



**Contribution to the List of Prior Issues**  
**United Nations Committee on Economic, Social and Cultural Rights**  
**Fifth Periodic Report of the State of Chile**

*Report prepared by the National Institute of Human Rights of Chile<sup>1</sup>*

### **Preliminary aspects**

1. Through this report, the National Institute of Human Rights (NHRI), an autonomous state institution, created by Law No. 20,405 of the year 2009, whose mission is the promotion and protection of the human rights of people living in Chile, makes available to the Committee on Economic, Social and Cultural Rights of the United Nations, relevant information on the progress and pending issues regarding the application of the Covenant in the country, so that this background is considered in the process of adoption of the list of issues prior to the presentation of the fifth periodic report of Chile. This document follows the structure of the concluding observations on the fourth periodic report of Chile, issued by the Committee (E/C.12/CHL/CO/4).

### **National Human Rights Plan**

2. 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. In 2017, the Undersecretariat presented the First National Human Rights Plan 2018-2022 (PNDH), an instrument that responds to the recommendations that have been made to the State of Chile regarding human rights and that contemplates a set of concrete actions, goals, responsible institutions and associated financial resources. However, in August 2018, this Plan began to be subject to revision and methodological adjustments in its goals and objectives. To date, the modifications to the Plan and the final text of the Plan have not been published, which has delayed the process of accountability regarding the progress in its implementation, as well as the monitoring that both civil society organizations and the NHRI, will perform the same. The Committee is urged to request information on the estimated date of publication of the Plan and the degree of progress in compliance with the commitments and actions stipulated.

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<sup>1</sup> Approved by the NHRI Council on August 19, 2019, in the ordinary session N°497.

## Justiciability of the rights contained in the Covenant

3. As reported by the State in its fourth periodic report, in 2015 a constituent process was initiated, its design consisting of seven stages,<sup>2</sup> which could not be completed during the administration that promoted it. The process advanced to the fourth stage, and the Executive sent in March 2018 a bill to the Senate amending the Political Constitution of the Republic (Bulletin N° 11617-07), which does not show any progress in its legislative discussion. Currently, the debate about a new constitution is practically absent from the public debate and is not included among the priorities of the current administration. The NHRI suggests to the Committee to consult the State how progress will be made in the constitutional recognition and legal and / or administrative protection of ESCR<sup>3</sup>.
4. On May 28, 2019, the Supreme Court issued a ruling establishing the responsibility of the State for its inaction during the serious contamination situation of the communities of Ventanas, Quintero and Puchuncaví,<sup>4</sup> which seriously affects their right to life, health and to live in an environment free of contamination.<sup>5</sup> It is worth mentioning that, after the failure, episodes of environmental emergencies have

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<sup>2</sup> The stages considered were: 1) Civic and Constitutional Education, 2) Citizen Dialogues, 3) Citizen Council of observers, 4) Delivery of Citizen Bases, 5) Constitutional Reform, 6) Mechanism and Discussion of the Constitution, 7) Plebiscite of ratification. Available at: <https://bit.ly/2KBr7Q>

<sup>3</sup> Specifically, in the 2011 Annual Report, the NHRI stated that “although the Political Constitution of the Republic (CPR) establishes a catalog of rights in its article 19, it is weak in terms of ESCR. In the first place, it does not recognize all economic, social and cultural rights, since it does not mention the right to housing, food, water or culture, among others. Secondly, it does not grant direct judicial protection to all the rights it recognizes, since the remedy of protection - constitutional action whose purpose is to restore the rule of law - excludes ESCR from its protection”. INDH. (2011). Annual Report Situation of Human Rights in Chile 2011, p. 136. Additionally, in the report sent by the NHRI to the DESC Committee in 2014, the Institute pointed out: “The Chilean Constitution is weak in the catalog of recognized and protected DESCs, either because it excludes rights established in the Covenant (e.g. : housing), reduces them to some of their areas or dimensions (for example: the right to social security understood only as access to the enjoyment of uniform basic benefits, whether granted through public or private institutions), or well, because the constitutional guarantee protection action is not applicable to them. Notwithstanding the foregoing, the courts, through guardianship actions, have guaranteed and protected economic and social rights indirectly by invoking the right to life and other civil and political rights.” INDH. (2014). Supplementary Report International Covenant on Economic, Social and Cultural Rights (ICESCR), paragraph 6.

<sup>4</sup> NHRI. (2018). Report of Observation Mission to the Quintero and Puchuncaví Zone. Available at: <https://bit.ly/2ycKxUZ>.

<sup>5</sup> The Supreme Court of Justice accepted the appeal for protection lodged by the National Institute of Human Rights, and by another 11 appellants in favor of the people affected in the wake of the environmental and health emergency that took place between August 21 and 23, and September 4 2018, faced by the inhabitants of the communes of Quintero and Puchuncaví. The pollution harmed more than 700 people - mainly children, adolescents and the elderly - who were poisoned by the inhalation of gases from the industries that operate in the area. NHRI “Supreme Court rules in favor of the population affected by companies of Quintero and Puchuncaví, and welcomes NHRI arguments”, May 29, 2019. Available at: <https://bit.ly/2wxYdc1>.

been repeated.<sup>6</sup> The NHRI suggests to the Committee to ask the State about the measures that will be adopted to comply with the ruling, specifically, regarding the implementation of a policy and a plan to face air pollution crisis, and the transfer to safe places of the affected population, mainly children and adolescents.

5. In the commune of Tilti, another one of the so-called “sacrifice zones”<sup>7</sup>, the Second Environmental Court recently rejected the claim filed by the Municipality for the approval of a new project that will be installed in the area focused on the management of industrial waste,<sup>8</sup> that will be added to other activities that are currently being developed in the place, related to effects on the right to health and the right to enjoy an environment free of contamination<sup>9</sup>. The NHRI urges to request information on the measures that are being implemented to guarantee access to environmental justice in the country and for the environmental courts to be able to adequately assess the potential synergistic impacts on productive activities concentrated in the so-called “sacrifice zones”.

### **Rights of indigenous peoples**

6. There are several legislative initiatives that have been presented to Congress for the constitutional recognition of indigenous peoples. However, none of them have been approved<sup>10</sup>. The only one that registers progress in its legislative process in the last year is the bill that “Recognizes indigenous peoples and the multicultural nature of the Chilean Nation” (Bulletin No. 10281-07), entered in 2015, which is still in the first constitutional process. The NHRI calls on the Committee to consult on the measures taken to accelerate the process of constitutional recognition of indigenous peoples
7. In 2016, the Executive introduced two bills: the one created by the Ministry of Indigenous Affairs (Bulletin No. 10.687-06) and the one created by the National Council of Indigenous Peoples and the Councils of Peoples (Bulletin N 10526), both are in the second constitutional process in the Senate.

The NHRI recommends that the Committee find out about the urgency granted to the discussion of both legislative initiatives and the modifications that both projects have experienced after the indigenous consultation.

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<sup>6</sup> Radio Cooperativa, “Intendencia declara emergencia ambiental en Quintero por peak de contaminación”, July 29, 2019. Available at: <https://bit.ly/2LQPEDa>.

<sup>7</sup> The NHRI defined Sacrifice Zone in 2011 as “a situation of obvious environmental injustice, because the benefits generated by an industry are diffusely distributed among the entire society, while the environmental costs are borne by people in situations of social and economic disadvantage”. In the case of Tilti, the town concentrates a pig farm, a sanitary landfill, a sewage treatment plant and solid waste collection and a mining waste tailings dam.

<sup>8</sup> Ruling Case N°164-2017 (accumulated Case N°165-2017).

<sup>9</sup> NHRI. (2018). Report of Observation Mission to the commune of Tilti, Province of Chacabuco, Metropolitan Region. Available at: <https://bit.ly/31M0NJo>

<sup>10</sup> Other similar legislative initiatives are Bulletin N° 5324-07 (2007), Bulletin N° 8438-07 (2012), Bulletin N° 11289-07 (2017), Bulletin N° 11873-07 (2018), Bulletin N° 11939-07 (2018).

8. 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, has been subject of criticism and questioning by indigenous sectors. Although the Institute has publicly expressed its appreciation of the efforts made by the Executive Power in order to provide instruments endowing legal certainty in relation to prior consultation procedures, the NHRI has recommended reviewing said decree, with the participation and consultation of the peoples, in order to achieve a regulation that obtains a higher degree of acceptance of the indigenous peoples<sup>11</sup>.

The NHRI suggests that the Committee consult the State on the measures promoted to establish, through the participation of indigenous peoples, a revision of Supreme Decree No. 66, with the purpose of generating an effective consultation mechanism that aims to achieve free, prior and informed consent, according to international standards in the field.

