



**International Convention on
the Elimination of All Forms
of Racial Discrimination**

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Committee on the Elimination of Racial Discrimination

**Combined twenty-second and twenty-third
periodic reports submitted by Chile under article
9 of the Convention, due in 2016^{*}, ^{**}**

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* The present document is being issued without formal editing.
** The annexes may be consulted in the files of the secretariat.



I. Introduction

1. In accordance with article 9 of the International Convention on the Elimination of All Forms of Racial Discrimination and paragraph 28 of the concluding observations on the combined nineteenth to twenty-first periodic reports of Chile, adopted by the Committee on the Elimination of Racial Discrimination in August 2013 (CERD/C/CHL/CO/19-21), the State of Chile hereby submits its combined twenty-second and twenty-third periodic reports, which describe the progress made and the challenges faced with respect to racial discrimination during the period 2012–2016, in the light of the international obligations that were assumed by the State when it ratified the Convention in October 1971.

2. The present report is the fruit of collaboration between the Ministry of Social Development, whose remit covers the vulnerable groups that are of particular concern to the Committee, and the Office of the Undersecretary for Human Rights of the Ministry of Justice and Human Rights, whose overall mandate is to ensure the promotion and protection of human rights.

3. Before submitting the present report, the Government held a meeting with representatives of relevant civil society organizations. The structure of the report and the issues that it covered were presented at the meeting. A dialogue was held in order to inform civil society about the report and, at the same time, allow the Government to consider factors that ought to be discussed in greater depth in the report. Over 150 organizations representing relevant groups were invited to the meeting, which was attended by those that work with migrants and people of African descent. The meeting was held at the offices of the Ministry of Social Development on 25 January 2018. Representatives of the Office of the United Nations High Commissioner for Human Rights (OHCHR) were also present, as they have been at other recent events.

II. Methodology

4. The present report sets out the main advances made during the period under review, followed by specific areas of progress and challenges faced by the State with respect to articles 1 to 7 of the Convention, on the basis that the remainder of the Convention deals with organizational matters that need not be covered by the State report. Each article is dealt with separately, with a focus both on legislative developments and on public policies, programmes and plans that have had an impact on the exercise of human rights. Throughout its analysis, the State identifies areas to be explored further, inasmuch as the reporting process is a dialogue in which the State not only reports on the fulfilment of its obligations under the Convention but also collaborates constructively with the Committee. Although the report is structured in such a way as to cover the main achievements of the period 2012–2016, the information provided is supplemented by details of particularly relevant events that occurred in 2017, in order to enable the Committee to follow up on those events.

5. It is important to note that some issues relate to more than one article; for example, access to justice falls under both article 5.2 and article 6. In its reporting, the State sought to address each issue in relation to the article that was, by its nature, the most appropriate. Under the other relevant articles, it mentioned the issue concerned and indicated where it was discussed in greater detail and depth.

6. The State has decided not to report on its implementation of article 3, on the basis that the article deals with something that is foreign to the national reality. The main focus of the article is apartheid, a situation that is intrinsically characterized by human rights violations; there have been no specific occurrences of such a situation in Chile. The article also refers to racial segregation, and this is addressed as a cross-cutting theme of the report.

III. Progress

A. Institutions

7. The State wishes to draw attention to the progress made in establishing and strengthening a network of public institutions for the promotion and protection of human rights, which has a direct impact on the fulfilment of its international obligations.

8. As regards government institutions, Act No. 20885,¹ which was promulgated on 16 December 2015, provided for the establishment of the Office of the Undersecretary for Human Rights within the Ministry of Justice and Human Rights;² this office is tasked with developing and coordinating the implementation of human rights policies and legislation. The Act also provided for the establishment of the Interministerial Committee on Human Rights, an advisory body that helps the President to determine the main elements of the Government's intersectoral human rights policy. The Undersecretary for Human Rights acts as the executive secretary of the Interministerial Committee.³

9. Bearing in mind the Committee's recommendations regarding the rights of indigenous women, another major achievement to be highlighted is the establishment of the Ministry for Women and Gender Equity,⁴ which is the lead agency responsible for designing, coordinating and evaluating policies, plans and programmes for gender equity and equality, in order to promote equal rights and the elimination of all forms of arbitrary discrimination against women,⁵ including indigenous women. One of its tasks is to mainstream gender equality and equity in public policies, with due regard for cultural relevance and the diversity of women.⁶ The relevant legislation also stipulates that the Ministry should promote measures to support women that recognize and protect multiculturalism and different ethnic identities.⁷

10. In its previous report, the State referred to the publication of Act No. 20405, which provided for the establishment of the National Human Rights Institute, an autonomous body governed by public law with legal personality and its own assets; in this report, it wishes to emphasize that it has significantly increased the Institute's budget allocations in order to allow it to expand its operations to cover the entire country, which is essential for the promotion and protection of human rights.

11. As the Institute indicated in its annual reports for 2016 and 2017, it already has 10 regional offices, in Arica and Parinacota, Tarapacá, Antofagasta, Coquimbo, Valparaíso, Biobío, Araucanía, Los Ríos, Los Lagos and Punta Arenas, and a further two are being set up in Maule and Atacama.⁸ The Institute views this regional growth as one of the main ways of fulfilling the aim of creating a robust, consolidated institution that is recognized by the people and at the service of all residents of Chile whose rights are violated in any way.⁹ It is hoped that the Institute will be operational throughout the country by 2018.¹⁰

12. Supreme Decree No. 21, promulgated in March 2014, established the National Council for Children.¹¹ The role of the Council is to advise the President on determining and developing policies, plans, programmes, measures and other activities to ensure,

¹ Act No. 20885, available at www.leychile.cl/Navegar?idNorma=1086063.

² Annex XXIX, para. 1.

³ Annex XXIX, para. 2.

⁴ Act No. 20820, available at www.leychile.cl/Navegar?idNorma=1075613.

⁵ *Ibid.*, art. 1, second paragraph.

⁶ *Ibid.*, art. 3 (b).

⁷ *Ibid.*, art. 3 (q).

⁸ National Human Rights Institute, *Informe Anual sobre la Situación de los DDHH en Chile 2016*, p.

14. National Human Rights Institute, *Informa Anual sobre la Situación de los DDHH en Chile 2017*, p. 223.

⁹ National Human Rights Institute, *Informe Anual sobre la Situación de los DDHH en Chile 2016*, p. 305.

¹⁰ National Human Rights Institute, *Informa Anual sobre la Situación de los DDHH en Chile 2017*, p. 223.

¹¹ Supreme Decree No. 21, available at www.leychile.cl/Navegar?idNorma=1061265.

promote and protect the rights of children and adolescents at the national, regional and local levels, and to liaise between entities whose work is linked to these issues.¹²

13. In view of the fact that Chile ratified the Convention on the Rights of the Child in 1990 and, in doing so, undertook to fulfil the objectives of that instrument,¹³ the Executive has submitted various bills to address the lack of comprehensive legislation on the rights of the child. For example, in September 2015, a bill on a system of guarantees for children's rights was submitted to the Congress.¹⁴ The bill, which is currently in its second reading in the Senate, is divided into five sections: preliminary issues; principles, rights and guarantees; the system of administrative and judicial protection; institutions; and the National Policy on Childhood and Adolescence, with its corresponding action plan. These sections comprise a total of 49 permanent articles and 3 transitional articles. The bill is based on the comprehensive and integrated National Policy on Childhood and Adolescence, which is designed to ensure the full development of all children and adolescents. Its aim is to establish under national law a system that fully protects the rights of children and adolescents that are enshrined in the Constitution, in the various international treaties ratified by Chile that are in force and in other laws. The bill lays down regulations on non-discrimination, including provisions on the State's obligation to adopt specific measures for the benefit of groups of children and adolescents who face discrimination of any kind. In addition, there are plans to appoint an undersecretary for children, working within the Ministry of Social Development, to coordinate the management of this new system. The bill also provides for the appointment of a children's ombudsman, who would help to promote, protect and defend the rights of children and adolescents.

14. In order to achieve the above, the Executive has put forward two other bills. Firstly, it submitted to the Senate a bill that grants the Ministry of Social Development new responsibilities relating to children by amending Act No. 20530, which governs the role of the Ministry; the bill also provides for the establishment of the Office of the Undersecretary for Children.¹⁵ It contains a single article on the amendments to Act No. 20530 and five transitional articles. It has been approved by the Congress and sent to the Executive for promulgation. The aim of this legislation is to establish a new institution within the framework of a comprehensive system that protects and guarantees the rights of children and adolescents.

15. Secondly, in March 2016, the Executive submitted a bill providing for the establishment of the Office of the Children's Ombudsman.¹⁶ The bill was divided into three sections, on the purpose and functions of the Office, on its organizational structure and on its staff and resources, and comprised 24 articles, 2 of which were transitional. The bill was promulgated by the President on 22 January 2018.¹⁷ The Office of the Children's Ombudsman will be responsible for raising awareness of, promoting and protecting children's rights, taking into account the best interests of the child at all times, in accordance with the objectives of the Convention on the Rights of the Child.¹⁸ It will play an essential part in ensuring the success of the system of guarantees mentioned above.

¹² Supreme Decree No. 21, art. 1.

¹³ The goals of the Convention on the Rights of the Child include the protection of the best interests of the child (art. 3); the implementation of the rights enshrined in the Convention through States parties' legislation (art. 4); and the protection of children and adolescents belonging to minorities or of indigenous origin (art. 30).

¹⁴ *Diario Oficial* No. 10315-18, available at www.camara.cl/pley/pley_detalle.aspx?prmID=10729&prmBoletin=10315-18.

¹⁵ *Diario Oficial* No. 10314-06, available at www.camara.cl/pley/pley_detalle.aspx?prmID=10727&prmBoletin=10314-06.

¹⁶ *Diario Oficial* No. 10584-07, available at www.camara.cl/pley/pley_detalle.aspx?prmID=11005&prmBoletin=10584-07.

¹⁷ See www.ministeriodesarrollosocial.gob.cl/noticias/se-promulga-ley-que-crea-defensoria-de-los-derechos-de-la-ninez.

¹⁸ Annex XXIX, para. 3.

B. Public policies

16. The State has continued to make progress with respect to the protection and promotion of human rights by adopting various public policies. These include the National Human Rights Plan, which is provided for in Act No. 20885.¹⁹ This is a tool that will make it possible to establish a national policy in this area for the first time. The Act outlines what the Plan should include at a minimum and stipulates that the Government should consider developing policies on, *inter alia*, “combating arbitrary discrimination, in accordance with the national and international regulations that are in force.”²⁰

17. The latest recommendations issued to Chile by the treaty-monitoring bodies and by other States during the universal periodic review, as well as the recommendations of the National Human Rights Institute, which is a public but autonomous body, were compiled and examined prior to the drafting of the Plan, which will run for four years. The Plan deals with measures, financial resources, the allocation of responsibilities and mechanisms for follow-up and evaluation of outcomes.

18. The National Human Rights Plan was introduced by the President on 22 December 2017.²¹ It sets forth 638 measures, organized into 16 thematic areas; each measure corresponds to a recommendation issued to Chile by the treaty-monitoring bodies and/or by the National Human Rights Institute. The thematic areas concerning indigenous and tribal peoples and migrants and refugees are the ones that are the most closely linked to the Convention. Together, these two areas encompass 145 government measures that are designed to promote and protect human rights and to reduce the inequalities faced by migrants and members of indigenous and tribal peoples. The measures that fall under these two areas address more than 30 of the recommendations made to Chile by the Committee.

19. Not only has the State developed various public policies that are related to the content of the Convention, but it has also continued its efforts to ensure the realization of human rights. As far as children are concerned, in October 2016, the Executive announced a series of measures for the protection of children and adolescents, incorporating them into an action plan for the protection of children whose rights have been violated.²² The measures set forth in this plan include increasing the resources of the National Service for Minors and allocating additional State resources to improving the infrastructure, living conditions and security of direct care centres.²³ In 2017, a budget of 16.5 billion pesos (Ch\$) was set aside for this plan, in addition to the current resources of the National Service for Minors.²⁴

20. The National Policy on Childhood and Adolescence for 2015–2025, one of the central pillars of the system of guarantees for the rights of children, was published in March 2016.²⁵ The child and adolescent participation process on which the Policy was based was the first of its kind in Chile. It involved 815,266 students from 4,000 schools, representing 92 per cent of the communes in Chile.²⁶

21. One of the main thrusts of this policy is cultural pluralism. In this regard, it states that “in order to lay the foundations for a more inclusive and egalitarian society, this policy promotes cultural pluralism as a cross-cutting theme of the action taken by the various government departments responsible for protecting the rights of children and adolescents,

¹⁹ Annex XXIX, para. 4.

²⁰ Art. 15 of Legislative Decree No. 3, which contains the redrafted, consolidated and systematized text of the Organic Act establishing the Ministry of Justice and Human Rights.

²¹ See <http://ddhh.minjusticia.gob.cl/chile-cuenta-con-su-primer-plan-nacional-de-derechos-humanos/>.

²² See www.minjusticia.gob.cl/ministra-de-justicia-y-derechos-humanos-javiera-blanco-senalo-que-plan-de-accion-para-la-proteccion-de-la-infancia-vulnerada-es-un-desafio-pais/.

²³ See www.minjusticia.gob.cl/ministra-de-justicia-y-derechos-humanos-javiera-blanco-senalo-que-plan-de-accion-para-la-proteccion-de-la-infancia-vulnerada-es-un-desafio-pais/.

²⁴ See www.minjusticia.gob.cl/plan-de-accion-para-la-proteccion-de-la-infancia-vulnerada/.

²⁵ National Council for Children, National Policy on Childhood and Adolescence for 2015–2025. Available at www.consejoinfancia.gob.cl/wp-content/uploads/2016/03/POLITICA-2015-2025_versionweb.pdf.

