

2018

RESUMEN EJECUTIVO

INGLÉS



Informe Anual
Situación de los
Derechos Humanos
en Chile

2018



EXECUTIVE SUMMARY

ANNUAL REPORT
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en Chile

INGLÉS

INTRODUCTION

The National Human Rights Institute (INDH) hereby presents its Annual Report on the human rights situation in Chile, 70 years after the adoption of the Universal Declaration of Human Rights. The writing and publication of this report adheres to INDH responsibilities described in article 3 of the act from which the Institute was created, which outlines its obligation: *“To compile an Annual Report, which must be submitted to the President of the Republic, the National Congress and the President of the Supreme Court with regard to its activities and the national situation in the field of human rights, and to present recommendations it deems appropriate for the due protection and respect thereof. Its Council will take all appropriate measures to disseminate the report to the wider community”*.

A highly significant step towards the strengthening of human rights during the period of scope of this Report was the announcement in December 2017 of the approval of the first National Human Rights Plan (PNDH) for 2018-2021. The PNDH was compiled by means of a participatory process involving 15 regional dialogue sessions with civil society organizations, a one-day session with indigenous and tribal peoples, and a digital consultation. The Plan falls under the purview of the Undersecretariat of Human Rights (SDH), which was created by Law 20.885 and which, in turn, sits within the Ministry of Justice and Human Rights. The SDH is mandated to administer the execution, monitoring and evaluation of the PNDH. The PNDH outlines the priority measures to be taken by authorities to address human rights challenges, and these are organized into 15 objectives, 50 goals and 634 actions based on recommendations made by the INDH and international human rights organizations. The plan is presently subject to constitutional review by the Office of the Comptroller General of the Republic (CGR), and a review by the SDH, and its prompt implementation will represent a significant step towards the consolidation of this important public policy instrument.

In 2018, Sebastián Piñera Echenique assumed the Presidency of the Republic, while a set of new political forces emerged in Congress, primarily in the form of Frente Amplio¹ and Evópoli². The rise of these new political forces resulted in an end to the majority centre-right and centre-left blocs that had governed for the previous 27 years, and the new government is now a minority force in the legislative branch³.

1 A Coalition of political parties and movements formed by Revolución Democrática (Democratic Revolution), Movimiento Autonomista (Autonomist Movement), Partido Humanista (Humanist Party), Partido Liberal (Liberal Party), Poder Ciudadano (Citizen Power), Partido Ecologista Verde (Green Ecologist Party), Izquierda Libertaria (the Libertarian Left) and Izquierda Autónoma (Autonomous Left), all of which have congressional representation, plus five other organizations that do not have representation in Congress.

2 Evópoli was founded in 2012 as a political movement and was formally registered as a party on 6 June 2016, having garnered a total of 17,760 signatures.

3 The National Congress of Chile is composed of the Chamber of Deputies and the Senate.

It should be noted that recent electoral reforms made to the electoral system had positive but limited effects on the elections of 2017. For example, Law 20.840 states that “neither male nor female candidates may exceed sixty per cent of the respective total” of candidates, and this contributed to an increase in women representatives in the legislative branch from 15.8% to 23.0%⁴. In parallel, a significant proportion of Congress underwent considerable renewal, with 109 new representatives out of a total of 198. Regarding abstention, young people aged between 18 and 39, people with the lowest level of formal education, and those living in the more remote regions, continue to be the groups least likely to vote, despite the new political alternatives available on both the right and left of the political spectrum. With regard to electoral expenditure, the Electoral Service (SERVEL) reported that the process was successful considering the relatively new rules, since there were only 29 administrative sanction processes opened, one of which was brought before the Public Prosecutor’s Office, out of a total of 1,100 candidates.⁵

Consequently, it is evident that the electoral processes for the President, Congress and Regional Councillors require strengthening through an increased participation of voters. Similarly, while advances in gender representation and the improved control of electoral expenditure continue, there remain several challenges to overcome in terms of overall representation and voter trust in the main bodies that represent popular sovereignty, as well as in the modernization of political parties. Such issues must be resolved in order to strengthen democracy in the country.

Turnout remains worryingly low, having failed to exceed 50% once again.⁶ Turnout among women was higher than men (54.6% compared to 45.3%), while turnout among Chileans abroad reached a 60%-registration rate, with 19% voting. This situation is in spite of the electoral reform, the new quota in favour of the participation of women, and a stricter regulation of political campaign and party financing.

The electoral system still lacks mechanisms to ensure the representation of indigenous peoples. Of the 198 members of Congress, only five self-identify as indigenous, or 2.5%.⁷ According to the 2017 Census, 12.8% of the national population pertains to an indigenous group.

It should be noted that the so-called disinterest in politics is relative, since apathy is not only expressed in elections. While politics is understood as “everything in a society that is susceptible to being decided collectively”, and “the institutional expression of a certain status of the definition of politics”,⁸ a process of politicization in society is currently underway and pressure is being exerted to incorporate new topics into the debate for collective decision-making. Indeed, a number of diverse social movements have had a significant influence, both politically and culturally, on the events of 2018, and this has had consequences in terms of the defence or broadening of human rights across society.

4 UNDP (2018). *Political representation of women in the Legislative Branch: Analysis of the application of gender quotas in the 2017 congressional elections (in Spanish)*. Santiago: Ed. UNDP.

5 Communiqué on the auditing process of the 2017 elections, published on 9 March 2018. Available (in Spanish) at: <https://servel.cl/servel-concluye-revision-de-cuentas-de-ingresos-y-gastos-de-las-elecciones-2017/>

6 Chile, in conjunction with Colombia, has the lowest turnout in Latin America. More information is available (in Spanish) at: UNDP (2016). *Electoral participation: Chile in a comparative perspective 1990 - 2016*.

7 It should be noted that although these five elected representatives self-identify as indigenous, they were not elected to represent any particular indigenous groups.

8 UNDP (2015). *Human Development in Chile. Times of Politicization*. Santiago: Ed. UNDP.

The main social trend of 2018 has undoubtedly been the feminist movement, which was initially marked by small protests in public spaces, followed by demonstrations in universities. These subsequently grew into wider expressions in the workplace and finally across society as a whole. The power of this movement has been its ability to link the reality of discrimination on one hand, with the abuse to which women have historically been subjected in the public and private spheres on the other. As a result, the movement has helped to generate debate among the general public, in the media and across families, and this has further enhanced its impact to generate more positive changes in relations between men and women.

For example, progress has been evident with the creation and updating of protocols of action against sexual harassment and abuse in universities, the passing of municipal regulations and other measures against street harassment, and in raising general awareness of the importance of relationships between men and women being created on the basis of equality. Following on from the impact of this movement, Congress should now move forward to discuss and approve bills that enhance the rights of women in line with international standards.

Accordingly, the INDH has engaged in dialogue with the leaders of the university movement and offered its support in the observation of public demonstrations and the promotion of the rights of women in both informative discussions as well as in the drafting of protocols, as required.

Another area closely monitored by the INDH is the relationship between the State and the Mapuche people, and indigenous peoples in general. In recent years, the Mapuche people in particular have strengthened their organization, their demonstrations to demand recognition of their rights, and their cultural expressions in several different spaces. Nevertheless, the so-called 'Operation Hurricane', executed by the national police force, the Carabineros de Chile, towards the end of 2017, has been widely questioned, by the Government, the State Defence Council (CDE) and the INDH. The criticism arose following revelations that measures had been undertaken in the operation which violated the fundamental rights of eight Mapuche leaders, who were imprisoned for 27 days. Furthermore, an indeterminate number of people had been found to have had their private communications intercepted,⁹ with two public prosecutors from the Public Ministry of the Araucanía Region identified as among the possible victims.

