



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

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COMMITTEE ON THE ELIMINATION OF
RACIAL DISCRIMINATION

**REPORTS SUBMITTED BY STATES PARTIES IN ACCORDANCE WITH
ARTICLE 9 OF THE CONVENTION**

**Fifteenth, sixteenth, seventeenth and eighteenth periodic report
of States parties due in 2006***

CHILE**

[23 June 2008]

* This document contains the 15th, 16th 17th and 18th periodic reports of Chile (consolidated document), due on 19 November 2006. For the 11th to 14th periodic reports of the Republic of Chile and the summary records of the meetings at which the Committee considered those reports, see documents CERD/C/337/Add.2 and CERD/C/SR.1346, 1347 and 1361.

** The annex can be consulted in the files of the secretariat.

Summary

The State of Chile hereby delivers this consolidated document, which includes its 15th to 18th periodic reports, in accordance with article 9, paragraph 1, of the International Convention on the Elimination of All Forms of Racial Discrimination. The information contained in this report relates to the measures adopted to give effect to the provisions of this Convention for the period from 2000 to 2007. This document has been prepared following the "General guidelines regarding the form and contents of reports to be submitted by States parties" (CERD/C/70/Rev.5) and is divided into two parts.

The first part gives an account of the situation of discrimination in general and refers in particular to the situation of persons belonging to the indigenous peoples and to the situation of immigrants. The second part relates to the implementation of the articles of the Convention and provides greater detail on the policies and measures adopted to make headway in the elimination of racial discrimination in all its forms, the legal structure underpinning those policies and measures and the promotion and protection, on an equal footing, of human rights and fundamental freedoms of persons belonging to the indigenous peoples and immigrants.

Throughout this report an express reference will indicate where the information given is in reply to the concerns voiced and recommendations made by the Committee to the State of Chile following consideration of the 11th to 14th periodic reports of Chile in August 1999 (see CERD/C/304/Add.81).

Unless noted otherwise, each time this report gives figures in the national currency (Chilean pesos) the amount has been converted into United States dollars at the average exchange rate for pesos to dollars for 2007 as published by the Central Bank of Chile on www.bcentral.cl.

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I. INTRODUCTION

1. In December 2000, the Government of Chile took on the responsibility of hosting the Regional Conference in preparation for the World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance, to be held one year later in Durban (South Africa). One of the basic documents underpinning that conference was the International Convention on the Elimination of all Forms of Racial Discrimination. The Santiago meeting therefore represented a landmark which allowed the governments of the continent, human rights groups from organized civil society, indigenous peoples and peoples of African descent to reach agreements to work together to combat discrimination and racism.

2. Governments and civil society were subsequently called upon by the Durban Conference jointly to implement initiatives which are non-discriminatory in content in each country and at international level. This report sets out the principal measures taken in Chile. The reader will see the progress made and will also be able to deduce how far there is still to go.

3. As noted in this report, the Social Organizations Division of the Office of the Minister and Secretary-General of Government (DOS) has sought to implement a programme acknowledging good practice in non-discrimination. The status of democracy grows among the public when its institutions embrace policies, policy programmes, and budgets which use performance indicators to reflect the country's sociocultural diversity. This outlook, when coupled with public accountability in human rights, demonstrates that both the Government of Chile and civil society are committed to drawing up a Plan of Action against Racism and Other Discriminatory Practices which must become a tool which makes it possible for officials and citizens to monitor the measures adopted by Chile, as a member of the United Nations community, with a view to eliminating all forms of racial discrimination.

4. Specific note should be made of the importance to the protection of the rights of groups and individuals who are affected by discrimination of the draft legislation on anti-discrimination measures which is referred to in this report and is now awaiting approval by the National Congress.

5. The overall picture is that Chile has a special duty to combat the racism which has historically been inflicted on indigenous peoples. State policy towards indigenous peoples has been to prioritize the allocation of economic resources to resolve issues of access to ownership of ancestral lands in tandem with measures to help indigenous peoples develop economically and overcome the poverty in which they live. There has been determined investment in measures to promote and encourage indigenous communities in the north and south of the country. At the same time it is becoming increasingly important to focus the attention of the State on urban groups of indigenous peoples as they are becoming a significant proportion of the population belonging to the indigenous ethnicities recognized by the State of Chile.

6. As noted in the previous report, the process of constructing a new relationship between the indigenous peoples and the State of Chile began with the Nueva Imperial Agreement of 1989 which was entered into by the leaders of the indigenous peoples and the then Presidential candidate, Mr. Patricio Aylwin, representing the political coalition known as the Concertation of Parties for Democracy. Once elected, President Aylwin set up the Special Commission on Indigenous Peoples (CEPI), whose mandate was to draft the Indigenous Act. At that point the policy of dividing communities and assimilating indigenous peoples was abandoned, and a new

phase was entered into, based on respect for indigenous people and on their recognition, participation and development.