On April 9, 2019, Exempt Resolution No. 241 was published, which started the Indigenous Consultation according to the procedure regulated by Supreme Decree No. 66 of the Ministry of Social Development, a process that is being observed by the NHRI. For this consultation, the Executive established 11 measures to be consulted <sup>12</sup> in order to reform Law N ° 19.253. Due to criticism from some peoples and some incidents that occurred in local consultations during the so-called planning stage, the Ministry of Social Development announced that the process would be suspended until an evaluation of the first stage and adjustments was made. The NHRI is concerned that the measures consulted may change the land ownership system, reducing the scope of collective property and expanding individual property, which could violate the exercise of the rights of indigenous peoples with respect to the use of their land and territories.

In view of the foregoing, the Committee is urged to request information on the results of the evaluation of the first stage of the consultation, and in case of continuing with the process, the new schedule and procedures stipulated to carry it out. Likewise, to ask about the measures that will be taken so that the legal modifications to be consulted protect the territorial rights of indigenous peoples.

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<sup>11</sup> NHRI (2014). Annual Report Situation of Human Rights in Chile. Rights of indigenous peoples: territories and prior consultation. page 246.

<sup>12</sup> The measures to be consulted are: 1) Enabling indigenous communities to receive or generate individual domain titles; 2) Allowing the Real Right of Use and Real Right of Enjoyment to be constituted in individual title of dominion; 3) Removing the minimum subdivision restriction of 3 hectares by applying the general subdivision rules; 4) Allowing the sale of indigenous lands among indigenous people 5 years after their delivery; 5) Regulating the mechanism for swapping indigenous lands to clarify and specify their conditions; 6) Allowing the execution of lease contracts, bailment or tenant farming in indigenous lands for a term of up to 25 years; 7) Allowing alternative and voluntary mechanisms to repair indigenous land problems ; 8) Allowing access to benefits associated with indigenous status only to persons with indigenous status acquired by article 2 letters a) and b) of Law No. 19,253; 9) Higher requirements for the constitution of new indigenous communities; 10) Allowing Indigenous Associations to be constituted by a minimum of 2 members; 11) Allowing Indigenous Associations to apply for the indigenous development fund.

On the other hand, the NHRI appreciates the fact that the Ministry of the Environment initiated in June 2019 a process of public consultation of the Draft Framework Law on Climate Change, an initiative aimed at developing a long-term climate strategy that defines emission reduction targets by sector, and will include the obligation to develop mitigation and adaptation plans, in charge of different ministries. In this regard, the NHRI suggests asking the State if it has been taken into consideration to consult indigenous peoples about this legislative initiative, considering their knowledge, input and contribution in actions against climate change.

9. The NHRI has submitted *amicus curiae* in three cases, contributing to the applicable human rights standards, in particular those referred to prior consultation. The first one concerns the lithium exploitation projects in the Salar de Atacama that would affect the Atacameño communities;<sup>13</sup> the second case is related to the approval of the incorporation of blasting in the coal exploitation that “Mine Winter” performs on Riesco Island, territory claimed by the Kawésqar communities in the Magallanes Region and the Chilean Antarctic;<sup>14</sup> and the third one is an assignment of approximately 8,000 hectares, awarded by the Ministry of National Assets to the Chilean Army in the Arica and Parinacota Region, in territory claimed by the Aymara Communities.<sup>15</sup>

The NHRI urges the Committee to request information on the indigenous consultation processes that have been carried out regarding Investment Projects that may affect indigenous peoples since 2015 to date, distinguishing between those carried out under Supreme Decree No. 40 and those developed under Supreme Decree No. 66. Similarly, it is suggested to ask which is the competent body to carry out such consultation when projects or activities that potentially affect the rights of indigenous peoples do not enter the Environmental Impact Assessment System and where the procedure is regulated.

10. “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 verified by the National Corporation for Indigenous Development that it has favored speculative practices, [...] stepping away from the standard consisting in the application of models oriented to guarantee and protect said lands, as essential spaces for the survival of the original peoples”<sup>16</sup>. Another problem is that there is no certainty of unsatisfied demand in relation to indigenous lands and territories.<sup>17</sup>

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<sup>13</sup> NHRI. (2018). *Amicus Curiae* On Appeal for Protection Filed by the Atacameños and Collas Indigenous Communities. Available at: <https://bibliotecadigital.NHRI.cl/handle/123456789/1167>

<sup>14</sup> NHRI. (2018). *Amicus Curiae* on the Coal Extraction Project of Mina Invierno on Riesco Island. Available at: <https://bibliotecadigital.NHRI.cl/handle/123456789/1179>

<sup>15</sup> NHRI. (2018). *Amicus Curiae* On Ancestral Land Appeal for Protection of the Chucuruma or Socoroma Indigenous Community. Available at: <https://bibliotecadigital.NHRI.cl/handle/123456789/1135>

<sup>16</sup> NHRI (2014). Annual Report Situation of Human Rights in Chile. Rights of indigenous peoples: territories and prior consultation. p. 243

<sup>17</sup> Ibidem, 244.

The NHRI calls on the Committee to request information on the progress in the process of land acquisition and restitution <sup>18</sup>, including updated statistics on the number of beneficiaries disaggregated by sex, indigenous people of belonging, the number of hectares delivered, and a cadaster of the demand for unsatisfied land restitution.

## **Statistical data**

11. In 2015, a bill that created a new national statistical system (Bulletin 10372-03) was introduced in Congress, which aims to generate an autonomous and specialized institutionality in the field, and which is in the second constitutional process in the Senate. The initiative began after several questionings had been made to 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 Indexes (CPI). The NHRI suggests that the committee request information on the progress made in the legislative processing of the aforementioned bill and the measures implemented to develop indicators on the enjoyment and exercise of ESCR, broken down by sex, age, ethnic or racial origin, nationality, socioeconomic stratum, disability situation, urban and rural population, and other relevant variables.

## **Economic, social and cultural rights and companies**

12. The approval of the National Action Plan for Human Rights and Companies (NAP) 2017-2019, represents a significant advance in state coordination to implement the Guiding Principles on business and human rights in the country. However, the NHRI is concerned about its exclusion from Committee 360, an entity that collaborates in the evaluation of the NAP and provides recommendations for its effective implementation.<sup>19</sup> The Institute urges to consult on the progress achieved in the

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<sup>18</sup> In the 2014 annual report, the Institute recommended that “[...] the Executive Power 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 effectively recognize, protect and guarantee the rights to the land and territory of said peoples, including those of an ancestral nature, of in accordance with how they are conceived in international human rights law; ii) the construction, through an ample political dialogue conducted by the Executive Power, of an updated cadaster that delimits indigenous lands and territories, and iii) the design of suitable mechanisms, culturally relevant, and in accordance with international regulations, to advance the restitution of lands and territories claimed by indigenous peoples, including traditional indigenous lands, under the conditions and limitations established by international human rights law.” NHRI (2014). Annual Report Situation of Human Rights in Chile, p. 299.

<sup>19</sup> At the beginning of the year 2019, the Undersecretariat of Human Rights assumed the role of coordinating body for the administration and implementation of said Plan, and began working on the incorporation of a new governance structure, through the formation of a multi-stakeholder advisory committee (Committee 360) to accompany and collaborate with the implementation of the PAN. This Committee replaces the

fulfillment of the commitments established in the NAP and how the NHRI will be incorporated to the 360 Committee

13. In June 2019, a bill introduced changes to the environmental impact assessment system (SEIA)<sup>20</sup>. The NHRI requests the Committee to ask the State if the provisions of the legislative initiative need to be consulted with indigenous peoples, as well as the measures that will be taken, so that the proposed modifications guarantee progress in environmental protection, reinforcing the technical capabilities of the SEIA to anticipate the synergistic impacts of productive activities, strengthening the prerogatives and institutional capacities of the Superintendence of the Environment for its subsequent inspection, and guaranteeing effective citizen participation spaces, including provisions on indigenous consultation according to international standards.
14. Through its observation missions, the NHRI has verified in the field violations of the right to enjoy the highest level of health possible and the right to live in a pollution-free environment related to business activities. Within this framework, the Institute has documented the effects caused by productive activities in the communes of Chiloé<sup>21</sup>, Tiltil<sup>22</sup>, Petorca<sup>23</sup> and Quintero-Puchuncaví<sup>24</sup>. The NHRI suggests that the Committee request information on the degree of progress and compliance with the recommendations contained in the observation missions previously mentioned.