The new government has had a proactive policy in relation to the Mapuche people. First, it has promoted meetings between business community representatives, lonkos (the heads of Mapuche communities), and other Mapuche authorities. Second, the President has compiled and published the 'National Agreement for Development and Peace in Araucanía'. Attempts by the government to address the multiple dimensions, which include the legal-political, economic, social and cultural factors behind the Araucanía Region being left behind for years, and in particular the complex and conflictive relationship between the Chilean State and the Mapuche people, are noteworthy. Similarly, the proposal to move towards political and legal recognition of indigenous peoples, in particular via the granting of urgency to two bills currently under consideration in the Senate, i.e., the Ministry of Indigenous Peoples Bill and the Council of Indigenous Peoples Bill, as well as the announcement of a law on minimum quotas to promote greater political participation

⁹ For which the INDH brought an appeal against the violation of rights and liberties in favour of the Association of Municipalities with Mapuche Mayors (AMCAM), while the Chamber of Deputies formed an investigative commission in regard to this situation.

by indigenous peoples in elected bodies, should also be welcomed. Of additional relevance is the announcement of intended dialogue aimed at reaching agreements and building peace in the region.

Regarding the proposed constitutional reform, the INDH notes the importance of the results of the consultation process with indigenous peoples that took place in 2017 under the framework of the constitutional reform process promoted by former President Michelle Bachelet. However, announcements made in relation to amendments to Law 19.253 from 1993 on indigenous lands are concerning. It is fundamental that any such amendments are subject to consultation with indigenous peoples themselves and that any legislative changes guarantee the adequate protection of indigenous lands in accordance with relevant international law. In relation to announcements of tax exemptions to promote investment in the Araucania Region, the INDH considers it essential for any investment to be made in a manner that is compatible with and respectful of the rights of indigenous peoples as recognized by international law. This includes the protection of indigenous lands and territories, and consultation with a view to reaching agreements or obtaining consent for and participation in the benefits that such investment may generate, as stipulated in the provisions of article 15.2 of the International Labour Organization Convention 169.¹⁰ Finally, the INDH deems the announcements on the creation of a dialogue space, the Council for the Reunion of Araucania, which would consist of representatives of various regional sectors, as important. Accordingly, the Institute recalls that in its 2014 proposal for dialogue between indigenous peoples and the State, it recognized the need to include both these stakeholders as key interlocutors, without prejudice to the participation of representatives of other sectors.¹¹

The INDH deems the proposal from State authorities for peace and development in the region as noteworthy and the beginning of a participatory process. However, this process must be based on the constitutional and cultural recognition of indigenous peoples, guarantees of political participation, and fulfilment of State obligations to protect individuals from police violence and arbitrariness.

Finally, the INDH is concerned about the pending discussion on the Anti-Terrorism Act, and urges all parties to ensure the incorporation and application of international human rights standards, without discrimination, therein. This is particularly important given that several human rights treaty bodies have expressed their concern about the act and called for its amendment.¹²

From a human rights perspective, public discussions on justice, historic memory and reparation have also been significant. Regarding justice, discussion has centred on the issue of the conditional freedoms granted by the Supreme Court to persons imprisoned in the Punta Peuco prison for having committed human rights violations, and who have not based their arguments to that end on humanitarian health reasons. This important discussion on the conditions that need to be met in the granting of benefits to individuals found guilty of this type of crime, and without this operating as a surreptitious form of impunity, led the INDH Council to declare the following on 8 August:

¹⁰ Ratified by Chile on 15 September 2008.

¹¹ Available (in Spanish) at: <http://bibliotecadigital.indh.cl/handle/123456789/734>

¹² Available (in Spanish) at: <https://www.indh.cl/recomendaciones-indh-sobre-la-ley-antiterrorista-en-chile/>

The INDH urges all branches of government and, in particular, co-legislators to address and regulate conditional freedoms and reduced sentences in accordance with the principles of existing international human rights law, distinguishing between ordinary crimes and human rights violations. This not only relates to the obligation to provide justice and reparation to victims, but also to ensure compliance with the guarantee of non-repetition of these serious crimes.

This climate of impunity for some and the application of justice for others have influenced the debate on historic memory and human rights in 2018. In particular, this debate gained public attention following the appointment of a new Minister of Culture, Arts and Heritage, whose opinions on the Museum of Memory in a book published in late 2015. The situation triggered protests and significant outcry. Subsequently, on the occasion of 5 October, the anniversary of the 1988 plebiscite on the continuity of the dictatorship, this public sentiment was manifested as a wider discussion on the meaning of this date, its importance to current democracy, and the role played by society and political parties in this process. Consequently, the President has formalized efforts to devise a bill for the creation of a Museum of Democracy. Such cases provide evidence that disputes based on different forms and interpretations of history, which go beyond historical facts, persist across society in relation to the recent past.

Regarding reparations, the public debate that took place in relation to the withdrawal, by the executive branch, of the bill that aimed to grant a single reparatory contribution to victims of political imprisonment and torture, who have been officially recognized by the Chilean State (Official Gazette 11.619-17), should be noted. Prior to its withdrawal, the bill had received approval from the Commission on Human Rights and Indigenous Peoples in the Chamber of Deputies, and this situation led to an appeal being submitted to the Minister of Justice and Human Rights.

A further aspect which is representative of changes underway in Chilean society has been the public demonstrations held by the residents of the so-called 'sacrifice zone' in the municipalities of Quintero and Puchuncavi. Residents there have condemned and taken over public spaces in their localities, in order to garner public attention following decades of contamination and a limited response by authorities. As a result, the national environmental situation has returned to the political agenda. These events have also highlighted the costs that certain sectors of the population pay as a consequence of a regulatory framework that promotes the concentration of heavy industry in certain limited areas of the country. This reality results in a failure to guarantee host populations the due protection of their rights, with neither adequate emission and quality standards, nor robust inspections being implemented by the relevant bodies.

The children and young persons who were poisoned, the families distressed by the lack of information on the causes and effects of what was happening, the weak response of the health system, and the impact of the overall situation on sources of employment and income of local residents all became evident among the public as well as national authorities, who gradually responded in line with the demands made by the local population. This crisis has shown that environmental institutions need to be updated and brought in line with the standards of international organizations, which are more demanding, and that oversight must be strengthened in the face of a general public that is increasingly demanding respect in this area.

In response to this situation, the INDH sent an Observer Mission to the area, headed by its Director, who issued a report outlining a number of recommendations for the authorities. Simultaneously, the INDH filed an application for protection on behalf of the affected residents to the Valparaiso Court of Appeal. It should be noted that these measures from the INDH in 2018 are in addition to several other related interventions undertaken by the Institute, including: the submission of a report on the Observer Mission to the municipality of Tiltil, which is also host to a concerning environmental situation; an application for protection filed in response to toxic gas emissions in Copiapo; and an application for protection filed in relation to attempts to unload the capsized ship *Seikongen*, which has 200,000 kilogrammes of decomposed salmon on-board, and which represents a serious concern for the local environment in the Los Lagos Region.