7. When the Committee considered the previous consolidated report it commented that it was during the period from 1996 to 2000, i.e. the dates of office of the Government of former President Mr. Frei Ruiz-Tagle, that the new institutional framework for indigenous peoples became fully operational; that framework marked the beginning of the process to return lands through the National Indigenous Development Corporation (CONADI), the setting up of the first indigenous development areas, the introduction of the programme of grants for indigenous students (ADI), the establishment of an Advisory Commission on Development of Indigenous Peoples and the inauguration of Communal Dialogues involving representatives from indigenous communities and associations, thereby linking the public sector up with grass-roots Mapuche leaders.

8. During the past decade, Chilean society, the Government and the indigenous peoples have made the efforts necessary to implement the agenda agreed upon under the Nueva Imperial Agreement. Democratic governments have made strenuous efforts to improve the situation against a broader background of further entrenching democracy and improving social and cultural equity in Chile. The assessment of what has been done shows significant progress in many areas. These include the results of implementing the Indigenous Act; the work done by CONADI, a public body with responsibility for monitoring compliance with that Act; and the implementation of public policies intended to protect and return lands and water, promote development of production and reaffirm culture and education.

9. In March 2000, the former President, Mr. Ricardo Lagos convened a Working Group on Indigenous Peoples to act as a focal point to which indigenous peoples could address their demands. The President responded to the Group's report with a Letter to the Indigenous Peoples of Chile in which he sketched out the foundations for a new deal between the indigenous peoples, Chilean society and the State.

10. On the basis of the contributions and recommendations made by the Working Group, the "Sixteen-Step Plan" was drawn up which included commitments which were crucial to relations between the State and the indigenous peoples. The most noteworthy of these were the establishment of a Historical Truth and New Deal Commission and the implementation of the Comprehensive Development Programme for Indigenous Communities, which is to day known as "Origins".

11. Subsequently, in 2002, the Presidential Advisory Commission for the Coordination of Policies and Programmes relating to Indigenous Peoples was established, the aim of which was to advise the President of the Republic on the liaison, implementation, follow-up and coordination of actions, programmes, measures and other government initiatives which have a bearing on indigenous affairs.

12. Fifteen years ago the central focus of indigenous peoples' aspirations was unquestionably recovery of their ancestral lands, hence the strong focus in indigenous affairs policy on recovery and protection of those lands. The Presidential Advisory Commission was presented with the challenge of widening this focus by implementing a policy which would not only satisfy that demand but would also enable indigenous ethnic groups to progress in terms of economic development and thereby escape the poverty in which they live.

13. In April 2004, on the basis of the recommendations contained in the Report of the Historical Truth and New Deal Commission, the former President, Mr. Lagos, announced the New Deal Policy for Indigenous Peoples 2004/2010; the measures which were part of that policy are set out in this report.

14. In 2006, once she had taken office, the first task in indigenous affairs carried out by President Mrs. Michelle Bachelet was to convene the National Debate of Chilean Indigenous Peoples which was officially opened on 23 June 2006, as part of the celebration of the national day of indigenous peoples. The debate as a whole lasted nine months and closed in March 2007.

15. On the basis of the contributions and recommendations made as a result of this process involving the community the Government reaffirmed its intention to increase the involvement of indigenous peoples, further entrench their rights, especially in education and culture, policy for urban indigenous communities, and equal opportunities for indigenous women.

16. The indigenous affairs policy of President Bachelet's Government is firmly based on the provisions of Convention (No. 169) of the International Labour Organization concerning Indigenous and Tribal Peoples in Independent Countries, of 1989, and sought to introduce recognition of indigenous peoples into the Constitution.

17. The other situation, which falls within the scope of international conventions against racism is as complex as it is challenging and has been taking shape with the influx of a significant number of migrants, mainly from Latin American countries. The Ministries and services of the Chilean State which are associated with social policies have been responding to the growing social security needs of immigrants. As a result, both Government and civil society are convinced that progress must be made in drawing up a cross-sector State policy which streamlines criteria and acts as a focal point for the various institutional bodies.

18. The issue of migration management has been growing in importance since 2000, and this fact has been reflected both in government management and in Parliament's concern in the matter. The process involved is one which seeks to consolidate a type of management which is modern both in terms of policy and method.

19. On the policy side, a migration policy committee has produced a document summarizing the views of various Government bodies on migration. The document was forwarded for analysis and debate to various civil society stakeholders, who contributed their own views; it is currently awaiting Presidential approval before being formally adopted.

20. As regards method, systems for dealing with the public have been modernized and are being consolidated, reducing response times for users of migration services. Information technology is being used as a new means of communication between the public sector and users of migration services by offering remote assistance through a web-site.