## **Nondiscrimination**

15. During 2019, various attacks on LGBTI people have been reported by the media.<sup>25</sup> Even though Law No. 20,609 was published in 2012, which establishes measures against discrimination, it has been insufficient to prevent violence and other violations of rights of LGBTI persons and other special protection groups. The regulations limit themselves to establishing a jurisdictional action to punish acts of arbitrary discrimination through a fine for tax benefit, without providing the

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mechanism called "Multiactor Advisory Group" described in the NAP, an instance that had the participation of "representatives of civil society, trade unions, business sector, indigenous peoples, academia and the National Institute of Human Rights, in order to evaluate the progress contained in the Interministerial Committee Report, and provide feedback and / or recommendations regarding the effective implementation of the Plan ". Chilean Government (2017). National Action Plan for Human Rights and Companies of Chile. p. 91.

<sup>20</sup> Bill that introduces changes in environmental institutionality, and in the Environmental Impact Assessment System (Bulletin N°12714-12)

<sup>21</sup> NHRI. (2017). Observation Mission Report. Socio-environmental situation of Los Lagos Region, June 2016. Available at: <https://bit.ly/2ZchVtY>

<sup>22</sup> NHRI. (2018). Observation Mission Report of the commune of Tiltil, Province of Chacabuco, Metropolitan Region. Available at: <https://bit.ly/31MONJo>

<sup>23</sup> NHRI. (2018). Observation Mission Report of Petorca Province. Available at: <https://bit.ly/2BkgHzO>.

<sup>24</sup> NHRI. (2018). Observation Mission Report of Quintero and Puchuncaví areas. Available at: <https://bit.ly/2ycKxUZ>.

<sup>25</sup> La Tercera newspaper, "Autoridades en alerta por 'ola de ataques' a personas LGTBI" (Authorities on alert for 'wave of attacks' to LGBTI people), March 14, 2019. Available at: <https://bit.ly/2O5hee1>.

obligation for the State administration bodies to develop measures to prevent discrimination, nor to repair the victims. On the other hand, in the national legal system there are no typified behaviors that can be described as hate crimes towards LGBTI people.

The NHRI requests the Committee to consult the State if legislative reforms are contemplated in said regulations to include mechanisms for the prevention of discrimination and reparation in favor of the victims, including compensation for damages. Likewise, the Committee is requested to consult the State on statistics on judicial judgments in the matter of Law No. 20,609, informing the number of cases entered for discrimination, disaggregated by sex, sexual orientation, gender identity, age, ethnic-racial origin, and disability of affected people, from 2015 to date. In the same way, it is recommended to ask the State if it has been considered promoting measures to typify the so-called hate crimes and speeches and updated statistics on the crimes that have been perpetrated due to the sexual orientation and / or gender identity of the victims.

16. In 2017, the NHRI found a series of discrimination situations to which trans and intersex children and adolescents are exposed in school and educational contexts. The main problem was related to the lack of adaptations aimed at respecting gender identity and expression, including social name, and the ambiguity of intersex medical care protocols.<sup>26</sup> The NHRI requests the Committee to consult the State on the adoption of measures so that gender identity and expression is respected both in the educational and health fields, and on the establishment of clear protocols that avoid unnecessary surgeries of sexual assignment in intersex newborns.
17. With Law No. 21,120, published in the Official Gazette on December 10, 2018, the right to gender identity and rectification of the name and sex of the registry was established within domestic legislation<sup>27</sup>. According to article 17, letter a), of Law 21,120, within the background that must be accompanied by the process, there is a “psychological or psychosocial report that shows that children over fourteen and under eighteen and their family environment have received professional accompaniment for at least one year prior to the request”. According to article 23 of the aforementioned law, the purpose of the accompaniment program “will be the granting of tools that allow their comprehensive development, according to their gender identity”. These programs follow a regulation of the Ministry of Social Development, signed together with the Ministry of Health; which should have been issued within 6 months from the publication of the Law in the Official Gazette, a situation that has not been fulfilled. In accordance with the foregoing, the NHRI asks the Committee to consider the need to consult the State on the progress made in the regulations related to the accompaniment programs and what are the

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<sup>26</sup> NHRI. (2017). Annual Report on the situation of Human Rights in Chile 2017. Reality and challenge: trans and intersex children and adolescents in health and educational contexts, pp. 65-ff.

<sup>27</sup> According to article 9 of this law, any person over 18 years of age may, for up to two times, obtain the rectification of their birth certificate with the purpose of matching their gender identity. In the event that the person who requires recognition of their gender identity is over 14 and under 18, the request will be known by the competent Family Court.



safeguards that will be taken to prevent providers from offering reconversion or reparative therapies under this mode.

### **Equality between men and women**

18. In the last three years, the State, through the Ministry of Education and the Ministry of Women and Gender Equality, has developed awareness campaigns to modify gender stereotypes, such as “Breaking the stereotypes” (2016), “Give Equality” (2017), and, “Sexism Free Education” (2019). However, according to the latest national human rights survey conducted by the NHRI, 23.7% of the population has a high level of permissive attitudes towards gender violence, which is based on these stereotypes. The NHRI suggests that the Committee ask the State about the scope and coverage of the communication campaigns implemented from 2015 to date, the results of its evaluation, as well as the measures undertaken to carry out permanent campaigns that address the gender stereotypes that affect women in the enjoyment of their economic, social and cultural rights.
19. In 2009, Law No. 20,348 on the right to equal pay was published. However, the impact of such regulations has been low while wage gaps remain relatively stable<sup>28</sup>. During 2018, two legislative initiatives were introduced to ensure equal pay between men and women through amendment to the Constitution (Bulletin No. 12.005-07) and through amendments to the Labor Code (Bulletin No. 11.629-13). The NHRI urges the Committee to consult on the status of the legislative processing of these initiatives, as well as the impact that the implementation of Law No. 20,348 has had on the effective reduction of the wage gap between men and women. Similarly, the NHRI suggests that the Committee consult the State on the implementation of awareness campaigns to eliminate gender stereotypes in the workplace, and the impact they have had on the enjoyment of economic, social and cultural rights.

### **Administration of marriage property**

20. In 2011, the legal initiative, Bulletin 7567-07, which modifies the Civil Code and other laws, regulating the property regime of the marital partnership was presented. Its objective is to establish full equality between the spouses in regard to the administration of social assets, as well as to recognize, effectively, the full capacity of women to manage their assets. The NHRI requests the Committee to consult the State on the priority it will give to the advancement of this bill in its legislative agenda.

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<sup>28</sup> Data from the National Statistics Institute show that, during 2016, the average income gap was 31.7% and 25% in the median income, at the expense of women. INDH. (2017). Annual Report on the situation of Human Rights in Chile 2017. Culture of arbitrary discrimination against women, p.42.

## Domestic violence

21. In 2017, the Executive introduced in Congress the bill on the right of women to a life free of violence (Bulletin No. 11077-07), which constitutes an important advance for the future implementation of an articulated public policy that considers the violence that women face in the public and private sphere, and that contains the dimensions of prevention, sanction and eradication of violence against women<sup>29</sup>. The NHRI requests the Committee to consult the State on the urgency that will be granted for the processing of this bill.
22. At the beginning of the year 2019, Law No. 21,153 was passed that modifies the Criminal Code to typify street sexual harassment, regulating criminal types that today do not cover abusive sexual connotation against women over 14 years of age that occur in public spaces.<sup>30</sup> The NHRI urges to request figures regarding the implementation of the aforementioned law, as well as the measures that will be carried out to prevent and punish sexual harassment in educational settings through a specific regulation.
23. The National Human Rights Plan 2018-2021 includes training initiatives for police officials and other justice operators to assist women victims of violence. The NHRI suggests to the Committee to inquire about the status of implementation of these trainings, the number of officials that have been trained with respect to the total to be trained and the impact that this has had on the functioning of the mechanisms for reporting and attending to victims. Likewise, it is suggested to consult on the number of personnel of the Judicial Power and of the Public Ministry, disaggregated by region, which specializes in domestic violence. Finally, the Committee is requested to consult the current status of the National Human Rights Plan, including the progress in the implementation of the actions committed.

## Unemployment

24. According to official figures, the national unemployment <sup>31</sup> rate was 7% in the quarter from March to May 2018 and 7.1% in the same period of 2019. According

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<sup>29</sup> According to data from the Ministry of Women and Gender Equity, from January 1 to August 13, 2019, 28 completed femicides and 67 frustrated femicides have been recorded in Chile. It is worth mentioning that Chilean legislation (Law 20,480), recognizes as femicide the murder of a woman carried out by who is or has been her husband or cohabitant; for this reason, the violence exerted in dating relationships is not recorded in official statistics.