²⁶ National Council for Children, National Policy on Childhood and Adolescence for 2015–2025, p. 26.

especially when it comes to the design, management, monitoring and evaluation of public policies.²⁷ It was in this context that the Executive submitted to the Congress the bill on the system of guarantees for children's rights, as mentioned above.²⁸

22. In August 2017, the Executive put forward the National Action Plan on Human Rights and Chilean Businesses.²⁹ The measures set out in this plan include the development of a guide on the impact of projects on local communities, which should incorporate business and human rights standards;³⁰ the promotion by the Ministry of Energy of mechanisms for the settlement of disputes between communities and businesses in connection with energy projects; and the design and implementation of a complaints procedure that would allow both businesses and communities to report to the relevant authority their concerns about any failure to comply with an existing agreement.³¹

23. Furthermore, in order to ensure full institutional consistency, Act No. 20820, which established the Ministry for Women and Gender Equity, also amended Act No. 19023, which established the National Service for Women and Gender Equity,³² expanding the Service's powers to include, inter alia, the implementation of culturally appropriate policies, plans and programmes.³³

IV. Information relating to the substantive provisions of the Convention

A. Article 1: Racial discrimination

24. In relation to this article, the State wishes to draw attention to legal initiatives that have a direct impact on the exercise of their rights by vulnerable groups that are of particular concern to the Committee.

1. Act No. 20609, establishing anti-discrimination measures

25. In its previous report, the State was pleased to announce the publication of Act No. 20609, which sets forth measures to combat discrimination. Five years after the entry into force of the Act, the Government felt that it was necessary to assess whether it had achieved its aims. To that end, all cases of discrimination on grounds of race, ethnic origin or nationality were identified and analysed. From the entry into force of the Act up to 2016, a total of 203 cases were recorded,³⁴ of which 14 (6.9 per cent) involved discrimination on grounds of race, ethnic origin or nationality.³⁵ The majority — 57 per cent — of the complainants in those cases were female. In terms of geographical distribution, cases of discrimination on the basis of nationality mainly occurred in Santiago, Valparaíso and Talca, while cases of racial discrimination were concentrated in Concepción.³⁶ Overall, 104 cases, or 51 per cent of the total number of cases recorded up to 2016, were resolved in courts of first instance.³⁷ Of those, 4 per cent involved discrimination on grounds of nationality or race.³⁸

²⁷ National Council for Children, National Policy on Childhood and Adolescence for 2015–2025, p. 61.

²⁸ Page 8 (above).

²⁹ See www.minrel.gob.cl/canciller-munoz-presenta-plan-de-accion-nacional-de-derechos-humanos-y/minrel/2017-08-21/145507.html.

³⁰ National Action Plan on Human Rights and Chilean Businesses, p. 72.

³¹ *Ibid.*, p. 82.

³² Act No. 19023, available at www.leychile.cl/Navegar?idNorma=30390.

³³ Article 13 of Act No. 20820 amends article 2 of Act No. 19023 to include new functions and responsibilities. Article 13 (a), for example, refers to the function mentioned.

³⁴ Annex I.

³⁵ Annex II.

³⁶ Annex III.

³⁷ Annex IV.

³⁸ Annex V.

26. Act No. 20609 also amended article 12 of the Criminal Code to include an additional aggravating circumstance.³⁹ The courts have already started to apply this provision, handing down convictions in the four cases in which the Public Prosecution Service requested its application.⁴⁰ In one of those cases, two Colombians were insulted and then attacked with a knife, solely on account of the colour of their skin.⁴¹ In that case, the Punta Arenas Oral Criminal Court found that the testimony for the prosecution clearly demonstrated, as indicated by an investigation that had already been carried out, that the acts were motivated by the race or colour of the victims and therefore constituted not only the offences specified but also an act of discrimination, which increased the criminal responsibility of the perpetrator.⁴²

2. Citizen participation and the reform of the binominal system for parliamentary elections

27. International human rights bodies at both the global and the inter-American level had recommended that Chile should change its binominal electoral system, on the grounds that it perpetuated the underrepresentation of certain sectors of society and, in particular, prevented members of vulnerable social groups from being elected to parliamentary office.⁴³

28. Act No. 20840, which replaced the binominal system with a more representative, inclusive system of proportional representation, was promulgated in April 2015.⁴⁴ Under this Act, districts and constituencies were reorganized and quotas were increased: the number of deputies rose from 120 to 155 and the number of senators from 38 to 55. Incentives for ensuring gender parity in the Congress are an extremely important aspect of this new system. On the one hand, neither men nor women may account for more than 60 per cent of the candidates on an electoral list. On the other hand, up until the elections in 2029, for each woman elected senator or deputy, a sum equivalent to 500 Development Units will be allocated to the party that she represents.⁴⁵

29. These legal incentives had an impact on the parliamentary elections of November 2017. The representation of women rose from 15.8 to 22.7 per cent in the Chamber of Deputies and from 15.7 to 23.2 per cent in the Senate. Moreover, one of the women elected to the Chamber of Deputies was Emilia Nuyado Ancapichún, the first Mapuche Huilliche woman to occupy a seat in the Congress. She is an indigenous leader who has been very active on the ground within the Mapuche Huilliche communities. Although this marks a step forward, there is a continuing need to explore ways to promote political participation, as noted during the consultations on a new constitution that were carried out in 2016.⁴⁶

30. In August 2014, the Executive issued Presidential Instruction No. 7 on citizen participation in governance.⁴⁷ The aim is to move towards a model of governance that is based on effective citizen participation, in which civil society organizations play a vital role in promoting rights and building alliances to facilitate progress, while developing social oversight and providing services that are complementary to those provided by the State.⁴⁸

³⁹ Annex XXIX, para. 5.

⁴⁰ Annex VI.

⁴¹ Punta Arenas Oral Criminal Court, court case No. 14-2015 of 6 April 2015.

⁴² *Ibid.*, preambular paragraph 12.

⁴³ Concluding observations of the Committee on the Elimination of Discrimination against Women on the fourth periodic report of Chile, 2006, p. 3, para. 14. Concluding observations of the Committee on the Elimination of Discrimination against Women on the combined fifth and sixth periodic reports of Chile, 2012, pp. 6–7, paras. 24 and 25 (c). Inter-American Commission on Human Rights (IACHR), *Report on the Rights of Women in Chile: Equality in the Family, Labor and Political Spheres*, 2009, paras. 112 and 120–125 and section V, recommendation No. 10.

⁴⁴ Act No. 20840, available at www.leychile.cl/Navegar?idNorma=1077039.

⁴⁵ As at 1 February 2017, one Development Unit is worth Ch\$ 26,825, which means that 500 Developments Units amount to Ch\$ 13,412,905.

⁴⁶ See www.unaconstitucionparachile.cl/.

⁴⁷ Presidential Instruction No. 7, available at www.minjusticia.gob.cl/media/2015/05/Instructivo-Presidencial-sobre-Participaci%C3%B3n-Ciudadana.pdf.

⁴⁸ *Ibid.*, para. 1.

3. Indigenous peoples

Draft legislation

31. In 2016, the Executive submitted to the Congress two bills that were based on prior and informed consultations with indigenous peoples, in accordance with the International Labour Organization (ILO) Indigenous and Tribal Peoples Convention, 1989 (No. 169); these bills provide for significant developments in the indigenous institutional framework, marking the start of a new chapter of indigenous policy in Chile. Over 6,000 persons from traditional institutions and organizations representing the indigenous world, as well as individuals, took part in the consultation process. The proposed legislation is as follows:

(a) **A bill providing for the establishment of a national council of indigenous peoples and councils of indigenous peoples.**⁴⁹ This bill was submitted to the Congress on 14 January 2016 and comprises two sections, on the establishment of a national council of indigenous peoples and of councils of indigenous peoples; it contains a total of 26 articles, 5 of which are transitional. It is currently in its second reading in the Senate, having already received general approval; a deadline for the submission of comments has been set. The purpose of the bill is to establish a national council of indigenous peoples and councils of indigenous peoples, in order to facilitate formal dialogue between State bodies and the various indigenous peoples and thus ensure that the latter are continuously consulted on indigenous policy matters. It provides for the establishment of nine councils of indigenous peoples, one for each of the indigenous peoples recognized by the State.⁵⁰

(b) **A bill establishing a ministry for indigenous peoples.**⁵¹ This bill was submitted by the Executive on 17 May 2016. It is divided into two sections, one relating to a ministry for indigenous peoples and the other to an interministerial committee on indigenous peoples; these sections comprise 20 articles, of which 6 are transitional. This bill is currently in its second reading in the Senate Committee on Governance, Decentralization and Regionalization, having received general approval; a deadline for the submission of comments has been set. In accordance with ILO Convention No. 169, this bill was drawn up on the basis of prior consultation with the nine indigenous peoples that are recognized in Chile. It establishes that the ministry would be responsible for collaborating with the President on the design, coordination and evaluation of policies, plans and programmes intended to promote and strengthen the rights and the economic, social and cultural development of indigenous peoples and to eliminate all forms of discrimination against indigenous peoples, communities and persons.

Indigenous participation in the constitution drafting process

32. As part of the process of drafting a new constitution, consultations were held in 2016 with a view to ascertaining the views of all citizens. Those consultations culminated in the drafting of a set of citizens' principles; these will be included in the draft constitution that will be submitted by the Executive to the Congress before March 2018.⁵²

33. An additional aspect of the drafting process was that, in May 2016, the Ministry of Social Development issued Exempt Resolution No. 329, ordering that steps be taken to ensure indigenous participation in the process.⁵³ Pursuant to that resolution, an interministerial committee was set up to plan the consultation process and to lay down general guidelines on the organization of participatory meetings. This committee was coordinated by the Ministry of Social Development and composed of representatives of the Office of the Minister and Secretary General of the Presidency; the Ministry of the Interior and Public Security; the Office of the Minister and Secretary General of Government; the

⁴⁹ *Diario Oficial* No. 10526-06, available at www.camara.cl/pley/pley_detalle.aspx?prmID=10947&prmBoletin=10526-06.

⁵⁰ Annex XXIX, para. 6.

⁵¹ *Diario Oficial* No. 10687-06, available at www.camara.cl/pley/pley_detalle.aspx?prmID=11108&prmBoletin=10687-06.

⁵² See www.unaconstitucionparachile.cl/Informe-Final-CCO-16-de-enero-de-2017.pdf.

⁵³ Exempt Resolution No. 329, available at http://normativaconstruccion.cl/documentos_sitio/20276_RES-329_EXENTA_14-MAY-2016.pdf.

Ministry of the Environment; the Ministry of Labour and Social Security; the Ministry of Energy; the future Ministry of Cultures, Arts and Heritage; and the National Indigenous Development Agency.⁵⁴

34. The aim of the indigenous participation process was to enable indigenous persons over the age of 14 years to debate and discuss issues that they considered should be included in the draft constitution, through their representative organizations.

35. In June 2016, an advisory council responsible for monitoring the participation process was set up. Composed of representatives of United Nations bodies such as ILO, OHCHR, the United Nations Development Programme (UNDP) and the United Nations Children's Fund (UNICEF), as well as advisers from the National Indigenous Development Agency, it operated independently of the Government and was primarily responsible for ensuring that the process was consistent with international human rights standards and the principles of transparency and impartiality.

36. Around 17,000 people took part in the indigenous participation process, by attending meetings organized by the Government or held within the indigenous community, or by contributing individually online. On 4 May 2017, the outcomes of the participation process were submitted to the President; those outcomes have been used to develop measures aimed at indigenous peoples that will be included in the bill establishing a new constitution.

37. Following on from this process, indigenous consultations were held between August and October 2017 on measures relating to the constitutional recognition, cultural, linguistic and territorial rights and political participation of indigenous peoples.⁵⁵ This consultation process was supported by UNDP, which ensured and facilitated dialogue with the indigenous peoples, and by advisers from the National Indigenous Development Agency, who also helped to design the process. The National Human Rights Institute also participated as an observer. Some 5,800 indigenous representatives were involved in the process, which led to the signing of an agreement on these issues by the Government and the indigenous representatives on 21 October 2017; the issues will be addressed in the draft constitution that will be submitted by the Executive. This was a major step forward as regards the State's commitment to recognizing and safeguarding the rights of indigenous peoples.

4. People of African descent

38. In April 2016, a group of members of parliament proposed a bill that would grant legal recognition to the Chilean Afrodescendent tribal people.⁵⁶ This bill comprises seven articles on the recognition of people of African descent by the State, the recognition of their culture and customs as an intangible heritage of Chile, and their inclusion as a distinct population in the census, among other issues. The bill is currently in its second reading in the Senate Committee on Human Rights, Nationality and Citizenship.

39. The bill recognizes that the culture of people of African descent in Chile is a complex reality, born of a long process of preservation, renewal and transformation that has been shaped by the sociohistorical and economic conditions through which they have lived. The basic purpose of the bill is to grant legal recognition to the Chilean Afrodescendent tribal people. This recognition would place the State under an obligation to promote the culture and to respect the symbols of persons of African descent, to include their history in the national education plan and to include them as a census category as of the next census, which will be conducted in 2022.

⁵⁴ Annex XXIX, para. 7.

⁵⁵ See www.constituyenteindigena.cl/.

⁵⁶ *Diario Oficial* No. 10625-17, available at www.camara.cl/pley/pley_detalle.aspx?prmID=11051&prmBoletin=10625-17.

5. Migrants

Bill on migration

40. Migration law currently comprises Decree-Law No. 1094 of 1975, which sets forth rules concerning foreign nationals in Chile, and Decree No. 597 of 1984, which enacted the Immigration Regulations. Both of these texts were adopted during the dictatorship, at a time when the emphasis was on the principles of sovereignty and national security and there was no human rights-based approach. In order to partially rectify the situation, a series of regulations have been issued, in the form of memorandums, communications and so on, governing the situation of the migrant population in Chile in the area of maternity protection, access to education, access to the health system and the child protection network, among others.⁵⁷

41. For example, Supreme Decree No. 597 (Immigration Regulations) and Supreme Decree No. 296 of 1995, which sets the fees that foreigners must pay for immigration procedures, were amended by Supreme Decree No. 1930 of 3 December 2014, in order to align domestic law with some of the State's obligations under international human rights law.⁵⁸ The amendments included abolishing the right of the Investigative Police to withhold the identity documents of migrants who have violated immigration law; they may withhold a migrant's Chilean identity card only if his or her residence permit has expired or has been revoked and they may withhold a migrant's passport only if they are enforcing a valid expulsion order against him or her.⁵⁹

42. In addition, under Exempt Resolution No. 10330 of 11 December 2015, the National Advisory Council on Migration has been established; it is made up of representatives of non-profit organizations that provide migrants with advice, protection and representation and of institutions that study migration issues. The Council, which held its first meeting in the first half of 2016,⁶⁰ aims to turn civil society analysis and debate regarding the migration situation in Chile into a formal process.⁶¹

43. In June 2013, in order to provide real protection for persons who migrate to Chile, the then Government submitted a bill on migration and immigration to the Congress.⁶² The bill comprises 17 sections (including the preliminary section) that set out, inter alia, definitions, the scope of the bill, principles, entry and exit, migration categories and asylum seekers; it contains 175 articles, of which 5 are transitional. It is currently in its first reading in the Chamber of Deputies.