The aforementioned situation in Quintero and Puchuncavi highlights the challenges facing Chile in terms of ensuring the duty of the State to protect human rights in the sphere of business activities, as well as for businesses to respect such rights. It also highlights the need for the State to guarantee reparations for damages to human rights violations caused in the business sphere, in accordance with the United Nations Guiding Principles for Business and Human Rights. In this regard, the INDH notes the existence of a National Action Plan on Human Rights and Business in Chile (PAN),¹³ but is concerned about the delay in its national implementation. More than 12 months after it was devised, there is still no report available on its first year. Similarly, the Multi-Actor Advisory Group of PAN has not, to date, been constituted, which reduces the possibilities for civil society and local communities that are negatively affected by business activities to participate in the follow-up and monitoring of its implementation.

In this context, it is concerning that the State has announced the postponement of the ratification of the Escazú Agreement on access to information, participation and access to justice on environmental matters, and the special protection of human rights defenders. Chile led efforts to draft this agreement at the regional level and its approval would contribute to assuring the protection of human rights within the framework of business activity that adversely affects the right to a pollution-free environment.

Also of interest in 2018 are the legal and policy initiatives developed on issues such as immigration, gender identity and children.

Immigration was addressed as a priority issue by the government. After the introduction of several bills to Congress in recent years, the current government has prioritized congressional debate on this issue by presenting several amendments to the immigration bill initially introduced during the first administration of President Sebastián Piñera (2013). It also took a series of administrative measures in an attempt “to regulate the entry of foreigners to the country in a safe and orderly manner”. In April, this initiative had received wide public support, although opinions varied among specialists and immigration organizations.¹⁴

The process of regularizing the status of immigrants created significant expectations among migrants of different nationalities, and between 23 April and 23 July a total of 155,707 people were registered under this process. The position of the INDH regarding the

¹³ In response to the Plan, the INDH has initiated a formal work procedure, trained professionals and participated in several national and international activities.

¹⁴ See (in Spanish): <https://www.emol.com/noticias/Nacional/2018/04/10/901879/Elogios-a-regularizacion-y-criticas-a-visado-El-analisis-de-los-expertos-a-las-indicaciones-de-Pinera-sobre-migracion.html>

aforementioned bill has been to raise a number of points, including: (a) the amendments made are important because they aim to detach the reform from the existing regulations that were drawn up in 1975; (b) the creation of an autonomous National Migration Service is noteworthy; (c) there is concern about the procedural mechanism that fails to ensure legal appeals against expulsion decrees; (d) there is concern that access to emergency healthcare and education on the basis of equality and non-discrimination is not guaranteed for all immigrants; (e) the grounds for expulsion are overly broad and in certain cases would be excessive and not proportional to the offence committed; and (f) the bill fails to explicitly reflect the broad nature of the principle of non-refoulement and the absolute prohibition thereof. It should be noted that this latter point has now been incorporated into the legislative process.¹⁵

The INDH has followed up on the implementation of the immigration policy by conducting a national field visit to assess the care conditions and type of information received by foreign nationals during the relevant legal process. It has also provided its opinion on this matter as part of the congressional debate, recalling its experience of defending the rights of immigrants in cases of discrimination, degrading treatment and arbitrary expulsions.

A further significant occurrence has been the culmination of the five-year congressional discussion that resulted in the passage of the Gender Identity Act, which will allow individuals over the age of 14 to undertake name and sex changes. This discussion process also involved lesbian, gay, bisexual, transgender and intersex (LGBTI) stakeholders, as well as additional movements from important sectors, ranging from those who rejected the bill outright to others who wished to set the minimum age limit at 18 years old. This Act expresses the recognition of an inescapable reality facing numerous people who, because of their life experience and feelings, previously felt that their legal name did not represent them as a person; a feeling to which there was no legal recourse.¹⁶ Now, by completing one administrative procedure in the Civil Registry and, depending on the specific case, in the Family Courts, individuals will be able to change their name to full legal effect. Approval in the final legislative stage of the Chamber of Deputies was achieved following a vote of 95 to 46.

The INDH expressed its interest and concern with regard to this subject in its 2013 and 2017 annual reports, in particular for trans and intersex children and young persons. In these reports, the Institute iterated that, while recognizing it as a controversial topic, trans and intersex people should not be subjected to discriminatory treatment on the basis of their sexual orientation and gender identity.

Another aspect of the political and cultural process experienced by Chilean society has been the prioritization by public decision-making bodies of issues related to children. In 2018, a number of institutional initiatives, which had previously been debated for several years, have materialized: the creation of the Office for the Protection of Children and the Undersecretariat of Children, which reinforce the protection of the rights of children and ensure efforts are made to align the subject area more closely with comprehensive social policies. Under previous governments, public interest generated as a result of revelations of the living conditions and risks experienced by children in residences run by the National

¹⁵ Report on the Migration and Immigration Bill (Official Gazette 8970-06) and Submitted Amendments. Available (in Spanish) at: <https://bibliotecadigital.indh.cl/handle/123456789/1138>

¹⁶ It should be noted that certain civil society organizations have expressed concern about the exclusion of children under the age of 14 from the scope of the Act.

Children's Service (SENAME) had led to congressional commissions, reports from the CGR and questions being posed to ministers.

The new initiative taken by the government in relation to children and young persons, under the promise that they would be "first in line" in terms of priorities, was to seek a broad agreement on children, calling on the different political parties and personalities to constitute a working commission to devise related proposals. The subsequent 31-member commission delivered a wide-ranging report in May, outlining 94 measures that need to be implemented to give rise to a policy that guarantees the full exercise of the rights of all children nationwide. The proposals focus on three areas: to ensure the comprehensive development of all children; to prevent the violation of rights through an early warning system; and to implement capacity building programmes for children to help them fulfil their potential. Among the measures proposed is the dividing of SENAME. This will only occur once Congress passes the bills to create the Young Persons Social Reinsertion Service and the Children and Young Persons Protection Service, which have been discussed in Congress for a lengthy period of time. Another noteworthy measure is the passage of the Guarantee of Rights Act. In conjunction, these measures will constitute a comprehensive child protection system.

In 2016, the INDH initiated the SENAME Observer Mission, which sought to assess the system for the protection of children in residential centres administered by this State agency as well as by accredited collaborating bodies (OCA). The report was published in January 2018 and included a number of recommendations for SENAME and a set of administrative and legal measures were implemented in response to the most serious cases. Subsequently, additional steps have been taken, including: continued observer visits to residential centres and, in particular, to certain children as a follow-up to the mission; visits to psychiatric intensive care units in hospitals (UHCIPs) for adolescents; the filing of appeals and complaints, for example, in the case of the Directly Administered Centres of Specialized Reparation (CREAD) in Playa Ancha following the illegitimate treatment of 25 children, which recently resulted in charges being brought against eight officials; and collaboration being instigated with OCAs to improve standards of care. In conjunction, the INDH has signed a cooperation agreement with the recently established Office for the Protection of Children, to encourage mutual support and collaboration.

From a human rights perspective, it should be noted that the constitutional reform process promoted by former President Michelle Bachelet was manifested in a bill presented to Congress, which outlined the contents of a possible new constitution, only five days prior to the end of her mandate.