<sup>30</sup> The regulations define sexual harassment as those acts of sexual significance capable of causing an objectively intimidating, hostile or humiliating situation, and that do not constitute a fault or crime to which a more serious penalty is imposed, occurring in public places or with free public access, and without the consent of the victim.

<sup>31</sup> The measurement of the unemployment rate corresponds to the percentage of the unemployed population (unemployed and people who are looking for work for the first time) of 15 years and more with respect to the labor force or economically active population.

to official reports,<sup>32</sup> in 2017 the gender gap in the employment rate reached 21.7 percentage points to the detriment of women. Similarly, there is a greater proportion of women informally employed than men in that situation, a gap of 3.3 percentage points persisting in the last quarter of 2017.<sup>33</sup>

In recent years, laws and public policies have been adopted that could reduce the gaps that affect women in the workplace, such as the possibility of changing the day for female workers / s who also perform family care tasks<sup>34</sup> and the creation of the insurance for the accompaniment of children suffering from certain diseases.<sup>35</sup> However, other initiatives have been subject to delays, such as the universal nursery guarantee.

According to the data presented, the Committee is called on to request information on the legislative and public policy measures that have been implemented to reduce the structural conditions that limit the participation of women in paid work; the impact of the working day adaptability pacts on the incorporation of women into work; figures on the use of insurance for the accompaniment of children suffering from certain diseases by working women.

25. Regarding unemployment in young people, the unemployment rate for the 15-24-year-old segment was 18.2% in the quarter from March to May 2019, 11.2 percentage points higher than the national unemployment average.<sup>36</sup> According to certain studies, in the age segment from 15 to 34 years there has been a significant reduction in salaried jobs and an increase in self-employment, which are characterized by much lower income and poor access to social security.<sup>37</sup>

One of the initiatives driven by the Executive to promote the incorporation of young people to work was to reactivate a legal initiative presented in 2013, through which a labor statute is created for young people studying in higher education (Bulletin No. 8996-13). The project proposes to establish a work contract with a reduced working day, with the possibility of discontinuing it during the day to adapt to class schedules. In addition, under this initiative, the remuneration obtained under this contract will not be considered for the purpose of determining the socio-economic status of the student or his family group in order to access various mechanisms that are intended to finance studies in higher educational institutions or the expenses associated with them. However, this initiative has been resisted by certain sectors, since it is considered to promote the precariousness of work, which could even affect regular

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<sup>32</sup> The National Employment Survey (ENE) and the Supplemental Income Survey (ESI).

<sup>33</sup> Instituto Nacional de Estadísticas, “Women in Chile participate less in the labor market and feel more insecure than men”, August 13, 2018. Available at: <https://bit.ly/2YjU3V1>.

<sup>34</sup> These are the labor adaptability agreements introduced by Law No. 20,940.

<sup>35</sup> Law No. 21.063 that creates insurance for the accompaniment of children suffering from the diseases indicated and modified by the Labor Code for these purposes, published in the Official Gazette on December 30, 2017.

<sup>36</sup> Data obtained from the official statistics of the National Statistics Institute, available at <https://stat.ine.cl>.

<sup>37</sup> Centro Latinoamericano de Políticas Económicas y Sociales de la Pontificia Universidad Católica de Chile. (2017). Labor report: deterioration in employment in the sub-35 segment.

work, together with the absence of supervision for the fulfillment of the mandate and the exclusion of young people who neither study nor work.<sup>38</sup>

According to the information and data indicated, the Committee is recommended to consult the State on legislative measures and public policies to intervene in the structural conditions that limit the participation of young people in work, as well as to encourage young people who neither study nor work to join the workplace.

26. People with disabilities is another group that faces high unemployment rates. The NHRI values the publication of Law No. 21.015 that encourages the inclusion of people with disabilities in the workplace.<sup>39</sup> However, there is concern about the decrease in the offer of work training plans and programs for people with disabilities, for example, the disappearance of the Program Más Capaz (More Capable) for people with disabilities, which sought to provide them with technical qualifications and the necessary work skills to be able to have equal access to the labor market. At present, the National Training and Employment Service (SENCE), through its Labor Training program, offers only two courses for people with disabilities in four communes in the country.<sup>40</sup> According to the aforementioned data, the Committee is urged to request from the State updated figures on the impact on the labor inclusion of persons with disabilities of Law No. 21.015 and information on the actions taken to strengthen the training and formation of this group.

### **Informal sector of the economy**

27. According to official statistics, in the March-April-May 2019 quarter, the informal occupancy rate reached 28.6%. If this figure is disaggregated by sex, in the same period the rate was 27.6% for men and 30% for women. According to the data presented, the Committee is urged to consult the State on the measures, plans, programs and policies adopted to reduce the informal employment rate, particularly of women.

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<sup>38</sup> Senate of the Republic. Despite criticism for possible job insecurity: they support employment status for higher education students. Available at: <https://bit.ly/30WjNUTl>.

<sup>39</sup> In June 2017, Law 21.015 was published that encourages the inclusion of people with disabilities in the world of work. One of the main aspects of this norm is that, in private companies and State Administration Organizations. In both cases that have at least 100 workers or civil servants, at least 1% of annual staffing must correspond to persons with disabilities or assignees of a disability pension. According to the transitory norms of this law, it came into full force on April 1, 2019.

<sup>40</sup> These courses are: basic operations in bakery and kitchen assistant, which are carried out in the communes of San Bernardo, Ñuñoa, Melipilla and Valdivia. Available at: <http://www.sence.gob.cl/personas/cursos/linea-discapacidad>.

## Domestic work conditions

28. It is estimated that around 300,000 women work in this area, including a significant number of immigrants.<sup>41</sup> The approval in 2014 of Law No. 20,786, which modifies the day, rest and composition of the remuneration of private home workers and prohibits the requirement of uniform in public places, constituted an important advance in the respect for the labor rights of domestic workers. However, data available from the quarter March to May 2019, show that the informal occupancy rate of domestic service personnel amounts to 53.8%, maintaining the trend of a greater proportion of domestic workers working without a contract.<sup>42</sup> The lack of a formal contract places migrant domestic workers in a situation of high vulnerability, because in addition to generating a lack of protection in the workplace and social security, an obstacle is generated in the process of immigration regularization. The NHRI asks the committee to consult on the measures implemented to strengthen the inspection carried out by the Labor Inspectorate in compliance with Law No. 20,786, specifically in relation to the deed of contracts, duration of the workday, payment of remuneration and social security contributions, and respect for legal holidays and breaks.

## Equal salary for work of equal value

29. Internal regulations do not recognize the principle of equal pay for work of equal value. Although there are four bills introduced to the Legislative Power on the matter, no initiative has advanced in its processing during the last year.<sup>43</sup> The NHRI suggests that the committee require information on the measures implemented to incorporate this principle into national legislation.

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<sup>41</sup> Although there are no updated statistics, between 2005 and 2014, a total of 130,216 work visas for domestic workers were delivered, figures that allow estimating that at least 1 in 3 people working in this area is foreign. Department of Foreigners and Migration (2016). Migration in Chile 2005 - 2014. Available at: <http://www.extranjeria.gob.cl/media/2016/02/Anuario-Estadístico-Nacional-Migración-en-Chile-2005-2014.pdf>

<sup>42</sup> Casas, L.; Olea, H. (2014). Trabajadoras de casa particular: invisibilizadas y discriminadas. En Informe Anual sobre Derechos Humanos en Chile 2014, Universidad Diego Portales, p. 123.

<sup>43</sup> Bulletins N ° 9322-13 (entered in 2014, without movement until January 2018); No. 7167-13 (entered in 2010, without movement); N ° 9329-13 (entered in 2014, without movement); No. 10576-13 (entered in 2016, without movement).

## Union rights

30. While the unionization rate has steadily increased since 2013, with rates of 20% being recorded<sup>44</sup> from 2017, the NHRI has stated that low unionization in the country is a human rights problem.<sup>45</sup>

On September 8, 2016, Law No. 20,940 that modernizes the labor relations system was published.<sup>46</sup> One aspect of concern about this legal reform is that an opinion of the Constitutional Court declared union ownership unconstitutional in collective bargaining processes contained in the regulations, consequently, unions do not have the exclusive initiative for collective bargaining, which can be carried out by the so-called “negotiating groups”, who can agree on a new type of collective instrument: “the negotiating group agreement”.<sup>47</sup> The NHRI suggests consulting for the actions implemented to respect and protect freedom of association and to give unions effective negotiation tools.