44. The current Government outlined plans to modernize the existing migration regulations and institutions in its 2014–2018 Programme for Government.⁶³ It set up various interministerial bodies in order to determine the principles and content of its policy in that regard and organized consultations with civil society with a view to improving the bill that had been prepared by the Aliens and Migration Department.

45. In August 2017, the Executive submitted a new bill on migration.⁶⁴ The bill comprises 14 sections (including the preliminary section) that cover, inter alia, rights and duties, entry and exit, restrictions on entry, migration categories, third party obligations, and migration offences and penalties; it contains 146 articles, of which 4 are transitional. The Committee on Internal Governance, Nationality, Citizenship and Regionalization of the Chamber of Deputies rejected the idea of adopting legislation, which means that another

⁵⁷ See www.extranjeria.gob.cl/acciones-de-integracion/.

⁵⁸ Supreme Decree No. 1930, available at www.leychile.cl/Navegar?idNorma=1075316.

⁵⁹ Ibid.

⁶⁰ See www.extranjeria.gob.cl/noticias/2016/05/16/consejo-consultivo-nacional-de-migraciones-celebro-su-primera-sesion/.

⁶¹ Exempt Resolution No. 10330, available at www.extranjeria.gob.cl/media/2016/06/Decreto-Exento-10.330-sobre-Reglamento-Consejo-Nacional-Sociedad-Civil.pdf.

⁶² *Diario Oficial* No. 8970-06, available at www.camara.cl/pley/pley_detalle.aspx?prmID=9377&prmBoletin=8970-06.

⁶³ Available at www.gob.cl/programa-de-gobierno/.

⁶⁴ *Diario Oficial* No. 11395-06, available at www.camara.cl/pley/pley_detalle.aspx?prmID=11905&prmBoletin=11395-06.

bill on the same subject cannot be submitted until at least one year has passed.⁶⁵ Thus, the challenge of introducing comprehensive migration legislation that will protect migrants has yet to be met.

Statelessness

46. In order to address the need to protect stateless persons, the Executive submitted two bills to the Congress in September 2017 regarding the approval of two international conventions on the subject. The first bill concerns the approval of the Convention relating to the Status of Stateless Persons of 28 September 1954.⁶⁶ The second concerns the approval of the Convention on the Reduction of Statelessness of 30 August 1961.⁶⁷ The instruments of ratification for both Conventions have already been signed by the President and will shortly be deposited in New York.

47. As regards the situation of the children of migrant workers of irregular status in Chile, it should be noted that, under article 10 (1) of the Constitution, all persons born in national territory are considered Chilean, except the children of foreign nationals who are in Chile in the service of their Government or are temporarily resident in Chile; such children can choose to acquire Chilean nationality. Since the notion of a temporary resident (*transeúnte*) is not defined in the Constitution or in any other legislation, the Aliens and Migration Department is responsible for interpreting this term, for administrative purposes, in accordance with article 91 (11) of Decree-Law No. 1094,⁶⁸ which sets forth regulations concerning foreign nationals.

48. Thus, until August 2014, temporary residents were defined for administrative purposes as persons with the migration status of tourists or crew members and migrants of irregular status, including foreign nationals who had entered Chile illegally and those who faced an administrative penalty such as expulsion or an order to leave the country, since it was considered that such persons had no intention of residing permanently in the national territory. The children of migrants of irregular status therefore did not have access to Chilean nationality, which gave rise to situations of statelessness.

49. In its decisions on cases regarding the granting of nationality, the Supreme Court has established criteria relating to temporary residence that are consistent with the natural and obvious meaning of the term; these serve as the basis for the criteria applied by the Government. In a communication sent by the Aliens and Migration Department to the Civil Registry and Identity Service, the Ministry of the Interior and Public Security has determined that a temporary resident is a foreign national who is passing through Chile, without any intention to reside there. This constitutes a restrictive interpretation of the exception mentioned in the Constitution. The Supreme Court has, however, ruled that, when it comes to determining the right to Chilean nationality of a child born in Chilean territory, the irregular migration status of the child's father or mother should not have any bearing on the decision.⁶⁹

50. Following the change in the criteria used to define a foreign national who is temporarily resident, the Aliens and Migration Department launched a joint initiative with the Civil Registry and Identity Service to raise awareness of the new registration criterion among civil servants, so as to prevent further violations of the right to a nationality arising from ignorance of the new criterion. They also introduced a simple, rapid and accessible procedure whereby the birth registry entries of children born to foreign nationals temporarily resident in Chile could be amended and those children could obtain Chilean nationality. Between 2012 and 2014, the number of amendments rose from 39 to 102.⁷⁰

⁶⁵ Annex XXIX, para. 8.

⁶⁶ *Diario Oficial* No. 11435-10, available at www.camara.cl/pley/pley_detalle.aspx?prmID=11951&prmBoletin=11435-10.

⁶⁷ *Diario Oficial* No. 11436-10, available at www.camara.cl/pley/pley_detalle.aspx?prmID=11952&prmBoletin=11436-10.

⁶⁸ Annex XXIX, para. 9.

⁶⁹ Ordinary Communication No. 27601, Aliens and Migration Department.

⁷⁰ Annex XXIII.

51. In March 2015, Exempt Resolution No. 102 of the Civil Registry and Identity Service was published in the Official Gazette; in that resolution, the offices of the Service were instructed to use the phrase “child of a foreign national temporarily resident, article 10 (1) of the Constitution” in birth registry entries only in cases where both parents held the migration status of tourists or crew members with a valid permit.⁷¹ In addition, a national awareness campaign was launched with a view to ensuring that anyone who was registered as the child of a foreign national temporarily resident in Chile could, if eligible on the basis of the above criterion, request that his or her birth registry entry be amended and thus obtain Chilean nationality.

52. As regards the steps taken by the judiciary to grant nationality to children born in Chile to parents in an irregular situation, it should be noted that, as stated in the legal series on the rights of migrants published by the Research Directorate of the judiciary,⁷² Chilean nationality is, as a general rule, granted on the basis of *jus soli*, pursuant to article 10 (1) of the Constitution.⁷³ It is therefore essential to define the concept of a temporary resident when deciding on the nationality of children of foreign nationals. The Supreme Court stated in a specific case that “NN was considered the son of a foreign national who was a temporary resident, a term that must be interpreted in accordance with its natural and obvious meaning, pursuant to article 20 of the Civil Code, since it is not defined by law.” The dictionary of the Spanish Royal Academy defines the term *transeúnte* as “one who travels or passes through a place, who is passing through, who resides only temporarily in a place.”⁷⁴ This interpretation has gradually been taken up by other State authorities, so that “the original administrative criterion used to distinguish foreign nationals who were temporary residents from those who were not has changed; it is no longer centred on a continuous stay of at least one year but rather on residence. On that basis, those who indisputably fall into the category of temporary residents are tourists and crew members.”⁷⁵

53. It can be concluded that, in such cases, the Supreme Court has considered the determining factor to be the subjective notion of home, that is to say, residence and the intention to remain in a certain place. That intention is reflected in the interest shown by foreign parents and their active efforts to remain in the country. Thus, the Supreme Court has taken the view that migrants in an irregular situation should not be automatically classed as foreign nationals who are temporarily resident; instead, it is important to take into account the efforts made by parents of foreign nationality to settle in Chilean territory. The Court has therefore allowed appeals relating to nationality despite the irregular migration status of the parents concerned, stating expressly that, in such cases, the term “foreign national who is temporarily resident” does not apply.⁷⁶

54. The Court has allowed appeals of that kind on the basis of international human rights law, including, in particular, the American Convention on Human Rights and the Convention on the Rights of the Child, both of which recognize the right to a nationality.⁷⁷

55. The Court consistently allowed appeals relating to nationality that were lodged with it during the period under review.⁷⁸ Such appeals were dismissed in cases where the Court considered that the criteria of fact required under article 12 of the Constitution had not been met. As regards the nationality of those who have lodged appeals, according to systematized data published in the relevant legal series, which constitute baseline data only, there were 20 appellants between 2011 and 2014, of whom 12 (60 per cent) were Peruvian migrants.⁷⁹

⁷¹ Exempt Resolution No. 102, available at www.registrocivil.cl/transparencia/marcoNormativo/Rex_102.pdf.

⁷² See <http://decs.pjud.cl/index.php/colecciones/68-colecciones/tendencias/migrantes/nacionalidad/131-nacionalidad-de-los-hijos-de-migrantes-en-situacion-irregular>.

⁷³ Annex XXIX, para. 10.

⁷⁴ Supreme Court, case No. 12.551-2013, preambular paragraph 4.

⁷⁵ *Ibid.*, preambular paragraph 5.

⁷⁶ *Ibid.*, preambular paragraph 7.

⁷⁷ Annex XXIX, para. 11.

⁷⁸ Annex XVIII.

⁷⁹ Annex XXVIII.

56. Lastly, it should be noted that, in December 2015, a conciliation hearing was conducted in case No. 24.089-2015, a nationality claim involving 167 children. It was conducted in the presence of the appellants (universities and civil society organizations) and the parties being appealed against (the Civil Registry and Identity Service and the Aliens and Migration Department) and was presided over by the then President of the Supreme Court, Mr. Sergio Muñoz. At the hearing, it was agreed that the 167 children should be granted Chilean nationality, that they should receive their Chilean identity documents and that a public ceremony should be held to formalize the event. The parties also agreed to attend another hearing to define the population group that faces such circumstances, with a view to resolving all such cases.

57. As a result of this case, and subsequent collaboration between the Aliens and Migration Department, the Civil Registry and Identity Service, the National Human Rights Institute and the Office of the United Nations High Commissioner for Refugees (UNHCR), together with civil society representatives from Servicio Jesuita a Migrantes (Jesuit Migrant Service) and the legal clinics for migrants run by Diego Portales University and Alberto Hurtado University, the “Chile Recognizes” project was launched in May 2017 within the framework of the I Belong campaign run by UNHCR, with the aim of eradicating statelessness in Chile and around the world. When the project was launched, over 100 children and adolescents from the Arica and Parinacota, Tarapacá, Antofagasta and Metropolitan Regions were able to acquire Chilean nationality.⁸⁰ Under the “Chile Recognizes” project, more than 2,000 people registered as children of foreign nationals temporarily residing in Chile have been identified; it is hoped that the project will remedy this situation.

6. Refugees

58. In 2015, the Office of the President drew up a presidential instruction setting forth guidelines and instructions on migration policy.⁸¹ The instruction focuses on promoting and acting upon the State’s commitments in the field of human rights and playing an active role in the development of measures regarding humanitarian resettlement, legal residence, protection for victims of human trafficking, and related migration and development issues. Point No. 3 of the instruction concerns the principle of non-discrimination and consideration for vulnerable groups.⁸²

59. It is also worth noting that point No. 11, on Chile as a country of asylum and refuge, gives refugees more rights and guarantees the human right to asylum.⁸³ These guidelines and instructions are being put into practice, thanks to the work and support of the Council on Migration Policy and the guidance of the Aliens and Migration Department.

60. In particular, as regards applications for refugee status, steps have been taken to remove barriers to access to the procedure for the recognition of refugee status, in accordance with point No. 11 mentioned above. As a consequence, the number of asylum applications in Chile has increased significantly.⁸⁴

B. Article 2: Measures to be taken to eliminate racial discrimination

1. Public policies

61. The Ministry for Women and Gender Equity is formulating the Fourth Gender Equality and Equity Plan 2018–2030, taking the objectives of the 2030 Sustainable Development Agenda as a global reference. The Plan constitutes a new, comprehensive strategy to reduce poverty, inequality and violence against women. It will be national in scope, guiding public policy and mainstreaming the gender approach in all units of the

⁸⁰ See <http://chilereconoce.cl/>.

⁸¹ Presidential Instruction No. 5, available at <http://transparenciaactiva.presidencia.cl/Otros%20Antecedentes/Inst.%20Pres.%20N%C2%BA5.pdf>.

⁸² Annex XXIX, para. 12.

⁸³ *Ibid.*, para. 13.

⁸⁴ Annex VII.

Executive, whether ministries or departments. It is a participatory plan that will mobilize the country, transforming it, empowering it, bringing it together and taking it forward by introducing inclusive policies and reinforcing gender as a cross-cutting issue. With that in mind, consultations have begun, with the participation of women migrants, indigenous peoples and people of African descent, on progress made and challenges to be faced on gender equality by 2030, so as to understand their particular needs and circumstances.

62. Regarding the statistics to be obtained before the various public policies could be developed for the benefit of the entire population, it should be noted that the information provided by the 2012 census could not be used, owing to procedural errors that were made.⁸⁵ To compensate for these shortcomings, a shorter version of the population and housing census was conducted in April 2017. The number of questions on the census form was reduced to the strict minimum required to indicate demographic changes in the country with a sufficient degree of accuracy. While the census did not include questions regarding migration status or nationality, as these were not among the objectives of the survey,⁸⁶ it did ask whether the persons considered themselves to belong to an indigenous people.⁸⁷

2. Indigenous peoples

63. Chile has included in its plans and practices an obligation to consult indigenous peoples. Supreme Decree No. 66 of 4 March 2014 contains regulations governing the procedure for indigenous consultation under its article 6 (1) (a), and in line with article 2 of ILO Convention No. 169.⁸⁸ With a view to systematizing the entire indigenous consultation process implemented by the Chilean authorities since 2014, an agreement has been signed between the Ministry of Social Development and the Faculty of Law of the University of Chile to produce an in-depth assessment of the indigenous consultation process and its compliance with the standards set out in ILO Convention No. 169. This study will be ready by the end of the first half of 2018.