Although the continuity of this process was not contemplated by the new government, it is important to note what the INDH stated in its 2014 Annual Report in relation to the fact that the Constitution must be "...a reflection of the minimum agreements within a democratic society", and that the "current Constitution does not constitute a social agreement that reflects current times".

As can be seen, discussions in 2018 across both society and within the institutions referred to in this Annual Report, and which represent issues that concern the INDH as well as help to shape its actions, have addressed several issues relevant to human rights in Chile. This has resulted in cultural changes and the recognition of the rights of certain important groups. Such developments are a necessary step towards strengthening democracy and protecting human rights, and they represent a challenge to political parties and institutions to maintain pace with the transformations underway.

The public is becoming increasingly aware of the existence of not only individual, but also collective rights, as people belong to social groups that not only strive to ensure visibility, but also because they understand that these rights recognize their groups as equal before the law and that they should not be subject to discrimination. In this sense, society is demonstrating significant vitality in relation to the exercise of their rights. Another aspect in this regard is that the environment is increasingly perceived as a fundamental component in the quality of life of people. Many of people have felt motivated to act either against natural destruction or degradation, or because they see the environment as having a direct impact on them personally in the areas of health, education or work.

In this context, the INDH notes with concern the existence of certain segments of society that commit discrimination against groups of people who, due their particular characteristics or situations, are already experiencing suffering or stigmatization. This has been manifested, for example, in acts of violence carried out during feminist demonstrations, by spreading denial of human rights violations in the recent past, or by opposing certain groups of immigrants. Furthermore, there are certain segments of society that commit unacceptable destruction of public property or endanger the lives of police and peaceful protesters while concealing their identity, or that have vandalized the memorials of victims of the dictatorship. These discriminatory acts or violent measures are not compatible with a democratic way of life that recognizes the equal enjoyment and protection of human rights without the discrimination of others. It is important for the INDH that all voices, opinions and peaceful demonstrations that express just demands about their particular situation or that of the wider country can be voiced and undertaken and that all such individuals and groups doing so are afforded due protection. This is a key part of strengthening the public appropriation of democracy. The trend towards intolerance, ultranationalism, xenophobia and authoritarianism has been growing worldwide, while economic, social, corruption-related and mass migration crises have become more prevalent. This global reality has enabled groups that follow the aforementioned trend to obtain significant electoral support, which in turn jeopardizes the protection of human rights and destabilizes the multilateral system and democracies themselves.

Respect for human rights and the guarantee of their protection by the State is the main way to strengthen the democratic system. This responsibility implies that public officials, as well as the general public, need to understand and use, as their central point of reference to guide action and decision-making, the profound meaning of Article 1 of the Universal Declaration of Human Rights (UDHR), which states that “All human beings are born free and equal in dignity and rights. They are endowed with reason and conscience and should act towards one another in a spirit of brotherhood.” This coincides with Article 1 of the Chilean Constitution, which states that “People are born free and equal in dignity and rights”. From the perspective of the public, this implies being aware of their rights and having them respected, and recognizing the equal rights and dignity of other people: a basic precondition for democratic coexistence.

The year 2018 marks the 70th anniversary of the UDHR, which arose out of the death of more than 60 million military personnel and civilians during the Second World War, between 1939 and 1945. It was established as a universal consensus on the recognition of the condition of equality and dignity of all human beings regardless of their sex, age, nationality, thought or any other differentiating factor. Such conditions have since made it possible to condemn and set limits to abuses of power. This is significant because although the UDHR has not brought an end to the violations of the rights enshrined within its articles,

it remains highly significant because in conditions in which the rule of law is lacking, it is always the strongest and most unscrupulous who are victorious.

While 70 years have passed since the signing of the UDHR, the INDH is an institution which, although young, has accumulated a wealth of experience and, during its short period of existence, strengthened its overall autonomy. This experience enables us to provide people with the assurance that we will continue to uphold the legal mandate of the Institute, which is *“to promote and protect the human rights of people living in Chile, as established in constitutional and legal regulations, in international treaties signed and ratified by Chile and that are in force, as well as those emanating from the general principles of law recognized by the international community”*.

This Annual Report on the situation of human rights in Chile consists of seven chapters that were compiled following a process of discussion and consultation in the INDH Council, in which certain issues that have not been covered in previous years were addressed. Consequently, the report reflects issues that are more commonly discussed on an ongoing basis in the Council, while others are incorporated due to their prevalence within the wider public debate, including one that has been called an ‘emerging issue’.

Accordingly, the first chapter analyses the situation regarding “Violence against rural indigenous and non-indigenous women: invisible and marginalized”. It outlines different research studies and reviews the scarce statistical data available to illuminate what is an understudied and misunderstood reality. It calls for greater concern to be shown for this subject in order to bridge the existing gaps in policies between urban and rural settings, which are particularly prevalent in relation to the rights of rural women.

The second chapter, “Rights of migrants and the new immigration policy”, provides an evaluation, from the perspective of international human rights treaties, of the migration and immigration policy and the new bill introduced by the current government in this area. It analyses the key data provided by authorities and the opinions of experts and migrant and pro-migrant organizations.

The third chapter addresses “Memorials and their contribution to non-repetition”, and evaluates State action in terms of its recovery of and support for the management of these sites as well as the way in which civil society has played a fundamental role in their renovation and preservation.

The fourth chapter is called “Natural resources, business and human rights: analysis of the impact of industrial activities on natural resources and the environment”. It reviews the situation of three economic sectors that are key to Chilean economic development: mining, fishing and aquaculture, and energy. Analysis relates these industrial activities to their respective impacts on the environment, the relevant responsibilities of the State and businesses, in relation to the United Nations Guiding Principles on Business and Human Rights, and the effects on human rights, in particular, the right to live in a pollution-free environment.

The fifth chapter covers the “Rights of older persons and State obligations: care provision in long-term care facilities”. Analysis is based on visits to all long-term care facilities for older persons that are administered directly by the State, as well as additional private facilities which receive State funding. This process, which was carried out by INDH regional offices, has enabled the Institute to collect information and analyse the findings with regard to the standards established by the Inter-American Convention on Protecting the Human Rights of Older Persons, ratified by Chile and incorporated into national legisla-

tion, including Law 19.828 which created the National Older Persons' Service (SENAMA).

The sixth chapter evaluates the "Solutions to waiting lists in the public health system: an unfulfilled promise". It includes an analysis of waiting lists in relation to the system of Explicit Health Guarantees (GES) and Non-Explicit Health Guarantees (NO GES), or Non-GES, including patient deaths while on waiting lists, in order to highlight gaps in the right to health.

The final chapter addresses, as an emerging issue, "Technological innovation, protection of personal data and human rights". It evaluates existing gaps that require a State solution, including those from a regulatory and human rights perspective, in order to provide adequate protection of the right to privacy. This right is particularly important given the new and emerging scenario that consists of the use of digital applications and technological tools that are generating increasingly large transfers of various types of data.

The INDH Council would like to reiterate its gratitude to everyone who collaborated with their knowledge and experience and who have made this Annual Report possible.



CHAPTER 1. VIOLENCE AGAINST RURAL INDIGENOUS AND NON-INDIGENOUS WOMEN: INVISIBLE AND MARGINALIZED

A series of global events have provided impetus to the so-called 'feminist wave'. In Chile, these have included accusations of harassment within certain universities that resulted in public demonstrations and which shone new light on the debate about feminism and its demands.

