matters to international instruments, redoubling the training efforts of the different agents of the criminal system to give adequate application to these standards, increasing the effectiveness of the justice system to investigate and punish crimes of human trafficking and smuggling of migrants.
36. The NHRI recommends that the Ministry of Interior and Public Security guarantee, through the Civil Registry and Identification and the Department of Foreigners and Migration, that Chilean nationality be granted to all persons entitled to it.

Refugees and asylum seekers

37. The Executive must ensure that refuge applications are processed in accordance with the law, eliminating the practice of pre-admissibility and ensuring that the processing at all stages meets the appropriate formal requirements in order to facilitate timely appeal.

Ratification of treaties

38. The NHRI reiterates the need to ratify the international human rights treaties and protocols that are pending by the State of Chile. This, as a way of having more legal tools to guarantee human rights in the country.

Amendment to Article 8 of the Convention

39. It is recommended to ratify the amendment to Article 8, paragraph 6, of the International Convention on the Elimination of All Forms of Racial Discrimination.

Durban Declaration and Programme of Action

40. Implement action plans and other measures necessary to implement the Durban Declaration and Programme of Action at the national level.

Consultations with civil society organizations

41. Establish broad consultations and constructive participation mechanisms of civil society organizations during the preparation of State reports to United Nations treaty bodies.