64. The alternative proposal on prior consultation put forward by the Ministry of Cultures, Arts and Heritage is also relevant in this regard. Under Exempt Resolution No. 2131 of 16 June 2014, the National Culture and Arts Council provided the following clarification, reasoning that “a process of prior consultation with the indigenous peoples is necessary, given that the bill establishing the Ministry of Cultures, Arts and Heritage is likely to have a direct impact on the rights and interests of such peoples.”⁸⁹

65. On 28 August 2014, notifications were sent to the country’s 15 regions and Easter Island using various means of communication, to inform them of the different dates for the consultations. The Aymara, Quechua, Atacameño, Colla, Diaguita, Rapa Nui, Mapuche, Yagán and Kawésqar peoples and the Arica and Parinacota Afrodescendent communities were convened for the first round of consultations. The consultation process was led on the ground by the Regional Directorates of Culture, working with the local authorities, governments and municipalities. The notification was sent both to formal indigenous communities and associations and to informal indigenous organizations and representative institutions of the peoples. The dates and venues for the consultations were all agreed by the participants, as were the working methods. Transport was arranged and the means of communication provided to ensure that participants could exercise the right to consultation. Outside observers and translators were also present.

66. The consultations were designed to be decentralized and to operate on the basis of consensus between the indigenous peoples and the regional teams of the National Culture and Arts Council. The proceedings were conducted in a flexible manner, taking the

⁸⁵ Annex XXIX para 14. Report available at: <http://www.ine.cl/docs/default-source/censos/comisiones-investigadoras-censo-2012/comision-nacional/informe-completo.pdf?sfvrsn=4>.

⁸⁶ 2017 Census frequently asked questions: www.censo2017.cl/preguntas-frecuentes/, section entitled “Extranjeros” (foreigners).

⁸⁷ 2017 Census questions are available at www.censo2017.cl/wp-content/uploads/2017/04/CUESTIONARIO-CENSO-2017-OF.pdf.

⁸⁸ Supreme Decree No. 66 is available at www.leychile.cl/Navegar?idNorma=1059961.

⁸⁹ National Culture and Arts Council Exempt Resolution No. 2131, second preambular paragraph.

dynamics of the institutions and forms of organization of the peoples consulted into account and moving forward by mutual agreement.

67. As a result of this process, Act No. 20145 establishing the Ministry of Cultures, Arts and Heritage was promulgated in October 2017.⁹⁰ One of the principles enshrined in the Act is cultural diversity,⁹¹ which underpins interculturality by promoting and contributing to the cultures of the Afrodescendent communities and of migrants resident in Chile.⁹²

68. Between 2014 and 2015, the National Council for Childhood set up two technical committees focusing on children and indigenous peoples. The first, the Intersectoral Panel on Indigenous Children and Adolescents, was established with a view to making contributions of an intercultural nature to the National Policy on Childhood and Adolescence. The Board comprised representatives of the National Council for Childhood, the Ministry of Social Development, the National Service for Minors, the Ministry of Education, the Ministry of Health, the Ministry of Housing and Urbanization, the Ministry of Labour, the Ministry of Women and Gender Equity, the Ministry of Sport, the Ministry of Justice and Human Rights and the National Culture and Arts Council and a permanent seat was held by UNICEF. In February 2015, the Board submitted the working document that it had prepared to the National Council for Childhood.⁹³

69. The second committee, the Technical Panel on Children and Indigenous Peoples, was made up of technical experts from civil society and first met in March 2015. Its role was to advise and make recommendations to the Council in respect of the National Policy on Childhood and Adolescence. The Board comprised both indigenous and non-indigenous people with wide experience in the field of the recognition, protection and/or defence of the rights of indigenous children.

70. On the basis of proposals made by the two technical bodies, the National Council for Childhood identified the following areas of work:

(a) **Special Policy for Indigenous Children and Adolescents in Chile.** This policy aims to create an intercultural framework which, by recognizing the diversity and legitimacy of indigenous sociocultural life, will help to improve the quality of life of indigenous children and adolescents in Chile, promote their overall development and guarantee the enjoyment of their rights.

(b) **The situation of Indigenous Children and Adolescents before the law: A comparative study of legislation and its implementation in public policies.** The study will provide an objective legal basis for a discussion on the Special Policy for Indigenous Children and Adolescents in Chile and help identify minimum standards.

71. On the question of indigenous women, all public institutions, under the leadership of the Ministry of Women and Gender Equity and the National Service for Women and Gender Equity,⁹⁴ have undertaken to work together, jointly with all other government departments and bodies. The strategies programmed include cross-cutting approaches to drive national policy for the eradication of violence against women and girls, as follows:

(a) **Human rights approach.** Violence against women constitutes a violation of human rights, partly or entirely preventing enjoyment of those rights;

(b) **Gender approach.** This makes it possible to understand the inequality and the hierarchy that has developed between men and women. Under this approach, gender is understood as a cultural, social and historical construct on the biological basis of sex, establishing the masculine and feminine norms and collective and subjective identities in society;

⁹⁰ Act No. 21045 is available at www.leychile.cl/Navegar?idNorma=1110097.

⁹¹ *Ibid.*, art. 1.

⁹² *Ibid.*, art. 3 (7).

⁹³ Available at http://observatorioninez.consejoinfancia.gob.cl/wp-content/uploads/2016/08/2._Ninas_ninos_y_adolescentes_indigenas.pdf.

⁹⁴ Annex XXIX, para. 15.

(c) **Intercultural approach.** This entails respecting the diversity of world views and women's practices and recognizing specific cultural elements that can yield pertinent answers by putting the emphasis on such principles as inclusion, integration and equity;

(d) **Intersectional approach.** This enables a wider, more complex appreciation of the causes of inequality by viewing the issue through a spectrum including such factors as age, social class, nationality, indigenous origin, sexual orientation, religion and language.

72. The National Civil Society Council of the National Service for Women and Gender Equity⁹⁵ was established in 2015 to be a standing, consultative, democratic body for citizen participation that would forge a closer relationship between organized civil society and the National Service for Women and Gender Equity.⁹⁶ Under article 10 of its statute, the Council,⁹⁷ which was set up by a number of civil society organizations promoting gender equity, includes specific quotas for organizations defending the rights of culturally diverse women and indigenous women, respectively.⁹⁸

73. The majority of indigenous and Afrodescendent peoples are located in the northern and southern regions of the country, where they have developed a range of activities. In the Arica and Parinacota region, for example, workshops and regional discussions have been held since 2014 with indigenous and Afrodescendent women, who have also participated in certain regional programmes promoted by the Service.

74. Since 2014, the Service has been running an intersectoral programme in the Araucanía region aimed at highlighting the value of the diversity brought by the Mapuche women to the region. It includes the following:

(a) **Intersectoral Mapuche Women's Group.** The aim of this body is to promote an intersectoral approach to tackling the gender inequality faced by the Mapuche women of the region, stressing the importance of their contribution, and coordinating the work of the public sector and of a number of private bodies working in the intercultural and gender sphere;

(b) **Mobile intercultural initiative of the National Service for Women and Gender Equity.** This initiative, a mobile women's centre, was developed by the Service in partnership with the North Araucanía health service. It provides care for women who have suffered intimate partner violence in Ercilla, Lumaco and Lonquimay communes, where the highest percentage of indigenous populations is concentrated;

(c) **Transfer programme operated jointly by the Service and the regional government.** Support for the economic autonomy of the women of the 32 communes of the Araucanía region is provided under an agreement between the Service and the Araucanía regional government. The agreement includes an intercultural component, facilitating exchanges between Mapuche and non-Mapuche women and providing opportunities to raise the profile of Mapuche culture and promote the women's collective work. The programme comprises a sinking fund whereby the women beneficiaries can opt for a Ch\$ 500,000 subsidy for the purchase of machinery, equipment and tools.⁹⁹

75. In 2015, the Service organized rural and indigenous women's groups in various regions of the country, composed of the leaders of indigenous and rural groupings from the regions and various State services. Their purpose was to ensure that public policies met the needs and interests of rural women, to promote plans and programmes to reduce gender inequalities and to support and strengthen rural women's leadership and empowerment.

76. Similarly, officials of the Ministry of Women and Gender Equity and the Service held a workshop in 2016 to take stock of the action taken to eliminate discrimination

⁹⁵ See <https://app.sernam.cl/oirs-cosoc/>.

⁹⁶ The Council is currently operating within the National Service for Women and Gender Equity.

⁹⁷ Annex XXIX, para. 17.

⁹⁸ Annex XXIX, para. 16. See www.minmujeryeg.cl/wp-content/uploads/2016/03/Resex.-N%C2%B0-1045-Reglamento-COSOC-corrregido_1.pdf.

⁹⁹ Approximately US\$ 837, calculated at 1 February 2018.

against indigenous women. The Ministry is also mandated to formulate, coordinate and monitor the National Plan for Equality between Men and Women.¹⁰⁰

3. People of African descent

77. In response to the Committee's recommendation to include disaggregated statistics on the Afrodescendent population, and with a view to supporting the implementation of public policies, a survey of Afrodescendants was conducted between August and November 2013 in the Arica and Camarones communes, located in the Arica and Parinacota region. The main aim was to identify and estimate the number of Afrodescendants in a region in which that population is highly concentrated. The survey was drawn up and carried out in collaboration with the Afrodescendent organizations of the region, the Latin American Demographic Centre and the National Statistics Institute.

78. The following are among the principal findings:¹⁰¹

(a) The Afrodescendent population is estimated at 8,415, or 4.7 per cent of the total population of the region;

(b) A total of 3,317 households, or 6.2 per cent of all households in Arica and Parinacota, have at least one household member of African descent;

(c) The Afrodescendent population is composed of 3,719 men and 4,696 women (44.2 per cent and 55.8 per cent of the total, respectively).

79. As part of the activities organized by the National Service for Women and Equity, the International Day of Women of African Descent was celebrated on 28 July 2015. The event focused on the achievements of many women of the region in raising the profile of Afrodescendent culture, one of which was the 2014 Survey of the Afrodescendent Population under the auspices of the National Statistics Institute.¹⁰²

80. In 2015, Chile took part in the First International Congress of Afrodescendent Women of Chile, the Southern Cone and the Andean region, held from 11 to 13 December of that year in Arica, in the context of the International Decade for People of African Descent.

4. Migrants

81. As reported in connection with article 1 of the Convention, people from different countries, mainly Latin Americans, seeking a better future for themselves and their families have chosen Chile as a destination, for various political, economic and social reasons. This has made it imperative not only to revise the relevant standards¹⁰³ but also to formulate and implement policies to guarantee the human rights of the people concerned.

82. The Aliens and Migration Department works jointly with various ministries, in line with memorandums of understanding, agreements and protocols on action to promote the integration of migrants. Action taken to guarantee the rights of migrants in an irregular situation is especially noteworthy. In July 2017, the President announced the creation of a special visa to regularize the situation of migrant children and adolescents. Such visas are free of charge, irrespective of the immigration status of the parents, and the only document now required when a migrant child or adolescent applies for a visa is an official birth certificate.

83. Under a memorandum of understanding signed in 2010 between the Aliens and Migration Department and the National Service for Minors, the two institutions undertake to ensure the least possible delay in the enjoyment of their rights by children and

¹⁰⁰ Annex XXIX, para. 18.

¹⁰¹ See: http://historico.ine.cl/canales/chile_estadistico/estadisticas_sociales_culturales/etnias/encafro.php.

¹⁰² See http://historico.ine.cl/canales/chile_estadistico/estadisticas_sociales_culturales/etnias/pdf/informe_de_resultados_encuesta_de_caracterizacion_de_la_poblacion_afrodescendiente_de_la_region_de_arica_y_parinacota_2013.pdf.

¹⁰³ See section 1.5.1 above.

adolescents who are residing in the country without their father, mother or legal guardian but under the responsibility of a third party; who migrated to Chile unaccompanied; or who have remained unprotected in the country with or without the necessary residence permit.¹⁰⁴ This memorandum has been included in the Collective Performance Agreement of the National Service for Minors since 2016 and, as a consequence, the Service received 179 requests for social reports from the Aliens and Migration Department in 2017.

84. Moreover, together with the Aliens and Migration Department, the Ministry of Education, the Ministry of Health and other institutions, the Service has since 2010 been giving its own staff, the staff of its network of partner institutions, and others engaged in intersectoral activities, training sessions in the treatment of children and adolescents whose rights have been violated or who have been admitted to juvenile justice programmes. By January 2018, 1,000 professionals in 10 of the country's regions had participated in such training, which is designed to build the teams' technical skills.

Human trafficking and people smuggling

85. Public policy on these crimes has been developed by the Intersectoral Panel on Trafficking in Persons, which is interministerial and intersectoral in composition, and led by the Ministry of the Interior and Public Security. The Panel formulated the National Action Plan against Trafficking in Persons 2015–2018,¹⁰⁵ which was adopted under an intersectoral agreement structured around four strategic areas: prevention and awareness-raising; detection and prosecution; protection of and care for victims; and inter-agency coordination and cooperation.¹⁰⁶ As well as putting new instruments in place, the Action Plan seeks to strengthen existing activities, especially the training of personnel, information-gathering and capacity-building in respect of vulnerable groups, the improvement of public service action protocols and, in general, the upgrading of procedures for current inter-agency coordination with civil society and international organizations.

86. In July 2015, the Panel set up a web page containing information for victims of trafficking and related statistics.¹⁰⁷ By December 2015, 3,144 officials from 13 public services had received training.

87. In addition, as of December 2013 the Intersectoral Protocol on Care for Victims of Trafficking was implemented and coordinated by the Office of the Undersecretary for Crime Prevention of the Ministry of the Interior and Public Security. Over the past four years, care has been provided in 123 cases.¹⁰⁸ The Protocol establishes a mechanism to coordinate the existing support services for victims provided by public institutions, civil society bodies and international organizations.