The State does not recognize the principle of unionization and collective bargaining in the public sector<sup>48</sup> and strike is still banned in general for public officials of the central administration and municipalities<sup>49</sup>, and not limited in exceptional cases as

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<sup>44</sup> It includes private sector workers: business, establishment, inter-company and transitory unions. Excludes unions of independent workers. Superior Labor Council (2018). Monitoring and evaluation report on the implementation and application of Law No. 20,940 that Modernizes the Labor Relations System.

<sup>45</sup> The NHRI stated that “[...] experience shows that the most effective in terms of preventing and resolving conflicts and discrepancies, as well as guaranteeing labor rights, is to promote trade unions by providing them with strong negotiation tools, making them the first inspector of respect to labor rights.” NHRI. (2011). Annual Report Situation of Human Rights in Chile 2011, p. 147.

<sup>46</sup> Some of the aspects introduced by this reform are: the inclusion of gender norms in favor of women in the regulation of trade unions and collective bargaining, the right to information is regulated and adaptability pacts are included, among other matters to be highlighted. In addition, a new institutional framework is incorporated: the Superior Labor Council and the Fund for Trade Union Training and Collaborative Labor Relations. It is also necessary to highlight that outside the scope of freedom of association a relevant modification of the discrimination criteria established in article 2 of the Labor Code is made.

<sup>47</sup> Arellano Ortiz, Pablo. (2017). Reforma Laboral ley N° 20.940 bajo el prisma de la teoría de las relaciones laborales. Revista de Derecho de la Pontificia Universidad Católica de Chile, N° 49, 2017. Available at: <https://bit.ly/2Olu6AA>.

<sup>48</sup> “In Chile, the labor regime of those working in the central public administration is regulated mainly in the Administrative Statute (EA or Statute) established in Law 18.834, which sets forth the prohibition of “organizing or belonging to unions in the field of Administration of the State; direct, promote or participate in strikes, interruption or stoppage of activities, total or partial, in the improper retention of persons or property, and in other acts that disrupt the normal functioning of the organs of the State Administration” (art. 84) . In response to this prohibition, Law 19.296 was established, setting rules on associations of state administration officials, which in its Art. 1 recognizes for “workers of the State Administration, including municipalities and the National Congress, the right to establish, without prior authorization, the associations of officials they deem appropriate, with the sole condition of being subject to the law and its statutes”. This Law also establishes that the associations of civil servants can only be composed of plant personnel and contract employees, excluding hired officials (art. 13).” NHRI. (2012). Annual Report Situation of Human Rights in Chile 2012, p. 222.

<sup>49</sup> “Art. 19 N° 16 of the Political Constitution of the Republic establishes in its sixth subsection that “the officials of the State or of the municipalities may not go on strike”. The NHRI has stated that, “regardless of whether a person works in the public or private sector, their labor rights must be guaranteed by the State. This also

established in article 8 of the Covenant. The NHRI calls on the committee to consult on the measures implemented to regulate the trade union rights of public officials on equal terms, without losing sight of the essential service requirements in the case of some critical functions.

## Social security system

31. The average amount of old-age pensions paid in the country is insufficient to maintain decent living conditions.<sup>50</sup> An aspect of inequality of the pension system is the formula on which retirement is calculated, since the regulations governing the pension system establish the use of mortality tables constructed based on the life expectancy at the age of retirement, using as sole criterion the sex of the affiliated person.<sup>51</sup> This results in a significant gap in old-age pensions,<sup>52</sup> the average pensions of women being about 40% lower than that of men.<sup>53</sup> Another area of inequality is that referring to the amounts of pensions received by the civilian population affiliated with private entities - Pension Fund Administrators (AFP) -, based on an individual capitalization system, and those received by people affiliated with the pension funds of the Armed Forces, a system that is based on a distribution formula.<sup>54</sup> As a result, the average pension in the three branches of the Armed Forces, as of 2016, tripled the average of old-age pensions of the civilian

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implies safeguarding the labor rights of public workers under conditions equivalent to those of private sector workers, so that the regulation for the public sector does not generate arbitrary differences.” NHRI. (2012). Annual Report Situation of Human Rights in Chile 2012, pp. 220-221.

<sup>50</sup> As of May 2019, the average of old-age pensions (self-financed plus solidarity pension contribution) was 8.28 tax-indexed units (UF) and the median of 5.46 UF (equivalent to \$ 231,000 and \$ 152,000 respectively), amounts lower than minimum salary amounting to \$ 301,000. Data obtained from the official statistics of the Pensions Superintendence, available at <https://bit.ly/32THLln>. On its part, the latest report of the Undersecretariat of Social Evaluation of the Ministry of Social Development indicates that, as of April 2019, the poverty line per person is \$ 163,943.

<sup>51</sup> Although there are several factors that alter the life expectancy between one person and another (place of residence, occupation, socioeconomic level), the tables used by the entities that administer the pension funds, approved by the Pension Superintendence, omit these differences.

<sup>52</sup> It is worth mentioning that the pension gap is also explained by the fact that women have fewer pension contributions due to various factors: their dedication to unpaid domestic and care work, precarious jobs (without an employment contract), lower wages and interrupted work trajectories, given the family responsibilities they must assume.

<sup>53</sup> In the case of women, the average pension is 6.66 UF (\$ 184,000) and the median is 4.93 UF (\$ 137,000); while in the case of men the average is 10.45 UF (\$ 292,000) and the median is 6.31 UF (\$ 176,000). This gives a 37% difference, a gap that has been steadily climbing every year, and that means that, although both have incomes below the minimum wage, women are much more adversely affected. 59% of them have pensions below the poverty line, while in men it is 26%. Data obtained from the official statistics of the Pension Superintendence, available at <https://bit.ly/32THLln>.

<sup>54</sup> It is a distribution mechanism where pensions are financed through the contributions of active and passive personnel, on the one hand, and the State on the other.

population.<sup>55</sup> It is suggested to request information on the measures contemplated to increase the average amount of old-age pensions, eliminate discrimination based on the sex of contributors of the pension system and reduce the gap in retirement pensions between the civilian population and the Armed Forces.

32. On November 6, 2018, the Executive sent a bill to improve pensions to the National Congress (Bulletin No. 12212-13). However, this project has been resisted by various political and social sectors because they consider that it does not introduce substantive transformations to grant better pensions. In accordance with the above, the Committee is urged to request information on the impact that the pension reform will have on increasing the amount of current pensions and the efforts made to ensure decent pensions that, at least, reach the amount set for the minimum wage.

### **Violence against children and adolescents (NNA)**

33. Regarding children and adolescents in state protection programs, in 2017 the NHRI carried out an Observation Mission in 171 protection centers of the National Service for Minors (SENAME). From 405 children surveyed, it turned out that 85% of girls and 83% of boys said they received punishment from the staff of these centers.<sup>56</sup> The Committee is requested to consult the measures implemented to prevent, punish and, in general, eradicate all forms of violence against children under the protection of the State, directly or through its collaborating agencies, as well as the current status of investigations against the persons responsible and the sanctions applied
34. The 2018 Report on Police Function of the NHRI reports the habitual use of irritating chemical weapons by agents of Special Forces of Carabineros of Chile within the educational establishments, during school hours in which students were inside the classrooms and other dependencies of schools and high schools. It is suggested that the State consult the measures adopted to avoid the disproportionate use of force and the use of chemical weapons within educational establishments and the investigations initiated by the Public Ministry of allegations of illegal, arbitrary and / or disproportionate use of strength by police.<sup>57</sup> It would also be necessary to require information on studies made regarding the potential impact that the use of chemical weapons generates on the health of people.
35. The NHRI has expressed concern about the violation of rights that have been caused, especially to Mapuche children, in the context of the intercultural conflict in the

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<sup>55</sup> The NHRI has indicated that “although there are cases such as that of the Armed Forces, of Order and Security and Gendarmerie, in respect of which it is possible to establish special conditions depending on the nature of the function developed, this must be done by safeguarding the referred principle of equal treatment”. NHRI. (2016). Annual Report Situation of Human Rights in Chile 2016, p. 219.

<sup>56</sup> INDH (2018). SENAME Observation Mission. Available at: <https://bit.ly/2n9WLaH>.

<sup>57</sup> The report is in the approval stage, and will be published soon.



Araucanía region<sup>58</sup>. In compliance with its legal mandate, the NHRI has filed legal actions, several of which have been accepted, confirming that fundamental rights have been effectively violated, as a result of excessive action by State agents.<sup>59</sup> The Committee is urged to request information on the measures implemented to prevent, investigate, punish and repair all types of violence against indigenous children and adolescents.

36. In 2015, the bill that created the Child Rights Guarantee System (Bulletin No. 10315-18) was introduced to the Legislative Power, and in 2018 the bill that created the Protection Service for Children Childhood and Adolescence and modifies legal norms that it indicates, both in the second constitutional process in the Senate. The committee is called to consult about the urgency that will be granted for the processing of both bills.