II. GENERAL SITUATION OF DISCRIMINATION IN CHILE

21. In its final observations on the eleventh to fourteenth reports, the Committee expressed its concern at this situation in view of the results of the "First survey of intolerance and discrimination. Report and analysis", Fundación Ideas and Department of Sociology of the

University of Chile (Santiago, December 1996), which showed that a considerable proportion of the Chilean population had intolerant and racist views.

22. Indeed the results of this first survey showed the following intolerant views:

- (a) 53.9 per cent said they fully agreed, broadly agreed, or slightly agreed that older people should not work because they deprive young people of job opportunities;
- (b) 57.6 per cent fully agreed, broadly agreed, or slightly agreed that homosexuals should not appear on television as they set a bad example to children;
- (c) 45.2 per cent d fully agreed, broadly agreed, or slightly agreed that homosexuality should be banned because it was against human nature;
- (d) 55.8 per cent fully agreed, broadly agreed, or slightly agreed that homosexuals should not be allowed to be schoolteachers;
- (e) 48.4 per cent fully agreed, broadly agreed, or slightly agreed that women who are separated from their husbands and are looking for a partner are a threat to other marriages;
- (f) 33.5 per cent slightly disagree, strongly disagree or completely disagree that the Jewish and evangelical religions are as Chilean as the Catholic religion;
- (g) 44.3 per cent fully agreed, broadly agreed, or slightly agreed that it living near poor people is awkward because it is dangerous;
- (h) 39.1 per cent fully agreed, broadly agreed, or slightly agreed that, although exceptions do exist, the poor are poor because they have not tried hard enough to escape from poverty;
- (i) 28.3 per cent fully agreed, broadly agreed, or slightly agreed that Chile is more developed as a country than its neighbours because the population of indigenous peoples is lower;
- (j) 28.6 per cent fully agreed, broadly agreed, or slightly agreed that AIDS sufferers should be isolated from the rest of the population for everyone's safety;
- (k) 24.3 per cent fully agreed, broadly agreed, or slightly agreed that although we may not like the fact, disabled people are a hindrance at work.

23. The Fundación Ideas and Department of Sociology of the University of Chile carried out two other surveys in 2001 and 2003 which illustrate changes compared to the first survey as set out below.

- (a) Generally there is an increase in tolerance. There are only a small number of areas where intolerant, discriminatory prejudice has grown and in all cases the increases are so small as to be insignificant. In some sub-scales the change is marked, at over 15 points, given the short period of time that has elapsed. The subscales relate to homophobia (negative prejudice against homosexuals) and abortion. However, of the three studies, it is in attitudes towards homosexuals that the highest levels of intolerance and discrimination persist.

(b) Another area where intolerance predominates relates to authoritarianism; Chileans, men and women alike, appear to have a definite authoritarian streak. The figure of authority is key for Chileans and they accept force as part of the social environment.

(c) It is of concern to note that the views of a high percentage of Chilean men and women with class-related or jingoistic prejudices (almost 45 per cent) have been steadfast in their strident views across the three studies.

(d) The same behaviour can be observed in opinions and attitudes towards indigenous peoples. Although this is only a general observation, between the first and second surveys there had been a slight fall in intolerance/discrimination, but opinions of this ilk have stayed the same in the third survey.

(e) Conclusions relating to indigenous peoples can be extended to physical minorities as well, especially to sufferers of HIV/AIDS and to moral minorities. In both cases there was a drop in levels of prejudice and discrimination towards these minorities between the first and second surveys; in the third survey the figures were unchanged or showed an increase.

(f) As regards the tolerance and non-discrimination scales and independent variables, of the people consulted, those who appeared to be more in favour of diversity were as follows:

- (i) Young people, who are more tolerant and more open to minorities;
- (ii) People with higher levels of education;
- (iii) People in the middle and upper-middle socioeconomic level;
- (iv) People whose political views are further away from the extreme right;
- (v) People who describe themselves as indifferent or atheist;
- (vi) Men and women show similar degrees of tolerance and non-discrimination;
- (vii) With regard to the sex of the respondent, namely the fact that historically women are more conservative, this factor appears to have no great effect on tolerance;
- (viii) The important thing to note in relation to the variables is their differing weight: education was much more significant than all other variables.

24. The conclusion reached by following the three measures referred to above as used by the Fundación Ideas and the University of Chile, and other studies on this issue¹, was that discrimination and intolerance are lodged at the heart of national culture and operate sub-consciously as stereo-types, prejudices, values or beliefs that everyone accepts and applies unquestioningly in their daily lives. There is a tension and a gap between what people say and

¹) United Nations Development Program Chile *Human Development Report, 2002 “We, The Chileans: A Cultural Challenge”*.

what they actually do in their daily lives. What appears on the surface to be tolerant discourse is operating alongside discriminatory behaviours.