88. In 2015, the Office of the Public Prosecutor issued Memorandum No. 575/2015, which contained general instructions for action on crimes of trafficking in persons, smuggling of migrants and unlawful association with intent to commit such crimes. The instructions set out an assessment of the criminal and procedural aspects of Act No. 20507.¹⁰⁹

89. Since the entry into force in April 2011 of Act No. 20507, which defines the crimes of migrant smuggling and trafficking in persons and establishes standards for their prevention and criminal prosecution,¹¹⁰ and up to 31 December 2015, 255 people have been identified as victims of this crime and 16 convictions have been registered. Regarding the crime of human trafficking within the meaning of article 411 quater of the Criminal

¹⁰⁴ See www.sename.cl/tactiva/RES-10654.pdf.

¹⁰⁵ See <http://tratadepersonas.subinterior.gov.cl/media/2015/12/Plan-de-Accion-contra-la-Trata-de-Personas-2015-2018.pdf>.

¹⁰⁶ See <http://tratadepersonas.subinterior.gov.cl/media/2015/07/MITP-Convenio-Intersectorial-para-aprobar-e-implementar-Plan-de-Accion-Nacional-contra-la-Trata-de-Personas.pdf>.

¹⁰⁷ See <http://tratadepersonas.subinterior.gov.cl/>.

¹⁰⁸ See <http://tratadepersonas.subinterior.gov.cl/media/2018/02/Informe-Estad%C3%ADstico-Trata-de-Personas-2011-2017.pdf>.

¹⁰⁹ See CEDAW/C/CHL/7, para. 55.

¹¹⁰ Act No. 20507 is available at www.leychile.cl/Navegar?idNorma=1024319.

Code,¹¹¹ 33 cases have been filed, with a total of 214 victims.¹¹² Men trafficked for forced labour accounted for 121 of the victims, or 57 per cent of the total.¹¹³ The other 93 victims were women, with 72 per cent trafficked for sexual purposes and 28 per cent for forced labour.¹¹⁴

90. Of the total of 214 victims, 16 were children or adolescents: two aged 14, two aged 15, one aged 16 and 11 aged 17 years of age. Four of the female children and adolescents were trafficked for sexual purposes. The male children and adolescents were trafficked for labour.¹¹⁵ Eight of the convictions came in cases relating to children and adolescents, seven for sexual and one for labour trafficking.¹¹⁶ Of the total number of victims, 98 obtained a visa under article 33 bis of Decree Law No. 1094,¹¹⁷ which provides for special visas for victims of these crimes. The majority of the victims were of Bolivian, Colombian and Dominican nationality.¹¹⁸ Prison sentences for the 20 persons convicted of these crimes ranged in length from 541 days to 10 years and one day.

91. The Aliens and Migration Department and the Technical Secretariat of the Intersectoral Panel on Trafficking in Persons have conducted a range of activities aimed at implementing Act No. 20507, such as the introduction of a special residence permit for victims of human trafficking,¹¹⁹ exemption from payment for the special visa or the issuance of temporary work permits.

92. Since 2012, Chile has followed a policy of providing women victims of trafficking with residential care. The Josefina Bahati shelter for such victims and for migrants subject to exploitation¹²⁰ uses a legal and psychosocial approach, providing care, aid and protection to women whose rights have been violated as a result of trafficking, some of whom have children under 14 years of age and have entered the shelter with their children. In 2016, the range of activities of shelters in the Metropolitan Region was extended to include the provision of care for women migrants who had suffered sexual or labour exploitation or who had been smuggled.

93. The year 2016 saw a number of prevention activities rolled out in various areas of the country. These included workshops on human rights and trafficking in persons, along with talks on the issue, discussions, training sessions and other activities.

94. The National Service for Minors is running 18 projects providing specialized care for victims of commercial sexual exploitation, including trafficking in children and adolescents, with the capacity to provide care for 953 victims in 12 of the country's regions. It also has a foster families programme, which provides specialized care and support for children and adolescents who have been separated from their original families as a result of sexual exploitation.¹²¹

5. Refugees

95. The Humanitarian Assistance Programme for Asylum Seekers and Refugees¹²² has taken due account of the special needs of asylum seekers and refugees, with a view to providing them with the tools necessary to help them integrate in Chile. These include health care,¹²³ housing, education, social welfare, vocational training, training in micro-

¹¹¹ Annex XXIX, para. 19.

¹¹² Annex VIII.

¹¹³ Annex IX.

¹¹⁴ Annex IX.

¹¹⁵ Annex IX.

¹¹⁶ Annex X.

¹¹⁷ Annex XI.

¹¹⁸ Annex XI.

¹¹⁹ Annex XXIX, para. 20.

¹²⁰ See <http://tratadepersonas.subinterior.gov.cl/media/2017/08/ONG-Ra%C3%Adces-autonom%C3%Ada-de-mujeres-violentadas-por-trata-de-personas.pdf>.

¹²¹ See CEDAW/C/CHL/7, para. 72.

¹²² For 2016, the Programme had a budget of Ch\$ 115,000,000 (US\$ 170,000).

¹²³ Including medical, psychiatric and psychological treatment.

entrepreneurship and assistance for persons with disabilities.¹²⁴ The programme also provides language classes for asylum seekers and refugees who are not Spanish speakers.

96. For children and adolescents entering the country unaccompanied by an adult, in 2014 the Ministry of the Interior and Public Security and the National Service for Minors agreed a protocol on children and adolescents who requested recognition of their refugee status.¹²⁵ The protocol covers the various situations in which children and adolescents can find themselves, when applying for refugee status: unaccompanied; separated from their families; orphaned; accompanied but lacking documents; accompanied by their father and/or their mother, or with the authorization of an absent father or mother; and accompanied by their father or mother without the authorization of the absent parent.

97. The protocol has improved protection for children and adolescents arriving in Chile in each of the scenarios covered. It also provides for referral to the National Service for Minors and, through it, where necessary, to a family judge, to ensure that children and adolescents not only have access to the asylum procedure but are also protected from violations of their rights on Chilean territory.

C. Article 2.2: Measures to be taken to eliminate racial discrimination

98. For comments relating to article 2 (2) of the Convention, please refer to the information provided by Chile on article 1 (1) above.

D. Article 3: Racial segregation and apartheid

99. As stated in the introduction to the present report, the obligations under this article (linked principally to apartheid) is foreign to the national reality in Chile. For that reason, no information will be provided.

E. Article 4: Prohibition of incitement to racial discrimination

1. Draft legislation

100. In July 2017, a group of deputies submitted a bill to amend the Criminal Code by including the crime of incitement to hatred or violence against persons.¹²⁶ This would involve the adoption of a new article 147 bis of the Criminal Code and would criminalize incitement to hatred or violence against persons on the basis of race, ethnic origin, sex, sexual orientation, gender identity or nationality, following the framework of Act No. 20609. The bill is currently before the Constitution, Legislation, Justice and Regulations Committee of the Chamber of Deputies for its first reading.

101. Soon after, in September 2017, the Executive submitted a bill to the Congress criminalizing incitement to violence,¹²⁷ under which three articles would be added as a new article in the Criminal Code to that effect. The bill is currently before the Committee for Human Rights and Indigenous Peoples of the Chamber of Deputies for its first reading.

102. The bill draws on the spirit of the earlier bill and proposes criminal sanctions for hate speech on the basis of, inter alia, national or ethnic identity, sex or race. If the offence in question is committed by a public official in the exercise of his or her duties or in the course of his or her work, that is deemed an aggravating circumstance, since any departure by the State from the principle of equality and non-discrimination infringes its duty of objectivity and equality of treatment, without discrimination, in all its decisions and actions.

¹²⁴ Financial support to provide technical aids and to adapt housing for persons with disabilities.

¹²⁵ See www.sename.cl/tactiva/2017/diciembre/conve/2721.pdf.

¹²⁶ Official Gazette No. 11331-07, available at www.camara.cl/pley/pley_detalle.aspx?prmID=11847&prmBoletin=11331-07.

¹²⁷ Official Gazette No. 11424-17, available at www.camara.cl/pley/pley_detalle.aspx?prmID=11939&prmBoletin=11424-17.

F. Article 5: Equality in the enjoyment of rights

1. Article 5 (a): Equal treatment before the tribunals and other organs administering justice

Access to justice

103. To improve access to justice for individuals and peoples living in Chile, in 2015 the judiciary launched “Citizens’ Justice Centres”,¹²⁸ a project developed in collaboration with representatives of social organizations and members of vulnerable groups, among others. The project is a collective proposal for a paradigm shift in the way that justice and conflict resolution are understood in the country.¹²⁹

104. It is expected that each pilot Citizens’ Justice Centre will devote attention to specific problems, including meeting the legal needs of migrants and migrant communities. The Supreme Court decided that the first two pilot centres would open in Antofagasta and Temuco, which have large migrant and indigenous populations, respectively. It is planned that these centres will employ community facilitators: that is, leaders of migrant communities who will work with the judiciary to help parties to conflicts to reach timely and lasting agreements, taking into consideration the different practices, customs and traditions of each party.

105. The departments of the Ministry of Justice and Human Rights have taken various steps to guarantee access to justice for persons belonging to indigenous communities and migrants.

106. The Public Criminal Defender Service developed a model of criminal defence for indigenous defendants¹³⁰ with a view to identifying such defendants and determining whether the facts in a given criminal case may allow it be characterized as an indigenous case, owing to a cultural factor in the criminal motives involved or a connection with land claims, ancestral beliefs, indigenous customs or any other factor. If the case is classified in these terms, the model requires the assignment of a specialized defence counsel.

107. The Public Criminal Defender Service has 174 public defenders specializing in indigenous issues who are geographically distributed according to the specific situation and the particular features of each region. The Mapuche Public Defender’s Office established in the regions of Araucanía and Los Lagos employs professionals who work exclusively on cases involving Mapuche defendants. Up to 2016, a specialized defence counsel was assigned to approximately 75 per cent of cases with indigenous defendants.

108. The Office has intercultural facilitators, who support the public defender in developing the theory of the case and in maintaining relations with users and indigenous communities. They are officials who are familiar with the indigenous language and culture of the region where they work.

109. Legal assistance agencies have a mandate to provide free legal services to indigenous persons, especially in matters related to the control, possession, division, administration, exploitation, use and enjoyment of indigenous lands, or to legal acts and contracts that refer to or affect indigenous persons or in which they are a party or have an interest. Legal assistance agencies may not refuse to provide services.

110. Legal assistance agencies have striven to improve the quality and coverage of services provided for indigenous people. In its assistance protocols, the legal assistance agency of the Metropolitan Region has included preferential criteria for indigenous persons, persons deprived of their liberty and persons with disabilities, among others.¹³¹ It has also implemented a protocol to assist human trafficking victims in Comprehensive Care Centres

¹²⁸ This project was approved by the plenary of the Supreme Court in document AD-2191-2015 of 28 December 2015.

¹²⁹ See annex XII.

¹³⁰ See www.dpp.cl/resources/upload/bbff843724ee902561ab8def3ea5cf37.pdf.

¹³¹ Official letter No. 001015 of 29 July 2016, sent by the Director General of the legal assistance agency of the Metropolitan Region.

for Victims of Violent Crimes, which offer a range of services, including a psychosocial legal service.

111. The legal assistance agencies of Bío Bío¹³² and of Arica and Parinacota, Tarapacá and Antofagasta¹³³ have taken steps to facilitate access to legal guidance services for indigenous persons living in areas far from urban centres, including the adoption of more flexible opening hours so that people travelling from remote areas can have access to legal advice offices and obtain the required services with the assistance of intercultural facilitators. There are also mobile offices that can travel to different areas to provide guidance and information services; one example is the mobile office in Iquique in the north of the country, which is administered by the Pozo Almonte legal advice office.

112. The Bío Bío legal assistance agency, in coordination with the municipality of Santa Bárbara and the Administrative Department of the Judiciary, has proactively participated in the work of a mobile court in the Alto Bío Bío district. Through this participation, it aims to ensure access to justice for Pehuenche communities, who have to travel long distances to complete formalities.

113. Legal assistance agencies maintain statistical records of the number of cases in which assistance has been provided for indigenous persons and migrants. In 2015, the legal assistance agency of the Metropolitan Region dealt with 3,095 indigenous persons, or 1.23 per cent of the total number of persons who received assistance. Between January and June 2016, it dealt with 1,507 indigenous persons, or 1.3 per cent of the total. Between January 2013 and July 2016, the legal assistance agency of Tarapacá and Antofagasta dealt with 11,881 indigenous persons.¹³⁴ At the national level, 1,573 migrants (1,110 women and 463 men) received assistance over the period 2012–2016.¹³⁵ The human rights office of the legal assistance agency of the Metropolitan Region completed 4,109 cases during the same period. Although these cases are not disaggregated by sex, nationality or age, they are broken down by subject area, so that, by reviewing cases relating to foreigners,¹³⁶ it can be deduced that at least 2,747 migrants received assistance.¹³⁷ As of January 2018, the office had 1,004 ongoing cases, in which it was assisting 510 women and 494 men, mostly of Dominican, Colombian and Peruvian nationality.¹³⁸

114. The Public Prosecution Service applies the principle of non-discrimination in its general service guidelines in order to ensure that all users are provided with appropriate assistance and protection, in accordance with the relevant processes and protocols. One of the main elements incorporated into the Service's User Information and Assistance System is the principle of non-discrimination, which means that prosecutors and officials are required to treat all persons as equals regardless of their sex, sexual orientation, race, ethnicity, belief or religion, nationality or any factor other than status as a user of the Public Prosecution Service.¹³⁹ The same is true of guidelines on the care and protection of victims and witnesses.

115. In order to facilitate indigenous peoples' access to the services of the Public Prosecution Service, the following are available:

(a) Intercultural facilitators in areas of the country with larger indigenous populations;

¹³² Official letter No. 245/2016 of 28 July 2016, sent by the Director General of the legal assistance agency of the Bío Bío region.

¹³³ Official letter No. 407/2016 of 28 July 2016, sent by the Director General of the legal assistance agency of Tarapacá and Antofagasta.

¹³⁴ Ibid.

¹³⁵ See annex XXIV.

¹³⁶ Cases concerning aliens and migration; appeals against expulsion; appeals against deprivation of nationality; administrative remedies against expulsion orders; remedies of unconstitutionality of legislation on foreigners; and trafficking in persons.

¹³⁷ See annex XXV.

¹³⁸ See annex XXVI.

¹³⁹ See www.fiscalia.dechile.cl/Fiscalia/victimimas/apartadosiau.jsp.