### Poverty and inequality

37. According to figures reported by the Ministry of Social Development, for 2017, poverty in Chile amounted to 8.6%<sup>60</sup> and affected women (9%) more than men (8.2%). On the other hand, there were 10,610 people living in the street,<sup>61</sup> a group that as of June 2018 amounted to 12,860 people.<sup>62</sup>

In the NHRI's opinion, the problem noted in 2015 persists, regarding “[...] that the State's actions in favor of people living in poverty [take place] mainly through social benefits, bonuses and conditional transfers, [which] more that overcoming poverty

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<sup>58</sup> It has to be recalled that in 2014 the Temuco Court of Appeals received an appeal for protection filed by the NHRI in favor of Mapuche children between 4 and 10 years old, who were affected by tear gas used by uniformed police personnel near the Temucuicui School, where they studied. NHRI, “After the appeal for protection of the NHRI, the case was resolved in favor of Mapuche children gassed by police,” November 12, 2014. Available at: <https://bit.ly/2KDTAoE>

<sup>59</sup> During 2019, the NHRI filed an appeal for protection on account of the disproportionate use of tear gas and pellets, against unarmed people who were being evicted from a farm they claimed was theirs, among which were children and adolescents (Appeals Court of Temuco, Protection Case 75-019). Similarly, the Supreme Court received an appeal for protection filed by the Institute for the disproportionate use of force used by Carabineros de Chile to control a demonstration that took place in Temuco, an instance in which serious situations were detected such as the use of shotguns with projectiles pointing directly to the bodies of the people who were demonstrating, including a 17-year-old from the Mapuche community of Temucuicui who was injured on his back (Temuco Court of Appeals, Protection Case 34-2019). In 2018, the NHRI filed a complaint for the crimes of torture and frustrated homicide against the 15-year-old Mapuche teenager M.A.P.C. who accompanied Camilo Catrillanca at the time of his death and who observed the entire event.

<sup>60</sup> On the total, non-extreme poverty corresponds to 6.3% (1,115,445 people) and extreme poverty to 2.3% (412,839 people). Ministry of Social Development (2018). Summary of CASEN 2017 results.

<sup>61</sup> Of these, 85% are men (9,015 people) and 15% are women (1,595 people). Ministry of Social Development. Registro Social Calle has identified 10,610 people in street situations as of August 2017. Available at: <https://bit.ly/2YogioH7>.

<sup>62</sup> Ministry of Social Development. (2018). Report on Social Development 2018. Available at: <https://bit.ly/2rvNBli>.

or reaching an adequate standard of living tend to alleviate or temporarily improve the circumstances in which [such people] live”.<sup>63</sup>

According to the data of the Socioeconomic Characterization Survey (CASEN) 2017, the incidence of poverty and extreme poverty is significantly higher in the indigenous population, reaching 10.5% and 4%, respectively, while in the non-indigenous population, the incidence of poverty is 5.8% and extreme poverty reaches 2.1%.

According to these data, the Committee is urged to request the State information on the progress in the adoption of a comprehensive policy of overcoming poverty that incorporates a human rights approach; the actions that have been taken to combat the highest poverty rates that affect women and indigenous communities; and the actions that have been taken to improve the living conditions of people in street situations.

### **Right to food**

38. 34.4% of the Chilean population over 15 years of age is obese, while overweight in children under 5 years old is 9.3%. The prevalence of undernourishment, that is, population that does not meet the minimum daily energy requirements, reaches 3.3%, equivalent to 700 thousand people.<sup>64</sup> The Institute recommends requesting information on the policies implemented to guarantee the right to adequate food, including the impact of such measures.

### **Right to adequate housing**

39. According to official figures, by 2018 there were a total of 822 camps or informal settlements in the country, in which 46,423 families lived, representing a 25% increase in the number of camps and 70% in the number of families inhabiting them, with respect to 2011.<sup>65</sup> In addition to lacking basic services, the possibility of an eviction is always latent in these settlements, without internal regulations guaranteeing alternative accommodation or relocation of evicted persons. In 2017, the NHRI observed eviction procedures that involved serious violations of rights, including families that were left without relocation because they were not registered to qualify for a housing subsidy. The use of force by Carabineros did not respect the principles of necessity and proportionality, compromising the physical integrity of residents, including girls, boys and the elderly.<sup>66</sup>

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<sup>63</sup> NHRI. (2015). Annual Report on the situation of human rights in Chile 2015, Poverty and Human Rights, pp. 70-71.

<sup>64</sup> FAO, FIDA, UNICEF, PMA and OMS. (2018). The state of food security and nutrition in the world. Building climate resilience for food security and nutrition.

<sup>65</sup> In 2011 there were 657 camps, in which 27,387 families lived. Ministry of Housing and City Planning. (2018). National Cadaster of Camps 2018.

<sup>66</sup> NHRI. (2017). Human Rights Program, Police Function and Public Order Report 2016.

On the other hand, in the country, 6.5% of households live in overcrowded conditions.<sup>6768</sup> In the case of migrants, overcrowding amounts to 20.6% of households (corresponding to 377,572 households), as they face severe discrimination in access to housing (collection of abusive leases, difficulties in accessing programs of subsidy, denial of access to housing due to their country of origin, etc.). Given the difficulties of access, a significant proportion live in precarious conditions of habitability, either in camps or in tenements.<sup>69</sup>

In accordance with the foregoing, the NHRI suggests that the Committee consult the State regarding the measures implemented to reduce households that live in informal settlements or in overcrowded conditions; adapt the procedures to the provisions of General Comment No. 7 of the DESC Committee on housing and forced evictions; and guarantee access to adequate housing for migrants.

### Right to drinking water and sanitation

40. In 2011 a bill was introduced to amend the Water Code (Bulletin N° 7543-12), which modifies the Chilean water régime, already described by the NHRI in its 2013 annual report. The legislative initiative was positively assessed by the NHRI, as “[...] its approval would allow the population, in particular rural communities and indigenous peoples, greater protection of the right to access water [...]”.<sup>70</sup>

Regarding drinking water and sanitation services, by 2017, 6.2% of total households, corresponding to 339,359 homes, did not have access to basic sanitary services.<sup>71</sup>

On the other hand, in July 2019, the city of Osorno spent more than 10 days without water, as a result of an oil spill in the production line, demonstrating the need to update the regulations and strengthen the supervisory role of the Superintendence of Sanitary Services so that the plants operate in appropriate conditions minimizing this type of incidents, given their impact on the health of the population.<sup>72</sup>

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<sup>67</sup> Ministry of Social Development (2018). Summary of CASEN 2017 results.

<sup>68</sup> The CASEN Survey defines the Overcrowding Index as the “ratio between the number of people residing in the house and the number of bedrooms in it, considering rooms of exclusive use or multiple use.”

<sup>69</sup> The so-called *conventillos* or *cités* (tenements) “are minimum dwellings –in size and quality– grouped in a shared alley, and in general built by the public charity of the late nineteenth and early twentieth centuries. They are characterized by having a poor state of preservation and poor quality of hygienic services. At present they are inhabited by mostly immigrant families who normally live in overcrowded conditions, who experience usually arbitrary and / or insufficiently regulated leasing conditions.” NHRI. (2013). Annual Report on the situation of human rights in Chile 2013, p. 197.

<sup>70</sup> NHRI. (2015). Annual Report on the situation of human rights in Chile 2013, p. 176.

<sup>71</sup> Corresponds to housing where water availability, hygienic service (excreta disposal) or water origin is assessed as deficient. In rural areas, there are a total of 211,700 homes without access to basic health services, while in urban areas the number of homes in this condition amounts to 127,653. Ministry of Social Development (2018). Summary of CASEN 2017 results: housing and environment.

<sup>72</sup> Radio Bio, “Essal: informe revela que superintendencia conocía en 2018 graves problemas en las plantas de Osorno” (Essal: report reveals that Superintendence was aware in 2018 of serious problems in Osorno plants), July 24, 2019. Available at: <https://bit.ly/2Ypj5BZ>

On the other hand, the NHRI through its observation missions has found that there are localities such as Petorca<sup>73</sup> and Tierra Amarilla<sup>74</sup> where water is insufficient to meet minimum requirements for the maintenance of adequate living standards and the family economy, water scarcity due to the persistent drought, the overexploitation of water by companies, the insufficiency of the current regulatory framework, and the inefficiency of the actions taken by the authorities.