While the occurrences of 2018 marked a significant milestone in the struggle to achieve respect for their human rights, a number of women remain invisible not only to the general public, but also to the State. For example, women from rural parts of the country, including indigenous women, remain largely hidden from this feminist debate, despite them constituting a particularly vulnerable group in the face of violence.

The chapter aims to describe and analyse violence against rural indigenous and non-indigenous women, since these groups are among the most ignored segments of society in relation to the design of public policy to prevent and eradicate violence. Furthermore, action by the State in this area is weak, with a lack of data and research on the subject, and this situation contributes to a misunderstanding of the magnitude of the problem.

The State does not compile information on the basis of ethnicity and rural settings in relation to violence committed against women, and this lack of statistical data prevents all parties from understanding the specific realities experienced by people living in Chile. The tendency to homogenize the situation of women and treat the problem on the basis of experiences being similar across the board for everyone has two outcomes. First, it makes the most vulnerable groups, including indigenous women and women in rural areas, more invisible. Second, it impedes the design of relevant public policy that can effectively address the different situations being faced.

From a more qualitative analysis of the problem, there is agreement among experienced organizations and professionals that interventions from the State to address violence against women are defined from a logic which addresses only urban areas. Consequently, cultural and territorial considerations and strategic issues are disregarded in the design of intervention programmes.

For example, in relation to the situation of women on Easter Island, articles 13 and 14 of Law 16.441 establish extenuating circumstances for certain crimes committed due to cultural specificities of the Rapa Nui people. As such, this legal reality has become an obstacle to the adequate treatment of violence against women on the island.

Access to justice for indigenous and rural women is marked by several elements: geographical remoteness and isolation, cultural factors and police violence.

Overall, the Chilean State has much ground to make up in terms of rural and indigenous women and the prevention and treatment of violence committed against them. If the State fails to design targeted and relevant policies and programmes, the reduction of violence against women will become increasingly difficult.

RECOMMENDATIONS

- 1.** The INDH recommends that all State agencies responsible for the production of statistical information regarding violence against women disaggregate their data. Specifically, disaggregation is requested for data on indigenous women, as well as data on the rural status, age, possible disabilities and sexual diversity of all women.
- 2.** The INDH recommends that the Ministry of Women and Gender Equality and the Undersecretariat of Crime Prevention include women from rural settings in their National Survey of Victims of Domestic Violence and Sexual Offences (ENVIF) and that the resultant data analysis should be disaggregated by ethnicity, race and whether women respondents reside in urban or rural settings.
- 3.** The INDH recommends that all State agencies incorporate a gender perspective within their operating frameworks, in addition to addressing the special conditions of rurality or social origin of their service users.
- 4.** The INDH recommends that the legislative branch urgently considers the bill on the right of women to a life free of violence and to consider specific measures for the prevention and reparation of violence committed against rural and indigenous women.
- 5.** The INDH recommends that the Ministry of Women and Gender Equality implements policies and programmes in response to violence against women (based on both prevention and treatment) which take account of the importance of cultural identity, in order to recognize the specific situations of women from indigenous communities. It is also recommends that such policies and programmes consider the rural status of their beneficiaries.
- 6.** The INDH recommends that the legislative branch amends articles 13 and 14 of Law 16.441, which created the legal-administrative Department of Easter Island, given the implications of these articles on the State obligation to penalize violence against women. These articles allow criminal responsibility to be reduced by one degree and enable convicted individuals to serve up to two thirds of his or her sentence outside prison, for crimes and offences committed against family members, or in contravention of public morality and sexual integrity.
- 7.** The INDH recommends that all administrative agencies of the State, in particular the police and the Public Prosecutor's Office, work with indigenous women in conjunction with promoting training programmes on indigenous culture, especially on the topic of conception of women in indigenous society, in order to avoid any form of violence being committed against them.
- 8.** The INDH recommends that the Ministry of the Interior and Public Security devises a specific protocol in relation to raids on Mapuche communities, which outlines the need for special care to be taken to ensure the safeguarding of the rights of children, young persons and women.
- 9.** The INDH recommends that the Ministry of Justice and Human Rights emphasizes the need to provide access to justice for rural indigenous and non-indigenous women, thereby ensuring that geographical isolation and certain cultural elements (including language) do not constitute limitations for such women to exercise this right.





CHAPTER 2. RIGHTS OF MIGRANTS AND THE NEW IMMIGRATION POLICY

For several decades, different segments of society have called for an updated regulatory framework and the design of public policy in line with the challenges posed by migration and immigration. These calls have grown especially prevalent given the increased immigration experienced by Chile in recent years. In this context, there is an urgent need for more specialized legislation and public institutions to protect immigrants from a range of discrimination and rights violations.

Therefore, this chapter analyses the measures announced by the executive branch in relation to its amendments to the regulatory framework and its administrative and public policy measures aimed at the immigrant population, in particular, those in an irregular situation. The aims of the chapter include the evaluation of the compliance of these amendments with international standards and recommendations to the State on the modification of certain aspects of these that either currently or in the future may affect the human rights of immigrants.

Based on the study undertaken, Chile can be seen as one of the preferred destination countries in the ongoing global migratory phenomenon. By analysing relevant statistical trends, there is no reason to conclude that this tendency will change in the short term. As such, there is an urgent need for an efficient and timely State response to this new reality.

The information gathered shows that the latest immigration bill, while being an important step forward, contains certain provisions to address immigration that could lead to situations where the human rights of foreign nationals living in the country are not guaranteed. The chapter also warns about certain administrative measures of the plan to regularize the status of immigrants, particularly those related to expulsions and the implementation of consulate tourist visas for Haitians, whereby citizens of that country have to acquire a visa in the Chilean consulate in Haiti prior to travelling to Chile. These requirements may negatively impact the rights of foreign nationals.

Similarly, the approach currently used to deal with the rapid growth in immigration to Chile is based more on border control and public security than on the protection of rights. This is evident, for example, in the immediate expulsion of foreign nationals caught attempting to enter the country through irregular entry points, without due consideration being taken of the reasons behind their decision to enter the country in this manner.

As a whole, the measures adopted tend to regulate the situation of immigrants, but they reveal that certain processes actually make regularization more difficult. For example, the prohibition on working while awaiting a visa creates obstacles to guaranteeing immigrant access to rights. As such, actions must not be based on discretionary issues and they must safeguard compliance with human rights standards.