(b) The capacity to hire interpreting services in any language or dialect for Chilean nationals or foreigners who are victims of or witnesses to a crime and who are required to testify during an investigation or in court;

(c) A charter of users' rights, which the Service decided to draw up in the Mapudungún, Aymara, Rapa Nui, Kawésqar, Creole, Yagán and French languages.

Migrants

116. Pursuant to the commitments made by Chile for the protection of human rights, including those of child and adolescent migrants, and the legislative provisions on migration that empower the Ministry of the Interior and Public Security to impose administrative penalties for infringements of immigration regulations, regional intendants have been instructed to refrain from imposing any kind of sanction on foreign children and adolescents who fail to comply with these regulations, inasmuch as responsibility for regularizing their situation by applying for the necessary residence permits or authorizations rests with their parents, guardians or carers.¹⁴⁰

Trafficking in persons and people smuggling

117. Cases of trafficking in persons usually have some factors in common in the countries of nationality of the persons involved. The Public Prosecution Service has requested and provided support during cases from their outset until the holding of oral proceedings. In 2015, the Government worked in coordination with the Bolivarian Republic of Venezuela on parallel cases in the two countries and joint action was taken for the protection of victims when they returned to their country and for follow-up on cases of this nature.

118. Since the entry into force of Act No. 20507, the Public Prosecution Service has been authorized to request the Aliens and Migration Department to issue humanitarian visas. These requests are now directly coordinated by the Extradition and International Cooperation Unit of the Public Prosecution Service; this keeps the number of potential intermediaries to a minimum and allows for rapid and effective communication, which significantly reduces waiting times for applicants. Moreover, victims are supported throughout the process. The result has been a sustained increase in the number of investigations into trafficking in persons and people smuggling. The latter offence is increasingly prevalent in border regions in the north of the country and in the Metropolitan Region, which is the final destination for many migrants.

119. Although there has not been any increase in the number of convictions for migrant smuggling,¹⁴¹ convictions for trafficking in persons have risen significantly.¹⁴²

Act No. 18314 defining terrorist acts and establishing the related penalties

120. In the Programme of Government for 2014–2018, President Michelle Bachelet undertook to amend Act No. 18314 defining terrorist acts and establishing the related penalties, with the intention of bringing it into line with international standards, as recommended by international human rights bodies.¹⁴³ In this context, the Government established a commission on the Counter-Terrorism Act, composed of professors of criminal law and constitutional law. The commission studied current terrorism legislation and drafted a report that took account both of recommendations by the United Nations and the human rights monitoring bodies of the Inter-American system and of international

¹⁴⁰ These instructions have been communicated to the competent authorities through Circular No. 30722 of 10 September 2014 of the Head of the Aliens and Migration Department of the Ministry of the Interior and Public Security.

¹⁴¹ Santa Cruz Criminal Court, court case No. 67-2012, case No. 1200236968-9, 12 March 2013; Curicó Guarantees Court, court case No. 2471-2015, case No. 1500427019-0, 20 August 2015.

¹⁴² Fourth Santiago Criminal Court, court case No. 199-2012, case No. 1100440193-1, 7 September 2012; Fourth Santiago Criminal Court, court case No. 293-2013, case No. 1200922694-8, 2 November 2013; Punta Arenas Criminal Court, court case No. 113-2015, case No. 1300269504-3, 31 December 2016; Fourth Santiago Guarantees Court, court case No. 12993-2014, case No. 1401094760-2, 2 November 2015.

¹⁴³ See www.gob.cl/programa-de-gobierno/.

conventions and treaties signed and ratified by Chile. On 4 November 2014, the President submitted to the Senate the bill defining terrorist acts and related penalties and amending the Criminal Code and the Code of Criminal Procedure¹⁴⁴ — which was consolidated with another bill with the same purpose submitted by a group of Senators —¹⁴⁵ so as to overcome legal flaws and provide the country with an appropriate, legitimate and democratic regulatory framework. The bill submitted by the Executive contains 12 articles referring to various terrorist acts and their financing, the individuals involved, penalties and other issues. Besides defining and punishing terrorist acts through the amendment of the Criminal Code and the Code of Criminal Procedure, it establishes a special regulation on complex crimes, including terrorist offences, with the goal of harmonizing national legislation with international standards in that area. It provides that a terrorist offence is an offence in which the aim of the perpetrator is to undermine or destroy the democratic institutional order or seriously disrupt public order; to impose demands on or obtain decisions under duress from the political authority; or to instil widespread fear in the population of the loss or deprivation of fundamental rights. The bill is currently under consideration in the first reading.

121. With regard to the implementation of Act No. 18314 between 2014 and 2016, the Ministry of the Interior and Public Security reports that there were 18 complaints related to offences covered by the Act, but none of these were brought with the aim of criminalizing the assertion of indigenous peoples' rights. During the period under consideration, there were two cases that placed this legislation at the centre of public debate. These were:¹⁴⁶

(a) **Temuco Guarantees Court (case No. 1300701735-3).** This concerned an act of arson committed at the Lumahue farm during the early hours of 4 January 2013, which resulted in the murder of Werner Luchsinger and Vivianne Mackay, a married couple. On that date, Celestino Córdova Tránsito¹⁴⁷ and a group of 11 others broke into the property belonging Mr. Luchsinger and Ms. Mackay, who were inside, and assaulted them. Mr. Luchsinger attempted to repel the attack and managed to injure one of the defendants. Mr. Córdova and his companions then doused the building with an accelerant and used a flammable material to set fire to it with the couple still inside. The property burned down in its entirety, causing the death by burning of the victims. On 14 November 2017, Temuco Criminal Court acquitted the remaining defendants in the case, having been unable to establish beyond all reasonable doubt that the offence in question had taken place as described in the charges or that the male defendants and female defendant had taken part in the offence and must be punished by law.¹⁴⁸ Following an appeal for annulment filed by the complainant and admitted by the Temuco Court of Appeal, a new trial was ordered;

(b) **Temuco Guarantees Court (case. No. 1600553093-1).** This concerned an act of arson committed at the Truf Truf evangelical church at about 9.15 p.m. on 9 June 2016. A group of five unknown persons, with their faces covered, entered the church where 15 people, including women and children, were at worship. The group threatened the worshippers with guns to make them leave, before setting fire to the church. The attackers then fled but were arrested by a Carabineros (police) patrol at about 11.30 p.m. Although the Ministry of the Interior and Public Security, acting through the relevant regional intendancy, applied for the case to be dealt with under Act No. 18314, the Court indicated

¹⁴⁴ *Diario Oficial* No. 9692-07, available at www.camara.cl/pley/pley_detalle.aspx?prmID=10106&prmBoletin=9692-07.

¹⁴⁵ *Diario Oficial* No. 9669-7, available at www.camara.cl/pley/pley_detalle.aspx?prmID=10087&prmBoletin=9669-7.

¹⁴⁶ In 2017, there was another case in which the Public Prosecution Service requested that Act No. 18314 be applied to persons belonging to indigenous communities. This was the “Operation Hurricane” case heard by the Temuco Guarantees Court (court case No. 7228-2017). In October 2017, the Supreme Court set aside an order under which the defendants had been remanded in custody.

¹⁴⁷ Celestino Córdova Tránsito was convicted by the Temuco Criminal Court on 28 February 2014. See <http://cidsur.cl/wp-content/uploads/2014/03/SENTENCIA-CAUSA-R.I.T.-220-2013.doc>.

¹⁴⁸ Temuco Criminal Court judgment of acquittal available at www.pjud.cl/documents/2538862/0/SENTENCIA+RIT+150.pdf/fd73a1bc-5b04-4082-8632-31d61705650c.

on 10 October 2017 that the charges would no longer relate to terrorist offences. The case is currently at the stage of the preparatory hearing prior to oral proceedings.¹⁴⁹

2. Article 5 (b): Security of person and protection by the State against violence or bodily harm, whether inflicted by government officials or by any individual, group or institution

Legislation

122. One issue that has been the subject of public debate was the regrettable experience of Lorenza Cayuhán, a member of the Mapuche community, who, while pregnant and deprived of her liberty, had to give birth shackled to a bed at a clinic in Concepción. As a result, the President tasked the Office of the Undersecretary for Human Rights with integrating a human rights perspective into the Prison Regulations.¹⁵⁰ This reform has been a collaborative effort that has taken into consideration suggestions made by various public services and by civil society. At the initial stage, a working group was established with the participation of the Office of the Undersecretary for Human Rights, the Office of the Undersecretary for Justice, the Ministry of Women and Gender Equity, the National Service for Women and Gender Equity, the Prison Service and the Ministry of Health. Once a text had been agreed upon, the work entered its second stage and was carried out by the Ministry of Justice and Human Rights and the Prison Service, during which a human rights perspective was incorporated into the Regulations as a whole. This involved conducting a comprehensive review of the text and the applicable international human rights standards.

123. The new Regulations stipulate that the primary purpose of prisons is to promote social reintegration and to care for and monitor persons deprived of their liberty and persons benefiting from the supervision and assistance of the Prison Service. The Regulations also establish a set of principles, including that of cultural belonging, promoting respect for the culture and traditions of indigenous peoples and valuing the legacy handed down by their ancestors, which is evidence of their existence and world view. The new Regulations are currently awaiting constitutional review by the Office of the Comptroller-General.¹⁵¹

124. Furthermore, in March 2013 the Carabineros issued Circular No. 1756 on the use of force,¹⁵² which draws on the principles of legality, necessity and proportionality to define the limits to the use of force by the Carabineros and posits that force should be applied only when strictly necessary and to the extent required for the performance of police duties.

125. In the event that an officer does not act in accordance with international standards and national regulations on the use of force, the Carabineros have in place a range of oversight mechanisms to detect, investigate and punish misconduct by officers. These can take various forms:

(a) Hierarchical or disciplinary control is imposed. Administrative inquiries are carried out to determine the facts and the responsibility of the persons involved, and may result in a disciplinary penalty. If an irregularity constitutes a criminal offence, Carabineros personnel have a legal obligation to report it to the prosecuting authority, in accordance with article 175 (a) of the Code of Criminal Procedure;¹⁵³

(b) To enhance the effectiveness of this internal control, administrative prosecution departments — the Carabineros' administrative investigation and disciplinary bodies — were transformed into legal authorities, a reform that improved the quality of disciplinary proceedings. Ministry of Defence Decree No. 118 of 7 April 1982 was

¹⁴⁹ See annex XIII.

¹⁵⁰ Decree No. 518, available at www.leychile.cl/Navegar?idNorma=123280.

¹⁵¹ See annex XXIX, para. 21.

¹⁵² Circular No. 1756 available at: http://deptodhh.carabineros.cl/assets/circular_digcar_1756_13032013_usodelafuerza.pdf.

¹⁵³ See annex XXIX, para. 22.

amended in October 2013¹⁵⁴ and, since March 2014, the administrative prosecution departments report to the Carabineros' court officers. Since 2014, Carabineros personnel are provided with legal advice for their defence in administrative proceedings;¹⁵⁵

(c) An internal affairs unit conducts preliminary investigations into conduct that runs counter to the obligations of the service;

(d) A system has been set up for receiving complaints, based on a Carabineros Internet platform that is easily accessible to members of the public, who may use it to report acts that they believe to be irregular. The force has imposed on itself the requirement to investigate every complaint and to respond to requests.¹⁵⁶

Indigenous peoples

126. In response to cases of police abuse of members of indigenous peoples, the higher courts of justice have taken action to restore the rule of law, providing protection for the victims of such abuse, especially indigenous women, children and adolescents. In the cases that have come before them, the courts have ruled that the Carabineros may not use excessive force to disperse or control groups of persons that disrupt public order, which might include indigenous children and adolescents, while police procedures must be carried out strictly in accordance with the Constitution and legislation in force.¹⁵⁷

127. With particular regard to cases of police abuse involving Mapuche children and adolescents, the higher courts have stated that “the Carabineros de Chile are an institution whose personnel are professionally trained to control crowds that may disrupt public order in any way, for which purpose they are authorized to use various dissuasive measures, including the use of force; but such measures must be applied in a rational and proportionate manner, depending on the situation, which they should monitor in every case, always complying with the relevant protocols issued by the institution. In this particular case, the force used to subdue the adolescents party to the *amparo* proceedings was disproportionate, in that they had no capacity to resist effectively, owing to their location when arrested and their numerical inferiority compared with the police, given that the other participants in the unrest had presumably removed themselves from the place where the arrests were made.”¹⁵⁸

128. The Government is taking preventive measures to avoid the recurrence of such situations, while the fact that the judiciary acts independently to counteract the actions of the police is a positive human rights indicator in a State governed by the rule of law.

129. As regards cases of excessive use of force against Mapuche individuals in the context of territorial claims, the Carabineros protocols on the maintenance of public order — which are widely known and accessible to the public — include a specific protocol on the treatment of indigenous juvenile offenders.¹⁵⁹

130. As regards the investigation, prosecution and punishment of police abuse and violence, internal investigations have been carried out into any potential ill-treatment by members of the Carabineros of either adults or children and young persons during public

¹⁵⁴ The Decree established regulations series No. 15 on administrative inquiries of Carabineros.

¹⁵⁵ In accordance with General Order No. 2253 of 17 March 2014 and General Order No. 2274 of 10 June 2014, both of the Directorate General of the Carabineros.

¹⁵⁶ Established on 11 May 2012 under General Order No. 2088 establishing the Information, Complaints and Suggestions Department.

¹⁵⁷ Temuco Court of Appeal, case No. 449-2012 of 5 July 2012, upheld by the Supreme Court, case No. 5441-2012 of 20 July 2012; Temuco Court of Appeal, case No. 604-2012 of 3 September 2012, upheld by the Supreme Court, case No. 7132-2012 of 26 September 2012; Temuco Court of Appeal, case No. 569-2014 of 26 August 2014, upheld by the Supreme Court, case No. 23832-2014 of 10 September 2014.

¹⁵⁸ Temuco Court of Appeal, case No. 1114-2014, judgment of 31 January 2015, fifth recital. Although the Carabineros appealed before the Supreme Court, the appeal was subsequently withdrawn.