The NHRI suggests requesting information on the progress in the legislative processing of the bill that reforms the water code, detailing how the initiative will guarantee the right to access water for the entire population without discrimination, in particular for special protection groups such as indigenous peoples and rural communities, and how it will conform to international standards in the field

Likewise, the Institute recommends consulting for the measures implemented to guarantee the right to water and sanitation services, including their accessibility, affordability, quality and adaptability, as well as adequate mechanisms for regulating and supervising the provision of the service.

## Right to health

41. Based on the development of human rights indicators regarding the right to health in Chile, the NHRI has indicated that there are four main deficits in the field: “weak definition of the right to health at the constitutional level; omission of social determinants of health in public policy; inequalities and inequities in health, lack of quality of care and resolving capacity in public services; deficits in the field of sexual and reproductive health”.<sup>75</sup> Regarding the inequalities in coverage and opportunity for attention, it has been found that this varies in different population groups according to the region, economic income, sex, ethnicity, among other factors.<sup>7677</sup>
42. The 2016 and 2018 Annual Reports of the NHRI conclude that the right to access to health is not being guaranteed in a timely and effective manner by the State of Chile. The lack of medical specialists and infrastructure in the public system<sup>78</sup> determines

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<sup>73</sup> NHRI. (2018). Petorca Province Observation Mission Report. Available at: <https://bit.ly/2BkgHzO>.

<sup>74</sup> NHRI. (2018). Copiapó and Tierra Amarilla Observation Mission Report. Available at: <https://bit.ly/2O6Mcmb>.

<sup>75</sup> NHRI. (2016). Annual Report on the situation of human rights in Chile 2016, p. 175.

<sup>76</sup> In its 2015 annual report, the NHRI detected discrimination and harassment practices towards people in prostitution in public health centers, who receive insults, and in the case of trans women, are not called by their social name, which would prevent their access to health centers.

<sup>77</sup> NHRI. (2016). Annual Report on the situation of human rights in Chile 2016, p. 193.

<sup>78</sup> “The country has significant deficits in health professionals (medical specialists and nurses) and infrastructure deficiencies. These deficits are particularly relevant in the most remote regions and in small towns in our country. On a national level there are 36 thousand doctors today, which means that in some locations in the country there is 1 doctor for every 500 inhabitants. At the extremes of the national territory, this figure is 1 doctor per 850 inhabitants. “According to the Ministry of Health, to adequately care for patients, 3,795 medical specialists and subspecialists are missing. 2016, p 181. On the other hand, according to the World Health Organization (WHO, 2014), Chile is below the world average of 2.7 beds per 1,000 inhabitants. In fact, the country has a rate of 2.18 beds per thousand inhabitants. Thus, the number of public beds available

that by 2017 there were 1,661,826 people waiting for Specialty Consultations and 278,061 waiting for Surgical Interventions.<sup>79</sup> In 2016, 15,625 people died while waiting for non-GES care, while 993 people died waiting for a GES benefit.<sup>80</sup>

The NHRI recommends consulting the State on the adoption of measures to progressively achieve the full effectiveness of the right to health, guaranteeing timely and effective access to health benefits, without discrimination of any kind. Similarly, it is suggested to require information on the resources allocated to the public health system from 2015 to date.

43. Regarding intercultural health, in 2014 a participatory process was initiated with indigenous peoples to develop a regulatory decree for article 7 of Law 20,584 regarding the rights and duties of health patients, so that care is carried out taking into account cultural appurtenance and respecting the traditions of indigenous peoples. However, the commitment to finalize the regulation in 2017 has not been fulfilled<sup>81</sup>, and its elaboration process is not yet completed. For this reason, it is requested to consult the State on the estimated date for the publication of the regulation

## **Sexual and reproductive health**

44. In 2017, Law No. 21.030 was approved, which regulates the decriminalization of voluntary termination of pregnancy in three cases: risk of life of women, fetal infeasibility incompatible with life and rape. The implementation of the law, including the right to conscientious objection, has been regulated through a regulation of the Ministry of Health,<sup>82</sup> which allows private agencies with state-funded obstetrics and gynecology benefit agreements to invoke institutional conscientious objection.<sup>83</sup> Additionally, a cadaster carried out by the Ministry of Health reported that one third of all obstetric professionals in the public health system declare themselves conscientious objectors, and in cities like Osorno and

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decreased by 18% between 1999 and 2015, that is, 5,604 beds have been lost.” NHRI (2016). Annual Report on the situation of human rights in Chile 2016, p. 186.

<sup>79</sup> “The information presented by the Health Ministry (MINSAL), refers to the accumulation of situations of delay in GES care from 2014 to May 2017, which accumulates a total of 11,622 delayed guarantees. The most delayed in care are: 1) cataracts, 2) cervical-uterine cancer, 3) vices of refraction, 4) diabetic retinopathy, 5) comprehensive oral health of pregnant women, 6) secondary prevention IRCT, 7) preventive cholecystectomy, 8) orthosis, 9) breast cancer, 10) colorectal cancer, 11) prostate hyperplasia, 12) pacemaker, 13) gastric cancer, 14) chronic kidney disease in stages 4 and 5”. NHRI (2018). Annual Report on the situation of human rights in Chile 2018, p. 214.

<sup>80</sup> The Explicit Health Guarantees (GES) constitute a set of benefits guaranteed by law for people affiliated to FONASA and ISAPRES, currently the pathologies being guaranteed are 80.

<sup>81</sup> Ministry of Health (2017). Plan for Indigenous Peoples. Ministry of Health Health Sector Support Project - World Bank.

<sup>82</sup> Supreme Decree No. 67 of October 23, 2018, of the Ministry of Health, which approves the Regulation to raise conscientious objection in accordance with the provisions of article 119 ter of the Health Code.

<sup>83</sup> Constitutional Court (2019). Judgment declaring the unconstitutionality of the regulation to exercise conscientious objection. Available at: <http://ojs.uc.cl/index.php/bjur/article/view/751/775>

Huasco 100% of the doctors are opposed to performing abortions,<sup>84</sup>, figures that could hinder access to the benefit, mainly in the most remote areas of the country. The NHRI suggests to the Committee to consult the State regarding the measures implemented to deliver the benefits regulated by Law N° 21.030<sup>85</sup>, including the number of establishments available per province to perform the procedure with qualified personnel, the training to health teams of primary health and obstetric specialty, and the actions to develop protocols that allow delivering timely information. In addition, the NHRI urges the Committee to ask the State for adolescents' access to sexual and reproductive education programs.

45. Regarding sexual and reproductive health services, the NHRI is concerned that among the pathologies with the greatest delay in care in the public health system are cervical-uterine cancer (49.9 days of average delay) and breast cancer (52 days of average delay), since malignant tumors are the second cause of death among women and breast and cervical-uterine cancers are those with the highest mortality rate.<sup>86</sup>

The NHRI recommends consulting the State on women's access to sexual and reproductive health benefits; the measures implemented to ensure that these services are accessible throughout the country, particularly in relation to patients with serious and / or urgent diseases.

46. Official figures show that the number of new HIV-AIDS patients confirmed between 2010 and 2018 increased by 159.4%.<sup>87</sup> Regarding the deaths associated with the virus, in the case of Chile it is 2.9 per 100 thousand inhabitants, while the world average is 1.2 patients per 100 thousand inhabitants. Both the transmission and death figures related to HIV-AIDS are explained by the lack of timely diagnosis and the lack of public prevention policies, which include sex education programs and permanent communication campaigns. The Committee is requested to consult the State on the measures implemented to generate effective prevention policies for HIV / AIDS and promote the diagnosis and timely treatment of the disease.

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<sup>84</sup> Radio Cooperativa, "Aborto: Todos los ginecólogos de la red pública de Osorno son objetores" (Abortion: All gynecologists in the Osorno public network are objectors), April 13, 2018. Available at: <https://bit.ly/314qlRz>

<sup>85</sup> Transitory Article of Law No. 21.030 establishes that "the benefits regulated in this law will be required from the issuance of the decree referred to in the thirteenth paragraph of article 119 of the Health Code, which must take place within a period of ninety days from publication". The regulation referred to was published in February 2018.

<sup>86</sup> NHRI (2018). Annual Report on the situation of Human Rights in Chile. Solution to waiting lists in the public health system: a broken promise. p. 201-228.

<sup>87</sup> The highest prevalence of HIV-AIDS occurs among people aged 20 to 29; 99% being the sexual route the form of transmission. Arica and Parinacota, Tarapacá and the Metropolitan Region have the highest rates of people carrying the virus. Data presented by the Ministry of Health to the Health Commission of the Chamber of Deputies, in session of September 3, 2018.