RECOMMENDATIONS

- 1.** The INDH recommends that co-legislators safeguard the participation and contribution of distinct actors, especially organizations related to the ongoing legislative process and congressional debate on immigration. This would enable the drafters of the bill to modernize immigration legislation and relevant public institutions to be in possession of all necessary recommendations, such as those made by the Institute and other entities, to ensure that the resultant legislation adheres to related international standards.
- 2.** The INDH recommends that the Ministry of the Interior and Public Security makes the necessary modifications to immigration policy, in terms of both administrative and legal authority, so that immigrants living in Chile can opt for, in an expeditious manner, a work visa without exposing themselves to possible violations of their rights or finding themselves in an irregular migratory situation.
- 3.** The INDH recommends that co-legislators broaden, in the context of discussions of the immigration bill, the criteria established in the administrative measures that give rise to the temporary visas currently in force. This should be done in such a way so that the measures adjust to the life circumstances of immigrants who are studying or who wish to study in Chile, i.e., that their physical presence in Chile means they can make all visa changes without needing to leave the country.
- 4.** The INDH recommends that the executive branch amends the nature of the consulate tourist visas required for Haitians. This recommendation is made on the basis that, given the reality of Haitian society, the requirements established by Chile for the processing of such visas have not been sufficiently considered and that they may expose Haitians to a context of greater vulnerability, irregularity and potential trafficking or smuggling.
- 5.** The INDH urges the State to formulate public policy that guarantees the human rights of all immigrants, including access to social benefits under the same conditions as Chilean citizens, and without distinction to their immigration status, in all additional areas outlined in the bill presently under discussion in Congress. These policies should provide for the training of public sector workers, particularly those in the areas of healthcare, education, housing and employment, in order to facilitate a practicable integration of immigrants who reside in Chile.
- 6.** The INDH recommends that the executive branch extends the benefit of the ‘democratic responsibility’ visa to all countries in the region that are experiencing situations of general violence, foreign aggression, internal conflict, large-scale human rights violations, or other circumstances that are gravely affecting public order in that country. This would provide people affected in such contexts to equal access to the protection of the Chilean State.
- 7.** The INDH recommends that co-legislators incorporate the principle of equality and non-discrimination on the grounds of gender, sexual orientation, age, nationality, language, race, and disability, among others, within the ongoing design of this legislation.
- 8.** The INDH recommends that co-legislators incorporate measures for the protection of maternity and protection against gender-based violence in the ongoing design of this legislation, so that the same laws and regulations that apply to Chilean women are applicable to immigrant women.



CHAPTER 3. MEMORIALS AND THEIR CONTRIBUTION TO NON-REPETITION

The main objective of this chapter is to evaluate the State response in terms of the protection of cultural heritage and the recovery, financing and management of memorials as measures that contribute to the non-repetition of the serious human rights violations that occurred during the dictatorship (1973-1990). As such, the main findings of an exploratory study into this area are analysed on the basis of the principles and definitions established in institutional frameworks that enable the monitoring of State compliance in relation to its obligations in each of these areas.

The INDH considers memorials to be the physical spaces where serious human rights violations were committed, where such violations were resisted or confronted, or where, for some reason, the victims, their families or local communities associate the spaces with those events, and which are now used to reflect on, rethink and transmit traumatic processes and/or to pay tribute to the victims. Memorials act as material evidence of past human rights violations and, as such, can contribute to the symbolic reparation of victims within the framework of transitional justice. They can also serve as an educational resource in the present day to prevent such events from being forgotten and, as a result, repeated in the future.

According to international human rights law, States in countries where serious human rights violations have occurred in the recent past must assume their responsibility to implement all necessary measures to protect, recover, finance and support the management of memorials, in accordance with the principles governing the development of public policy in this area.

In Chile, there is no public policy regulating the protection of memorials since they do not form part of the National Monuments Act (Law 17.288), and there is no entity responsible for coordinating the execution of the proposals made by the Valech and Rettig Commissions. However, work undertaken by organizations founded by relatives and victims of the dictatorship has enabled the National Monuments Council to provide protection to 40 sites and numerous archives related to the historic memory of human rights violations that were committed between 1973 and 1990 (24 of which are located in the Metropolitan Region), by means of classifying them as Historic Monuments and Public Monuments.

Of the 1,132 sites that were used to commit human rights violations during the dictatorship, only 17 have been recovered as memorials. A total of 13 of these can be visited by the general public and in which it is possible to host educational activities that contribute to non-repetition. This small percentage is due, first, to the lack of public policy governing the recovery of memorials that could mandate and finance the Ministry of National Assets to carry out the required legal procedures to allow the transfer of such sites to human rights organizations within a reasonable period of time. Second, there has been limited collaboration on this matter by the Armed Forces.

In the absence of a public policy on financing, the organizations that manage the memorials have chosen to pursue competitive funds and collaboration agreements with the National Service for Cultural Heritage (DIBAM) to cover the costs associated with activities that contribute to non-repetition. However, unequal training of management teams has resulted in only 5 of the 17 organizations that manage recovered sites having secured permanent funding.

The support provided by the INDH, the historic memory unit of the Ministry of Culture, Arts and Heritage, and State technical bodies responsible for managing memorials has contributed to the execution of administrative measures and activities, as well as the compilation of files and documents. While such actions have facilitated the process of publicizing educational events that have taken place at these sites, they remain isolated and do not constitute a comprehensive public policy that standardizes State efforts in this area.

RECOMMENDATIONS

- 1.** The INDH recommends that co-legislators introduce a bill to reform Law 17.288 on National Monuments and thereby incorporate memorials within the provision of the amended act. This would enhance processes aimed at guaranteeing the preservation of these sites as spaces of human rights education and uphold the notion of non-repetition, particularly for memorials located in the regions.
- 2.** The INDH recommends that the Ministry of Culture, Arts and Heritage, and the technical bodies responsible for administering national heritage assets, promotes and executes all administrative and legal actions necessary to devise associated protection measures for memorials located in the regions that have not been declared National Monuments.
- 3.** The INDH recommends that the Ministry of Defence and the Ministry of the Interior and Public Security, under the framework of the obligations and commitments undertaken by the Chilean State, request cooperation from the Armed Forces and the Public Order and Security Forces to oversee the transfer of the main public buildings under their jurisdiction that were used by repressive branches of the dictatorship to commit human rights violations between 1973 and 1990, with the objective that they can be used as places of memory to develop pedagogical activities that contribute to non-repetition. In addition, the INDH recommends that these bodies comply with the actions established within the PNDH regarding the placement of plaques and the drawing up of protocols to provide access to memorials administered and located under the jurisdiction of the Armed Forces and the Public Order and Security Forces.
- 4.** The INDH recommends that the executive branch increases the budgetary and technical resources of the Ministry of National Assets in order for it to efficiently carry out the recovery work that it is legally mandated to undertake, and to acquire, by purchase or exchange, in the shortest possible period time, sites protected by the Heritage Act that remain under the possession of private persons and entities, in order to comply with the measures established in the PNDH.
- 5.** The INDH recommends that the executive branch guarantees baseline funding to all recovered memorials, in order to provide continuity to the educational and cultural activities carried out by the organizations that administer these spaces, and thereby contribute to the non-repetition of the human rights violations that occurred during the dictatorship.
- 6.** The INDH recommends that the executive branch strengthens, provides visibility of, and disseminates the technical advisory work undertaken by State bodies related to culture, heritage and human rights. This should form part of wider efforts to increase the number of human rights organizations that receive support for the management of memorials, particularly those that lack collaboration agreements with the State, are in the regions, or have a low level of specialization.



CHAPTER 4. NATURAL RESOURCES, BUSINESS AND HUMAN RIGHTS: ANALYSIS OF THE IMPACT OF INDUSTRIAL ACTIVITIES ON NATURAL RESOURCES AND THE ENVIRONMENT

The environmental crisis that took place in the Quintero-Puchuncavi bay has placed the relationship between companies and the environment at the forefront of public attention, and has revealed in passing how the human rights of local residents of a particular area can be violated. This issue does not solely relate to the right to live in a pollution-free environment. Rather, the consequences on this type of occurrence can have a more direct impact on the daily lives of residents by affecting their health and work. In Chile, the mining, energy, and fishing and aquaculture sectors have been particularly controversial, since they represent the main industries to have been fined by the Superintendence of the Environment (SMA) (89.7% of all fines) and are the primary protagonists of the socio-environmental conflicts map devised by the INDH.