¹⁵⁹ See protocol 4.2 on children and adolescents and indigenous children and adolescents, at http://deptodhh.carabineros.cl/assets/protocolos_mantenimiento_del_orden_publico.pdf.

demonstrations and police operations. These internal investigations have led to criminal charges and the imposition of disciplinary penalties.¹⁶⁰

131. Measures taken by the Carabineros to combat discrimination include the activities of the Human Rights Department. Thanks to the Department's efforts, it is now understood that there are certain groups of people, such as migrants and members of indigenous peoples, whose vulnerable situation means that they require greater police protection.¹⁶¹

132. In 2013, the Carabineros established a police section comprising staff trained in the social and cultural identity of the Mapuche; this in turn led to the initiation of special indigenous community patrols. Since September 2013, coordination of the indigenous community patrols has been the responsibility of the Carabineros Department of Community Integration, which is currently staffed mostly by members of Mapuche origin. In turn, the Investigative Police has set up special police investigation brigades in Concepción and Temuco.

3. Article 5 (c): Political rights, in particular the right to participate in elections — to vote and to stand for election — on the basis of universal and equal suffrage, to take part in the Government as well as in the conduct of public affairs at any level and to have equal access to public service

Indigenous peoples

133. With regard to equal participation in public affairs, as mentioned above in connection with article 1 of the Convention, the replacement of the binominal electoral system with a proportional one bore fruit in the parliamentary elections of November 2017, which not only led to an increase in the number of female parliamentarians, but also marked the first time that a Mapuche Huilliche woman, Emilia Nuyado Ancapichún, had been elected. In regional elections, a young Aymara man, Diego Paco Mamani, was elected a regional councillor in Arica and Parinacota.¹⁶²

Migrants

134. Elections and the right to vote are governed by Act No. 18556, the Constitutional Act on the electoral registration system and the Electoral Service. The Act stipulates that the Electoral Service must register all persons.¹⁶³ To this end, the Civil Registry and Identity Service should provide the Electoral Service with any record in its possession that may be needed for the inclusion of a voter in the electoral register.¹⁶⁴ In 2012, 167,521 foreign nationals (91,445 women and 76,076 men)¹⁶⁵ were authorized to vote, with the figure rising to 179,897 (97,907 women and 81,990 men) in 2013.¹⁶⁶ In 2016, 238,716 foreigners (129,764 women and 108,952 men) were authorized to vote.¹⁶⁷ It may thus be seen that the number of foreign nationals able to vote was 71,195 higher in 2016 than in 2012, a further sign of increasing immigration into the country.

4. Article 5 (d) (i): The right to freedom of movement and residence within the border of the State

135. See the information provided in respect of article 1 of the Convention.

¹⁶⁰ See annex XIV.

¹⁶¹ See

[http://deptodhh.carabineros.cl/assets/5respuesta_informe_2012_sobre_funcion_policial_\(19_de_junio_de_2013\).pdf](http://deptodhh.carabineros.cl/assets/5respuesta_informe_2012_sobre_funcion_policial_(19_de_junio_de_2013).pdf).

¹⁶² See <http://www.emol.com/especiales/2017/actualidad/nacional/elecciones/resultados.asp#c9064>. For information about the candidate, see <http://www.rn.cl/core/diego-paco-mamani/>.

¹⁶³ See annex XXIX, para. 23.

¹⁶⁴ *Ibid.*, para. 24.

¹⁶⁵ See annex XV.

¹⁶⁶ See annex XVI.

¹⁶⁷ See annex XVII.

5. Article 5 (d) (ii): The right to leave any country, including one's own, and to return to one's country

Indigenous peoples

136. In May 2016, the Executive submitted a bill to the Congress to regulate the exercise of the rights to stay and reside in and to travel to and from the special administrative territory of Easter Island.¹⁶⁸ The bill contains 8 sections, with 69 articles, 7 of which are transitional, and is intended to regulate the manner in which the rights to stay and reside in and to travel to and from Easter Island are exercised. In compliance with ILO Convention No. 169, the bill was drafted in consultation with the 36 family clans of the Rapa Nui people and with Easter Island indigenous organizations. It also sets out measures that will be applied when certain demographic limits are exceeded. The bill is currently before the Senate Committee on Governance, Decentralization and Regionalization at the second reading stage.

6. Article 5 (d) (iii) The right to nationality

137. See the information provided in respect of article 1 of the Convention.

7. Article 5 (d) (iv): The right to marriage and choice of spouse

Migrants

138. The Aliens and Migration Department has issued Circular No. 06 of 26 February 2015,¹⁶⁹ which states that any person who enters into a marriage abroad with a Chilean or an alien resident of Chile and is unable to register the marriage in Chile itself, and any person who enters into a civil partnership agreement with a Chilean or an alien resident, either in Chile or abroad, is entitled to obtain and be the holder of a temporary residence visa.

139. Some marriage applications have been rejected in cases in which one of the contracting parties is a foreigner and does not hold a permanent or temporary visa or foreigner's identity card. To address this, the human rights office of the legal assistance agency of the Metropolitan Region has submitted applications for protection to the Courts of Appeal of Santiago and San Miguel. Between July 2015 and January 2018, 12 such applications were filed, of which 6 were accepted by the courts, with the result that the relevant civil registry officials were ordered to permit the applicants' marriages in the absence of the impediments and prohibitions set forth under Act No. 19947;¹⁷⁰ the other 6 applications were rejected. Appeals were lodged against 11 of those 12 decisions.¹⁷¹ The Supreme Court upheld the acceptance of two of the applications but overturned the decision to accept four; it upheld the decisions of the Court of Appeal in respect of the five rejected applications.¹⁷²

8. Article 5 (d) (v): The right to own property alone as well as in association with others

Indigenous peoples

140. Through Act No. 19253,¹⁷³ the Government recognized the indigenous communities of Chile as the legitimate descendants of the indigenous peoples of the territory and thus as the transmitters of their own cultural traditions and manifestations. Through the acquisition and provision of the necessary fiscal assets and the regularization of private ownership of land, a legal basis has been provided for ancestral occupation or use, indigenous lands have

¹⁶⁸ *Diario Oficial* No. 10683-06, available at www.camara.cl/pley/pley_detalle.aspx?prmID=11107&prmBoletin=10683-06.

¹⁶⁹ Circular No. 06 available at www.movilh.cl/wp-content/uploads/2015/03/Circular-N6.pdf.

¹⁷⁰ Act No. 19947 available at www.leychile.cl/Navegar?idNorma=225128.

¹⁷¹ Only one decision was not appealed, in view of the fact that the passport of the person receiving legal assistance had expired at the time of the attempt to solemnize the marriage.

¹⁷² See annex XXVII.

¹⁷³ Act No. 19253 available at www.leychile.cl/Navegar?idNorma=30620.

been extended and families and communities have been placed in a position to benefit from State programmes, which operate on the basis that land is owned by those who live or work on it.

141. This important work has mostly been carried out in regions where the density of the indigenous population is high and where that population has a history of occupying or using the land. It has benefited the Aymara, Quechua, Atacameño or Likan Antai, Colla, Rapa Nui, Mapuche, Yagán and Kawésqar peoples. Many of these efforts have been undertaken in conjunction with the National Indigenous Development Corporation under a 1994 framework agreement and numerous cooperation agreements since 1999.

142. Recognizing that land is fundamental to indigenous peoples' existence and culture, the budget set aside for the purchase and return of land has increased steadily. Under article 20 (b) of Act No. 19253,¹⁷⁴ between 2012 and 2016 the State acquired 55,108 hectares, which were returned to 7,367 indigenous families. Under article 20 (a),¹⁷⁵ between 2012 and 2016 subsidies for land purchases covering a total of 14,188 hectares were granted to 1,989 indigenous families.

143. During the period 2012–2016, the Corporation invested Ch\$ 26,606.665 billion in the delivery of programmes relating to subsidies for irrigation works, the purchase of water rights and the regularization of indigenous land and water ownership, thus benefiting 19,629 indigenous families.

144. Furthermore, in 2017 the Executive decided to create a historical cadastre of indigenous land and water ownership, which is due to be completed in 2018. It is hoped that this will allow for the formulation of a better land-restitution policy that may contribute to the development of a long-term plan in this area.

145. The Ministry of National Assets and the Corporation have coordinated activities for the regularization and expansion of indigenous land. Thus, in accordance with Act No. 19253 and the legal instruments available to it, the Ministry has processed individual land titles and transfers of lands to communities, free of charge, leased Government lands, also free of charge, and regularized titles to private lands for the benefit of indigenous persons and communities throughout the country.

146. The State-owned land transferred to the Corporation and to communities included a total of 361 indigenous cemeteries. For the communities, these are holy sites with heritage, cultural and symbolic value.¹⁷⁶

147. As regards the recovery and the showcasing of indigenous heritage, the Ministry of National Assets has included the tangible heritage and other features of indigenous peoples in 10 of the 65 heritage trails that it promotes. This policy represents a new approach to the heritage trails and involves a special effort, focused on indigenous communities and organizations, to recover cultural and heritage landmarks.

148. To improve indigenous land restitution policies and access to water for indigenous peoples, the President ordered in June 2017 that a cadastre of indigenous land and water ownership be drawn up as a point of reference for the evaluation of overall demand for indigenous land and water rights and the possibility of their being returned to the claimant communities.

9. Article 5 (d) (vi): The right to inherit

149. The Government has no new information to provide in this regard.

10. Article 5 (d) (vii): The right to freedom of thought, conscience and religion

150. See the information provided in respect of article 5 (b) of the Convention regarding proposed amendments to the Prison Regulations under Decree No. 518, which are currently under constitutional review by the Office of the Comptroller-General.¹⁷⁷

¹⁷⁴ See annex XXIX, para. 25.

¹⁷⁵ Ibid., para. 26.

¹⁷⁶ See annex XXIX, para. 27.

11. Article 5 (d) (viii): The right to freedom of opinion and expression

151. See the information provided in respect of article 4 of the Convention.

12. Article 5 (d) (ix): The right to freedom of peaceful assembly and association

152. The Government has no new information to provide in this regard.

13. Article 5 (e) (i): The rights to work, to free choice of employment, to just and favourable conditions of work, to protection against unemployment, to equal pay for equal work, to just and favourable remuneration*Indigenous peoples*

153. The Office of the Undersecretary for Labour of the Ministry of Labour and Social Security has implemented employability plans for indigenous peoples. One example is a programme to improve the employability of traditional craftsmen and women from rural areas,¹⁷⁸ which aims to create jobs through the development of traditional crafts in areas with low levels of economic development and to increase and strengthen the participants' employability through training in professional techniques with a view to their subsequently entering and remaining in the labour market. In 2015, 79 participants were members of indigenous peoples.¹⁷⁹

154. The aim of the (+ Capaz (More able) programme launched in 2014 by the National Training and Employment Service is to facilitate labour market access and continuing employment for women, young people and persons with disabilities in socially vulnerable situations.¹⁸⁰ In 2015, a total of 7,857 users belonging to different indigenous peoples received training under the programme's regular, disability and women's entrepreneurship components (+Capaz Línea Regular, +Capaz Discapacidad and +Capaz Mujer Emprendedora). Indigenous persons were admitted to the programme on the basis of a procedure that the Service put in place in 2014 to identify the demand for training, with a view to meeting regional needs as regards productivity and employment.

Migrants

155. In compliance with the provisions of Presidential Instruction No. 5, all departments of the Ministry of Labour and Social Security have been working on a survey that will make it possible to evaluate the plans and programmes being implemented for the benefit of the migrant population.

156. Aliens and Migration Department Circular No. 07¹⁸¹ stipulates that aliens who wish to carry out remunerated activities in the country may receive a temporary residence permit for employment purposes, provided that they have an employment contract with an employer domiciled in Chile. For that type of visa, employment contracts are no longer required to contain a clause obliging the employer to pay the employee's return fare at the end of the contract (*cláusula de viaje*).

157. The Office of the Undersecretary for Labour has launched two initiatives:

(a) Pro Empleo (For jobs), an employability and inclusion programme specifically designed for the migrant population;¹⁸²

¹⁷⁷ See 6.3, above.

¹⁷⁸ See www.subtrab.trabajo.gob.cl/programas-de-empleo/mejora-a-la-empleabilidad-de-artesanos-y-artesanas-tradicionales-de-zonas-rurales/.

¹⁷⁹ See annex XIX.

¹⁸⁰ See www.sence.cl/601/articles-3588_archivo_01.pdf.

¹⁸¹ Circular No. 07 available at <http://colombiaencl.cl/wp-content/uploads/2015/03/Circular-N%C3%82%C2%B07-1.pdf>.

¹⁸² See www.sjmchile.org/comenzo-el-programa-de-capacitacion-e-insercion-laboral-para-personas-migrantes/.

(b) The Dialogo Social (Social dialogue) programme involving trade union training courses. The continuous training curriculum was recently modified to include a two-hour module on issues relating to migration.

158. The Labour Directorate of the Ministry of Labour and Social Security has produced a self-evaluation model based on its own special characteristics and needs. This tool was developed with technical assistance from ILO.

14. Article 5 (e) (ii): The right to form and join trade unions

159. In 2014, the Executive submitted a bill to the Congress to amend the Labour Code.¹⁸³ The bill contained 9 sections and 10 articles dealing with such issues as general, rules, the right to information of trade union organizations and collective labour agreements. An intense debate in the legislature ended with the adoption of Act No. 20940,¹⁸⁴ which introduced amendments to the Labour Code under which no distinction is made between workers. They thus apply in the same way to indigenous persons, people of African descent and migrants.

160. Concerning unionization, article 227 (3) of the Labour Code was amended to introduce a quorum requirement relating to the number of workers represented, for the establishment of a trade union.

15. Article 5 (e) (iii): The right to housing

Indigenous peoples

161. The Inclusion Agenda 2015–2018 of the Ministry of Housing and Town Planning was implemented with the aim of improving the quality of life of indigenous peoples, migrants, persons with disabilities, older persons, children and adolescents through actions that addressed their needs as regards housing, neighbourhoods and the city environment. Action was taken under the Agenda, in keeping with the intercultural approach of a dynamic interaction between diverse cultures, based on coexistence, dialogue, reciprocity and interdependence.