## Right to education

47. In 2018, a law called “Safe Classroom” (Law No. 21128) was passed, which grants the directors of educational establishments faculties to immediately suspend the students who incur in certain acts of violence, evaluating within a period of 10 days if it is appropriate to apply the penalty of expulsion or cancellation of registration. The NHRI expressed concern because there are already adequate mechanisms in the legislation to deal with these situations while respecting due process<sup>88</sup>. During the first semester of 2019 this law was applied to almost a hundred students, resulting in about 30 of them expelled. In some establishments, violence has intensified precisely because of the resistance of student groups against “Safe Classroom”. The lack of psychological support to the expelled students has been denounced, and cases in which they have not been relocated to another establishment. The Committee is requested to consult the State on the fundamentals of the “Safe Classroom” Law and the manner in which due process is protected in its application, in addition to updated figures on the results of its implementation, including figures of students sanctioned or expelled, and their relocation to guarantee their right to education.
48. Law N° 20.845 of school inclusion, published in 2015, prohibited both the collection of fees to parents in state-subsidized establishments, as well as the selection of students, generating a randomized system of admission aimed at mitigating the socioeconomic and academic segregation of the school system. In March 2019, the Executive sent to the Legislative Power two bills that modify the school admission mechanism and compose the “Fair Admission” system.<sup>89</sup> The NHRI suggests that the Committee consult the State about the progress in the implementation of Law No. 20,845 and the impact it has had on the reduction of socioeconomic and academic segregation in the public school system, and about the measures implemented to safeguard the right of the students not to be discriminated against in the process of school admission. Additionally, it is suggested to consult about the process of implementing free school education established in Law No. 20.845 and, in particular, the number of establishments that joined the free system.
49. In 2017, Law No. 21.040, which creates the public education system, was approved. The regulations provide that educational establishments cease to depend on

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<sup>88</sup> During the legislative process, the NHRI stated that the Inclusion Law had already established a penalty for cases of indiscipline that jeopardize the integrity of members of the educational community, allowing the expulsion or cancellation of enrollment during the school year. The project did not grant a reasonable period of time of defense against the accusations, and the sanctions restricted the exercise of their right to education.

<sup>89</sup> The first project (Bulletin N ° 12488-04) establishes a system of selection by academic merit for 100% of vacancies in educational establishments of high academic demand, where at least 30% of the selected students are priority and 20% are preferred, which was rejected by the Chamber of Deputies in July. The second project (Bulletin No. 12.486-04) gives priority in the admission to students under alternative care of the National Service of Minors and those with permanent special educational needs, while modifying the rules of school admission allowing establishments to use admission mechanisms for up to 30% of their vacancies according to criteria linked to their educational projects through interviews with families.

municipalities to gradually be administered by the Local Public Education Services, functional and territorially decentralized public bodies, with technical specialization and territorial relevance in charge of the provision of the educational public service. Despite the changes introduced by the law, many public schools still lack basic infrastructure to facilitate the learning process, with precarious conditions that include temperatures in classrooms below 12 ° Celsius,<sup>90</sup> mouse pests,<sup>92</sup> wet floors, leaking roofs, broken windows, etc. The NHRI suggests consulting the State for the human and financial resources that are being used to implement these Local Services, the type of support they are receiving from the Ministry of Education and the results of its implementation in the regions where they have already begun to operate. Similarly, information is called for regarding the number of educational establishments with poor infrastructure, disaggregated by region, including the measures implemented to provide public institutions with the basic conditions that promote learning.

50. The quality of public education remains an aspect of concern of the Chilean education system. According to various studies, a significant group of the Chilean population does not reach the minimum levels of knowledge to perform and integrate well in today's society,<sup>93</sup> with a comparatively poor performance in science and mathematics worldwide,<sup>94</sup> being one of the countries where the socioeconomic context of students has more influence on their performance<sup>95</sup>. The NHRI calls for consultation on the measures implemented to improve the quality of education in the public system, particularly in the lower income strata, including the incorporation of properly trained teaching staff.
51. In May 2019, the National Education Council approved the Curriculum Bases for third and fourth year of secondary education. The reform includes, among other modifications, that the history course is transferred to the "Common Elective Plan", while the branches of Philosophy and Citizenship Education become obligatory in all types of establishments. It is worth mentioning that, in the educational contents of basic and secondary education, a human rights education program that includes the history of massive and systematic violations of human rights in the period 1973-1990

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<sup>90</sup> Chilevisión Noticias, "Se suman los colegios que protestan por falta de calefacción en salas" (Schools that protest lack of heating in classrooms increase), June 14, 2018. Available at: <https://bit.ly/2Ymy1ks>

<sup>91</sup> Minimum temperature established in Decree 548 of the Ministry of Education.

<sup>92</sup> Radio Cooperativa, "Ratones, suciedad y destrucción: Denuncian "condiciones indignas" en el Instituto Nacional" (Mice, dirt and destruction: Denounce "disgraceful conditions" at the Instituto Nacional). Available at: <https://bit.ly/2Z5xEYu>

<sup>93</sup> Eyzaguirre, B. and Le Foulon. C. (2001). La calidad de la educación chilena en cifras. Centro de Estudios Públicos.

<sup>94</sup> The TIMSS test (Trends in the International Study of Mathematics and Science) applied in the country in 2015, showed that 59% of students in the eighth grade had a mathematical knowledge below the minimum that allows to describe the test, while 26% obtained a "low" level of achievement because they had only some basic mathematical knowledge. In science, 44% showed less than the minimum scientific knowledge that allows describing the TIMSS test, and 32% had some basic knowledge of biological and physical sciences. Results available at: <http://ww2.educarchile.cl/Portal.Base/Web/verContenido.aspx?ID=217419>

<sup>95</sup> OECD. (2017). Education in Chile, Reviews of National Policies for Education. Available at: <https://doi.org/10.1787/9789264284425-en>



remains absent. The NHRI suggests consulting the scope of the reform of the curricular bases and the inclusion of content on human rights in general, and on the violations of human rights that occurred in the period 1973-1990, in the educational programs

### **Cultural rights**

52. In 2018, the NHRI made a diagnosis on the actions of patrimonial protection, recovery, financing and management of memory sites related to massive, systematic and widespread violations of human rights that occurred between 1973 and 1990.<sup>96</sup> Based on the background information, it was found that state efforts to respond to the demands of survivors' organizations and relatives of victims have been insufficient and that there has been no active policy to strengthen these spaces. The country lacks a public policy of patrimonial protection for these sites. Given the significant contribution of memory sites to the pillar of non-repetition, carried out through outreach, education and updating of the report on systematic violations of human rights in dictatorship, it is essential that the State take measures to the strengthening, recovery and professionalization of the organizations that manage these sites, in all regions of the country. The NHRI calls for information on the efforts made for the delivery of the main fiscal properties that were used by repressive apparatus of the dictatorship to commit human rights violations between 1973 and 1990, so that these can be enabled as sites of memory, and the measures implemented to guarantee a baseline financing to all the memory sites recovered, in order to give continuity to the pedagogical and cultural activities carried out by the organizations that administer them.
53. Regarding intercultural education, the NHRI values the Indigenous Consultation on the proposal of Curricular Bases initiated in 2018, which resulted in the creation of the subject of Language and Culture of Indigenous Peoples.<sup>97</sup> However, there is concern about the lack of a regulatory framework for linguistic rights, as well as the weakness of policies for the protection of indigenous cultural heritage, especially of intangible cultural heritage and traditional knowledge. The NHRI recommends consulting on the progress of legislative initiatives on linguistic rights that are in Congress and the measures implemented for the protection of the material and

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<sup>96</sup> NHRI (2018). Annual Report on the situation of Human Rights. Memory sites and their contribution to non-repetition, pp. 91-116.

<sup>97</sup> The measure to be consulted was the proposal of Curricular Bases from 1st to 6th year of primary education 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 learning of the language and culture of these peoples in educational establishments in the country, considering all the peoples recognized by the Indigenous Law: Aymara, Quechua, Licanantai, Colla, Diaguita, Rapa Nui, Mapuche, Kawésqar and Yagan. 51. The consultation began in July 2018, and its development was at the regional level until Stage 4, Regional Dialogue, which ended in January 2019.

intangible cultural heritage of indigenous peoples, including their traditional knowledge.

### **Other recommendations**

54. The Optional Protocol of CEDAW has not yet been ratified by the Chilean State, whose bill (Bulletin No. 2667-10), has been in Congress since 2001. The debate was reactivated again in January 2019, in which the possibility of reserving some articles of said protocol was raised, to avoid allegations of serious or systematic violations (articles 8 and 9). The NHRI suggests to the Committee to ask the State if it is contemplated to grant urgency to the processing of this bill and if it will effectively declare the reservation of the aforementioned articles.