Consequently, this chapter provides an overview of the role of businesses and the State in the protection and destruction of the environment, in relation to the United Nations (UN) Guiding Principles for Business and Human Rights. It evaluates the potential environmental effects and their consequences on the local resident populations studied, as well as the regulatory and institutional framework in which businesses operate, and State supervision and penalization powers.

Accordingly, national environmental regulations are deficient in terms of the limits they establish on emission standards, which can be up to three times less than those applied in the European Union. Similar deficiencies exist with regard to the ability of authorities to control the accumulated and synergetic impacts that arise in industrial neighbourhoods, including projects that are evaluated in stages and on an individual basis. Furthermore, supervisory institutions face serious difficulties for two reasons: first, they must manage a considerable workload with limited resources; and second, they operate according to an institutional framework and procedural requirements that fail to reflect the varying degrees of significance of each case.

In relation to business activity, there are low rates of penalization procedures in the fishing and aquaculture, and energy industries (6.8% and 6.2% respectively), partially associated with lax regulations. There are higher rates in the mining industry, reaching 13% for metal mining and 42.4% in the metallurgic sector. In addition, there is a level of coordination among large economic industries such as mining and energy to cooperate on the education and promotion of best practices; a situation which is lacking in fishing and aquaculture sector. As such, the chapter describes the behaviour of businesses as highly varied, with some companies undertaking the bare minimum to comply with standards, while others seek to establish themselves in the long-term by promoting more sustainable practices.

Overall, the results of INDH research have found weaknesses of the State in its role as protector, investigator and penalizing body in the area of the environment. This is due to its insufficient regulations that fail to fully protect the environment and local populations, while its protective (Environmental Impact Assessment System [SEIA]) and supervisory (SMA) institutions are subject to limited resources and tools that do not allow them to function to an optimal standard. On the other hand, businesses must promote sustainable development and adopt due diligence procedures, setting an example to the rest of the industry and the State in relation to the standards that need to be established in order to achieve a development model on which businesses, the State and general public agree. In addition, the chapter iterates the need to expedite the implementation of the National Action Plan on Human Rights and Business, which will be a key tool for the business world, as well as the need to incorporate a human rights perspective into all future legislation on environmental issues.

RECOMMENDATIONS

- 1.** The INDH urges the government to expedite the implementation of the National Action Plan on Human Rights and Business, and in particular the execution of the Multi-Stakeholder Advisory Group, which includes the participation of civil society and other sectors of the community to conduct the following-up and monitoring of the Plan.
- 2.** In terms of regulations, the INDH reiterates that co-legislators need to standardize the legislative framework on environmental matters with those that specifically govern industrial sectors, especially those that regulate mining, energy, and fishing and aquaculture. This will ensure that quality and emission standards are adopted in accordance with those set by international organizations. Furthermore, such moves need to consider the evaluation of the cumulative impacts and, as such, take into account proposals made by the UN Sustainable Development Goals and the UN Guiding Principles on Business and Human Rights.
- 3.** The INDH strongly recommends that co-legislators include a human rights perspective in congressional discussions on initiatives related to environmental issues, in particular in the bill to reform the SEIA, as well as the bill linked to the pro-investment agenda. This will help to ensure that the human rights of all people living in Chile are guaranteed and protected and that they are not potentially violated by actions of State and/or non-state actors.
- 4.** Consequently, the INDH recommends that co-legislators strengthen the technical capacities of the SEIA to be able to anticipate, within the environmental impact assessment framework, the synergetic impacts of industrial activities, as well as the institutional powers and scope of the Superintendence of the Environment for subsequent inspection. Accordingly, special care must be taken with regard to areas that host a concentration of distinct industrial activities and which require the due safeguards to allow local populations the full enjoyment of their human rights.
- 5.** The INDH reiterates its recommendation to public and private businesses to assume, within their corporate policies, due diligence procedures as part of their formalized responsibilities to respect human rights.



CHAPTER 5. RIGHTS OF OLDER PERSONS AND STATE OBLIGATIONS: CARE PROVISION IN LONG-TERM CARE FACILITIES

According to the results of the 2017 census, the Chilean population is experiencing a process of significant ageing. Moreover, for the five-year period 2015-2020, life expectancy is projected to reach almost 80 years of age. Nevertheless, socioeconomic indicators warn that older persons with lower levels of household income have high levels of dependency.

Throughout 2018, the media has reported on cases of long-term care facilities for older persons (ELEAM) that operate without legally required sanitary authorizations, and of others that, despite having been operating in accordance with legal requirements, have not been adequately supervised by the Sanitary Authority. These situations have resulted in violations to the rights of older person residents.

Consequently, the INDH conducted a research at several ELEAMs nationwide, both publicly and privately funded, in order to determine whether the levels of care provided in these facilities conform to the standards set by the Inter-American Convention on Protecting the Human Rights of Older Persons, ratified by Chile in 2017.

During the course of the observation process, the management of certain establishments prevented the entry of INDH teams or suspended their visits in the middle of the fieldwork. In other cases, older persons with severe signs of neglect and mistreatment were discovered and such cases were referred to the Public Prosecutor's Office.

Generally, the results of the research undertaken, which are outlined in this chapter, lead to the conclusion that older persons receive better quality care in public institutions than in private establishments. However, levels of job discontentment among caregivers providing direct treatment is lower in private facilities than in those funded by the public sector, via the National Older Persons' Service.

The chapter also addresses the need for the State to devise a plan or programme to detect ELEAMs that operate illegally, penalize individuals who violate rights and provide them with subsequent orientation to ensure they comply with all existing and relevant legal requirements in the future, and also penalize individuals who, having previously been sanctioned, then fail to make the necessary improvements moving forward.

RECOMMENDATIONS

- 1.** The INDH recommends that the State, by means of the National Older Persons' Service, expands the coverage of public long-term care facilities, while ensuring that quality is maintained, and places particular emphasis on the care of persons over 80 years of age, as well as those with higher levels of dependency and those who lack family networks.
- 2.** The INDH recommends that the State, by means of the National Older Persons' Service, increases the coverage, of high quality, of the Home Care programme in order to encourage older persons to stay in their homes as long as possible, together with their families and existing networks.
- 3.** The INDH recommends that the State, and in particular the Ministry of Health and its regional ministerial secretariats (SEREMIs), in collaboration with the National Older Persons' Service and municipalities, urgently devises a plan to detect illegal long-term care facilities, penalize potential violations of the rights of residents, and promote their standardization to ensure they meet the standards of quality and respect for the rights of older persons in accordance with article 12 of the Inter-American Convention on Protecting the Human Rights of Older Persons.
- 4.** The INDH recommends that the State, through the Health SEREMIs and the National Older Persons' Service, adopts the necessary measures to bridge the gaps in living conditions and treatment that exist between long-term care facilities that receive public financing and those of an entirely private nature, in order to ensure that all older persons, without distinction, enjoy the rights recognized by the Inter-American Convention on Protecting the Human Rights of Older Persons.
- 5.** In response to the rapid ageing of the Chilean population and a growing demand for long-term care, the INDH recommends that the State devises a comprehensive plan to monitor and supervise ELEAMs, and which addresses aspects of infrastructure, safety equipment, quality of care provision and the rights of older persons.
- 6.** The INDH recommends that the State, by means of the Health SEREMIs, the National Older Persons' Service, the Employment Inspectorates, or the CGR, as appropriate, monitors and improves the working conditions of ELEAM employees, to ensure that they enjoy the necessary security, adequate remuneration, and suitable conditions required to provide the best possible care for older person residents.