162. Under the Agenda, an indigenous peoples committee was established to promote the participation of indigenous peoples, their families and/or communities in the design and management of adequate housing, integrated neighbourhoods and inclusive cities. In July 2016, the Housing and Urban Studies Commission of the Ministry of Housing and Town Planning prepared a characterization study of indigenous peoples' housing uses and customs in order to develop housing solutions.

163. In June 2016, the Ministry of Housing and Town Planning, the Ministry of Social Development and the National Indigenous Development Corporation concluded a cooperation agreement¹⁸⁵ whereby, working within their respective areas of competence, they would engage in housing and liveability-related activities to provide and adapt relevant housing solutions for indigenous families living in rural and urban areas.

164. Individuals or groups who are in possession of, or have the rights of enjoyment or usage of, indigenous lands may submit applications to the Housing of Choice Solidarity Fund, the Rural Liveability Programme or the Integrated Housing Subsidy System.

Migrants

165. An immigrants committee was established as part of the Inclusion Agenda 2015–2018, with the aim of helping to improve the quality of life of migrant families by facilitating their access to adequate housing solutions and encouraging their participation in

¹⁸³ See *Diario Oficial* No. 9835-13, available at www.camara.cl/pley/pley_detalle.aspx?prmID=10248&prmBoletin=9835-13.

¹⁸⁴ Act No. 20940 available at www.leychile.cl/Navegar?idNorma=1094436.

¹⁸⁵ See Exempt Decree No. 106, available at http://documentos.minvu.cl/min_vivienda/decretos_exentos/Documents/DECRETO%20EX.%20106%20DIJUR.pdf.

neighbourhood and city programmes. Interdisciplinary teams have been formed in regions with the greatest demand from the immigrant population.

166. The requirement that applications to the Housing of Choice Solidarity Fund and the Integrated Housing Subsidy System be accompanied by proof of five years' permanent residence in the country is being abolished; applicants will be asked only to provide proof of permanent residence. The same is true of the new Rural Liveability programme. As for the Rent Subsidy programme, the requirement of permanent residence is being replaced with that of holding a foreigner's identity card.

16. Article 5 (e) (iv): The right to health

Migrants

167. In September 2014, the Ministry of Health established the Migrant Health Advisory Team, made up of representatives of the Office of the Undersecretary for Public Health, the Office of the Undersecretary for Welfare Networks, the National Health Fund and the Office of the Superintendent of Health, which are all attached to the Ministry of Health, with the aim of developing health policy for migrants. The Team carried out a review of regulations, notably Decree No. 67 of 2015, which allows immigrants with irregular status — having no documents or resident permits — to obtain coverage under the National Health Fund,¹⁸⁶ a public health insurance scheme whose aim is to ensure access to and enjoyment of health-care rights for the entire population. Subsequently, the Ministry of Health issued Circular No. A 15/06 on health care for migrants,¹⁸⁷ which extended health services for migrant women to include birth-control methods, health education, advice on and promotion of sexual health, prevention of HIV/AIDS and other sexually transmitted diseases and access to condoms.

168. With regard to the situation of pregnant migrant women, an agreement on maternity protection was concluded between the Ministry of Health and the Ministry of the Interior and Public Security. It will facilitate the issuance of a temporary residence permit to alien workers who reside in Chile and are pregnant, improving their access to health services and guaranteeing care for 12 months after childbirth.

169. A programme of access to health care for immigrants, which operates in primary health-care facilities, was created under Exempt Resolution No. 1266. Under this programme, a pilot scheme is being implemented in four regions (Arica and Parinacota, Tarapacá, Antofagasta and the Metropolitan Region), comprising a set of coordinated measures designed to reduce the barriers faced by immigrants in obtaining access to health care and treatment. Participants in the pilot scheme include the National Health Fund, the Office of the Superintendent of Health, the health services responsible for primary care and hospitals, municipalities and the Ministerial Regional Secretariats of Health.

170. In December 2014, the Ministry of the Interior and Public Security and the National Health Fund signed an agreement to facilitate access to health care through the Fund, giving aliens residing in Chile access to the Fund's services as beneficiaries upon presenting proof of residence. This was then supplemented by Ministry of Health Decree No. 67, which added the new circumstance of "lack of resources" applying to migrants without documents or residence permits, which allows them to qualify as beneficiaries of the health-care system.

171. In 2015, the Ministerial Regional Secretariat of Health of the Metropolitan Region prepared a diagnostic study on the health of migrants in the Metropolitan Region, assessing their state of health and access to health services compared with the Chilean-born population.¹⁸⁸

¹⁸⁶ Decree No. 67 available at: <https://www.leychile.cl/Navegar?idNorma=1088253>.

¹⁸⁷ Circular No. A 15/06 available at www.saludarica.cl/wp-content/uploads/2016/12/15-migrantes-circular-A15-06-ministerio-de-salud-para-descarga.pdf.

¹⁸⁸ See: http://seremi13.redsalud.gob.cl/wrdprss_minsal/wp-content/uploads/2016/08/DIAGNOSTICO-DE-SALUD-DE-INMIGRANTES-2015-SEREMI-DE-SALUD.pdf.

172. In October 2017, the Ministry of Health unveiled the Health Policy for International Migrants, following a collaborative process led by the Migrant Health Advisory Team.¹⁸⁹

173. Lastly, the Government has embarked on a strategy of improving health information in order to gain a better understanding of migrants' state of health. One aspect of this strategy is the development of monthly statistical summaries,¹⁹⁰ with a view to ensuring that the migrant population is identified in primary-care health records.

17. Article 5 (e) (v): Education and training

Indigenous peoples

174. Acting in accordance with Act No. 20370,¹⁹¹ Act No. 19253 and ILO Convention No. 169, the Ministry of Education has launched a number of initiatives to ensure the inclusion of indigenous peoples. In December 2014, the Secretariat of Indigenous Intercultural Education was established as a technical body within the Office of the Undersecretary for Education, with responsibility for safeguarding and promoting the cultures and languages of the indigenous peoples recognized under Act No. 19253. It is responsible for promoting the development of teaching practices and intercultural institutional management so that all students, regardless of their ethnic origin, may acquire an understanding of indigenous peoples' languages and cultures.

175. Pursuant to Ministry of Education Decree No. 280, the indigenous language subject area was established to provide children and young persons from different cultures and language backgrounds with access to indigenous language learning opportunities, systematically and in a manner relevant to their situation. In 2015, 610 indigenous language programmes were established in target schools. Of these, 485 were taught in the indigenous language subject area, 63 in the framework of intercultural education at the basic level, 27 in intercultural education at the upper secondary level, 36 under a programme to revitalize indigenous languages and 5 in the context of bilingualism strategies. A total of 71,811 students were enrolled in the programmes. The number of traditional educators paid to teach in the indigenous language subject area was 481.

176. Through the General Student Information System, it was possible to establish that, in 2015, 102,630 basic education students were enrolled in target schools having a traditional educator. Girls' enrolment was concentrated among the Mapuche people and in urban areas.¹⁹² In 2016, the Government's Bilingual Intercultural Education Programme distributed textbooks, workbooks and guides for traditional educators teaching the Mapuche, Aymara and Quechua languages in the first, second and third years of basic education.

177. With regard to nursery education, an agreement is in place between the National Indigenous Development Corporation, the National Kindergartens Board and the Integra Foundation. Entitled "Objectives, purposes and main aspects of the education programme and implementation of curriculum design and bilingual intercultural instruction", the agreement covers 77 target establishments, supporting the employment of indigenous language and culture educators. As of April 2016, a total of 7,467 indigenous children were enrolled in different levels of nursery education.¹⁹³

178. In 2015, the National School Support and Scholarships Board awarded 78,223 scholarships to indigenous students, which take the form of a cash subsidy for indigenous children and adolescents studying in the fifth to eighth years of basic education. Also in 2015, the Government began to implement the judgment handed down by the Inter-American Court of Human Rights against the State in the case of *Norín Catrín et al. v. Chile*, by awarding scholarships from the nursery level through to higher education. These scholarships have been awarded to 226 persons from the communities and families involved in the case.

¹⁸⁹ See <http://web.minsal.cl/ministerio-de-salud-da-a-conocer-la-politica-de-salud-de-migrantes-en-chile/>.

¹⁹⁰ See www.deis.cl/resumenes-estadisticos-mensuales-deis/.

¹⁹¹ Act No. 20370, available at www.leychile.cl/Navegar?idNorma=1006043.

¹⁹² See annex XX.

¹⁹³ See annex XXI.

Migrants

179. Within the Ministry of Education, the regulations unit of the General Education Division is working with the Cabinet of the Division and the inclusion and diversity unit to review the regulations governing the access of students from migrant backgrounds to education and their continuation and progression in the Chilean education system. The purpose of the review is to identify where existing regulations need updating and propose amendments that will increase their relevance; to overhaul and improve management procedures for the effective implementation of regulations; and to engage in communication and dissemination activities with the most important people involved in the system, namely students and their families.

180. As for initiatives undertaken with municipalities, the Ministry of the Interior and Public Security and the Ministry of Education signed an agreement to establish the programme “Escuela Somos Todos” (We all make up the school), which facilitates and promotes inclusion in the education system by granting student visas to the children of migrants residing in Chile. Between its launch in August 2014 and 2015, the programme was instrumental in regularizing the migration status of 1,232 students.¹⁹⁴

181. Lastly, Act No. 20910, which was published in March 2016,¹⁹⁵ provided for the establishment of State technical training centres in all regions of the country. In May 2016, the Ministry of Education announced that the technical training centre to be established in the Bío Bío region as part of the University of Bío Bío would be located in the municipality of Tirúa and offer subjects including training for nursery assistants and bilingual intercultural educators.¹⁹⁶

18. Article 5 (e) (vi): The right to participation in cultural activities

182. The aim of the Culture and Arts Development Fund of the National Culture and Arts Council is to support the development of the arts, the dissemination of culture and the preservation of cultural heritage in Chile. The Fund’s 2016 regional competitions for the funding of projects to be implemented in 2017 included topics aimed at migrants and indigenous people. For the first time, funding was made available for Afrodescendent culture, with the aim of strengthening Afrodescendent identity in the Arica and Parinacota region through outreach and dissemination projects, training and the promotion and showcasing of artistic and cultural displays.

Indigenous peoples

183. The Department of Indigenous Peoples of the National Culture and Arts Council is implementing a programme to promote and disseminate, with their participation, the arts and cultures of indigenous peoples and the Afrodescendent community, in accordance with ILO Convention No. 169.

Migrants

184. The Council has also launched a programme on migration and interculturality as a framework for action to provide access to culture and the arts. Its purpose is to increase the visibility of cultural expressions by migrants in Chile, highlighting their contribution to the construction of identities.

185. The programme operates under three headings: (1) access to interculturality; (2) promotion of interculturality; and (3) capacity-building for interculturality.

¹⁹⁴ See annex XXII.

¹⁹⁵ Act No. 20910 available at www.leychile.cl/Navegar?idNorma=1088775.

¹⁹⁶ See www.mineduc.cl/2016/05/27/ministra-delpiano-anuncia-centro-formacion-tecnica-estatal-la-region-del-biobio-se-emplazara-tirua/.

19. Article 5 (f): The right of access to any place or service intended for use by the general public, such as transport, hotels, restaurants, cafes, theatres and parks

186. The Government considers that there is no substantive information to report in this regard, as the general issues have already been addressed in connection with articles 1 and 2 above.

G. Article 6: Remedies against racial discrimination

187. The obligations arising from this article relate to the interaction between two fundamental principles of international human rights law: access to justice and non-discrimination. The Government has already provided information on both elements in the present report, mainly in respect of Act No. 20609 and the statistics provided in relation to the first five years of implementation of this legislation. The Committee may therefore find it useful to refer back to the sections on articles 1 and 5 (a) above.

H. Article 7: Human rights education

188. The article places the emphasis fairly and squarely on the need to keep extending human rights education as a means of eliminating prejudices, stereotypes and all forms of discrimination.

189. That is why the establishment of the Office of the Undersecretary for Human Rights and the focus of its work on human rights training and education for public officials, in particular members of the armed forces and the forces of order and public security,¹⁹⁷ were highlighted at the beginning of this document. As previously indicated, the National Human Rights Plan entered into force in December 2017.

1. Migrants

190. Various educational and awareness-raising measures have been carried out to counteract any tendency to stereotype or stigmatize migrants. These include:

(a) **Migrant-sensitive systems in the Ministry of Health.** Training in migration and health, human rights and cultural competence was provided for service providers and administrators, health professionals and persons in charge of health programmes within the Ministry. In 2015, 350 officials received training and 65 health service directors and programme managers attended a 100-hour course;

(b) **Promotion of inclusive education work with migrant students.** The inclusion and diversity unit of the General Education Division has taken on the task of designing, coordinating and promoting policies in favour of the adoption of an inclusive approach in different areas of the school system, as part of the wider implementation of educational reform.

191. The Aliens and Migration Department has taken other measures to reduce discrimination against the migrant population. These are:

(a) **“Sello Migrante” (Migrant seal).** This is a seal of approval in the form of a certificate, promoted since 2015, that is awarded to municipalities that commit themselves to becoming discrimination-free areas, upon meeting certain requirements;

(b) **National capacity-building plan.** In 2014 and 2015, the Aliens and Migration Department held several workshops and training sessions for municipal officials, public services, businesses, civil society organizations and others;

(c) **Course on inclusion and user assistance.** The aim of this e-learning course is to inform and raise awareness of inclusion and non-discrimination among municipal and public administration staff in order to identify, prevent and eliminate discriminatory practices that may occur in their workplace or in their social or personal environment.

¹⁹⁷ See annex XXIX, para. 28.

Trafficking in persons and people smuggling

192. Under its national capacity-building plan, the Aliens and Migration Department has given public officials training in various subjects, including trafficking in persons — explaining the differences between that and migrant smuggling — and the Government's public policy on the issue.

Refugees

193. Several training courses have been conducted with the aim of strengthening asylum procedures in Chile and promoting respect for the rights of asylum seekers and refugees. Such courses included:

(a) **Training for immigration officials of provincial governments.** Officials who participate in the refugee status determination procedure and other public officials who might have dealings with refugees or asylum seekers have received training;

(b) **Training for officials of the International Police.** Training was provided for International Police officials, in particular those serving in northern Chile, which is the location of the border crossings with the largest number of asylum seekers and refugees entering the country.