CHAPTER 6. SOLUTIONS TO WAITING LISTS IN THE PUBLIC HEALTH SYSTEM: AN UNFULFILLED PROMISE

The right to health and healthcare has become a source of growing and sustained public concern. At the centre of the discussion is the State obligation to protect and guarantee health, particularly given increasing expectations among the general public for access to greater and improved benefits in this area.

This right must be understood not only from the formal perspective, but also from the duty of the State to implement measures that ensure people have effective access to medical or clinical care.

Accordingly, the management of waiting lists and waiting times for medical appointments is one area that has been questioned in terms of its efficiency and health outcomes. In this regard, the following data is noteworthy:

Situation of Non-GES waiting lists at the national level: According to information provided by the Ministry of Health (MINSAL), as of May 2017, the waiting list for new specialty consultations reached 1,661,826 cases. Conversely, the number of people waiting for surgical interventions was 278,061.

Delayed GES or GES waiting lists: Information provided by MINSAL refers to the accumulated delays in GES care between 2014 and May 2017, with a total of 11,622 delayed guarantees. The cases of greatest delay are as follows: (1) cataracts; (2) cervical cancer; (3) refractive errors; (4) diabetic retinopathy; (5) comprehensive oral health of pregnant woman; (6) secondary prevention for chronic kidney disease; (7) preventive cholecystectomy; (8) orthosis; (9) breast cancer; (10) colorectal cancer; (11) prostatic hyperplasia; (12) pacemaker; (13) gastric cancer; and (14) chronic renal disease stages 4 and 5.

Deaths on GES and Non-GES waiting lists: A total of 15,625 people died while waiting for Non-GES care in 2016, which represents 15% of all deaths nationwide that year. A total of 993 people died while waiting for GES treatment in the same year, representing 0.9% of deaths nationwide in that 12-month period.

A hypothesis of potential association between cause of death and presence on Non-GES waiting lists was established for 6,593 deaths. With regard to the 993 deceased persons who were on GES waiting lists, it was possible to imply a hypothesis of potential association between waiting and death in 15% of cases.

Generally, waiting times in Chile are excessively long, particularly in the case of Non-GES conditions, and there are no warning systems to detect patients with more serious and/or urgent pathologies. Furthermore, in the case of GES conditions, the irregularities detected by the Comptroller General of the Republic in its audit of 23 hospitals, and the findings of investigations carried out by the public prosecutor E. Arias, are particularly worrying.

Finally, it should be noted that the right to access healthcare is not being guaranteed in a timely and effective manner by the Chilean State, which is a violation of the basic right of residents nationwide.

RECOMMENDATIONS

- 1.** The INDH recommends that the State adopts economic, technical and legislative measures, to the full extent of its available resources, to progressively achieve the comprehensive fulfilment of the right to health, guaranteeing access to health services and without discrimination in a timely and effective manner.
- 2.** The INDH recommends that the Ministry of Health creates a warning system for patients with serious and/or urgent illnesses, as well as for patients experiencing long waiting times.
- 3.** The INDH recommends that the Ministry of Health develops an effective and timely monitoring mechanism for compliance with GES management and associated goals across the 29 health services in the country.
- 4.** The INDH recommends that the Ministry of Health reviews existing agreements and designs new tools to avoid inadequate incentives for compliance with stipulated deadlines to improve service quality.
- 5.** The INDH recommends that the Ministry of Health devises a regulatory and management framework to enable primary healthcare providers to strengthen preventive plans and improve their ability to overcome community health problems.
- 6.** The INDH recommends that the Ministry of Health compiles programmes that ensure ongoing capacity building of professionals who work in the provision of primary healthcare, whereby they are trained to resolve primary health-related issues as effectively as possible.
- 7.** The INDH recommends that co-legislators grant greater resources to public health and that these include improved management and evaluation mechanisms. This is important considering the high proportion of the general public that is treated by the public health system, and the inability of the system to respond to the care demands of the wider population. Indeed, both the aforementioned realities contribute directly to long waiting lists, which in turn undermine the right to access healthcare, which is guaranteed by the Chilean Constitution.



CHAPTER 7. TECHNOLOGICAL INNOVATION, PROTECTION OF PERSONAL DATA AND HUMAN RIGHTS

In 2018, there have been multiple episodes of leaks and misuses of personal data, in Chile and internationally. Personal data refers to information that identifies a person or, at least, makes them identifiable. Examples of this include name, place and date of birth, address and identity number. The protection of personal data becomes more complex in a context of the large-scale use of social media, the installation and use of video-surveillance equipment, and the emergence of Big Data and Data Mining.

In June 2018, following the enactment of Law 21.096, the protection of personal data was included in article 19 (4) of the Constitution. However, significant gaps remain that must be bridged in order for the legal system to provide adequate standards on the protection of personal data.

One of the challenges that the State must overcome relates to Law 19.628 on the protection of private life, which was enacted in 1999. It has been argued that this legislation is now obsolete for a number of reasons: its lack of effective penalization; its authorization of the use of data for direct marketing purposes without the consent of the owner of that data; its failure to create a register of private data banks; and the absence of a supervisory public authority.

In relation to the use of biometrics, this chapter argues that, in itself, this does not entail a risk to personal privacy. However, the regulation of how biometrics is used is growing in relevance, which is why authorities must consider the protection of personal privacy from the outset of any and all discussions on this subject, in order to avoid or diminish certain risks associated with its use.

Another topic raised in the chapter is the use of Big Data and Data Mining for public policy formulation. According to the specialists who were consulted for the compilation of this Annual Report, one problem that arises in this regard is that policy impact assessments are not carried out with respect to other aspects or rights that are not directly involved in the problem that the policy is intended to solve.

Finally, the chapter addresses the need to establish a new paradigm for the protection of personal data. This paradigm should include efforts by the State to adopt educational and awareness-raising measures on the importance of safeguarding the dissemination of personal data. It should also seek to exercise control over the information provided by parties responsible for managing databases with respect to the particular objectives and needs for collecting such data in the first place. These criteria should be included in the bill that seeks to regulate the protection and treatment of personal data and which aims to create a personal data protection agency (Official Gazettes 11.092-07 and 11.144-07, redrafted), which is currently undergoing discussion in Congress.

RECOMMENDATIONS

- 1.** The INDH recommends that co-legislators complete the constitutional process of the bill to regulate the protection and treatment of personal data and create a personal data protection agency (Official Gazettes 11.092-07 and 11.144-07, redrafted), and that this bill includes the principles of legality, purpose, proportionality and transparency, while also establishing minimum obligations in relation to the handling of personal data to guarantee security.
- 2.** The INDH recommends that the executive branch, by means of the aforementioned bill, creates an independent, technical institution with the necessary resources to oversee compliance with the future law on the protection of personal data with respect to both public and private agents.
- 3.** The INDH recommends that State bodies respect and guarantee, at all times, human rights impacted by the management of databases containing personal data, in order to ensure the exercise of their powers or to improve their internal procedures.
- 4.** Similarly, companies that work with personal data are urged to promote due diligence to prevent violations of the right to privacy and private life that may occur during the course of their operations.