25. The general study of 2006 "Derechos y ciudadanía en el Chile de hoy" (Rights and citizenship in today's Chile), shows that 92 per cent of the population is of the view that Chileans act in discriminatory ways; eight out of ten people say that in Chile there is little or no respect for people's rights; that figure rises considerably among the lowest socioeconomic level (96 per cent). In the view of 73 per cent of the population, public institutions have little or no respect for rights. Furthermore, the public consider that the groups whose rights are infringed the most are the poor (38 per cent), the elderly (men and women) (16 per cent), the disabled (13 per cent), consumers (10 per cent) and students (10 per cent). These figures tally nicely with the public's view of the main forms of discrimination in our country: 37 per cent state that the greatest discrimination comes about for "being poor", followed by "physical appearance and skin colour" and "not having enough education" (9 per cent). As regards people's view of democracy, 58 per cent prefer a society where there is respect for rights despite some degree of disorder; finally, on expectations relating to the human rights situation, 82 per cent believe that the situation could be improved. These figures match the telephone survey conducted by the Office of the Minister and Secretary-General of Government in 2005², of a sample of 607 people over 18 years of age in Greater Santiago. To the questions "when were you the subject of discrimination?" and "for which of the following reasons were you discriminated against?", 42.6 per cent of respondents said for socioeconomic reasons, followed by 41.3 per cent who said their age, and 27.1 per cent who mentioned their physical appearance.

A. The situation of indigenous peoples

26. Under the Indigenous Act³ the State recognizes nine indigenous peoples in Chile as follows: Aymará; Quechua; Atacameño or Likan Antai; Colla; Rapa Nui; Kawésqar; Yámana or Yagán, and Mapuche; the Mapuche are further subdivided into the Lafkenche, Pewenche and Williche groups. Recognition of the ethnic and cultural diversity within the country was recently extended by an amendment to that Act which recognized the existence and features of the Diaguita ethnic group and indigenous Diaguita status⁴.

27. The background factors set out below follow the incorporation of "membership of an indigenous people", which is now deemed an important variable, into information tools used to describe the economic and social features of the population, such as the Inquiry into the Socio-Economic Characteristics of the Nation (Casen)⁵, which the State uses to carry out

⁽²⁾ Flash survey: Tolerance and non-discrimination, Office of the Minister and Secretary-General of Government (MSGG), November 2005.

⁽³⁾ Act No. 19,253 of September 1993 relating to the Protection, Advancement and Development of the Indigenous Inhabitants of Chile. [Translator's Note: original wrongly reads 'May'.]

⁽⁴⁾ Act No. 20,117 of 8 September 2006.

⁽⁵⁾ The Ministry of Planning (MIDEPLAN) has been conducting the Casen Survey since 1987. Unless stated otherwise, the figures in this report are based on the survey taken in 2006 because of their representativeness at national, regional and municipal level.

socioeconomic surveys of homes and population and to assess the distributive impact of social programmes and policies.

1. Demographic situation of the indigenous population (Casen Survey 2006)

28. The number of people who describe themselves as belonging to an indigenous people is 1,060,786, or 6.6 per cent of the population of the country; that percentage has risen by 2.2 percentage points over the last decade. Most of the indigenous population describes itself as belonging to the Mapuche people, an ethnicity which accounts for 87.2 per cent of all indigenous groups; the Mapuche are followed by the Aymará (7.8 per cent), the Atacameño (2.8 per cent), Diaguita (0.8 per cent), Quechua (0.6 per cent), Colla (0.3 per cent); Rapa Nui (0.2 per cent); Kawésqar (0.2 per cent) and the Yagán (0.1 per cent).

29. Most of the indigenous population live in the cities. However, in rural areas the number of indigenous people is relatively high compared to the non-indigenous population. The trend over time has been for the numbers of people living in rural areas to decline both for the indigenous and non-indigenous peoples. In 1996, 51.7 per cent of the indigenous population was concentrated in urban areas, whereas in 2006 that percentage had grown to 69.4 per cent. In the past year the proportion of indigenous residents in rural areas was as high as 30.6 per cent, higher than the 11.6 per cent of the non-indigenous population in rural areas in the same year. As regards territorial distribution, the indigenous population accounts for a high percentage of residents in the following regions: Metropolitan (27.1 per cent), La Araucanía (23.9 per cent) and Los Lagos (14.7 per cent)⁶. See table No. 1 in the annex.

2. Socioeconomic situation of the indigenous population (Casen Survey 2006)

Poverty and destitution

30. Since 1990, Chile has significantly reduced the proportion of the population living below the poverty line. In 2006, 19 per cent of the indigenous population and 13.7 per cent of the non-indigenous population were living in poverty, a difference of 5.3 per cent between both population groups. Poverty has fallen more rapidly among the indigenous population, thereby closing the gap between the indigenous and the non-indigenous populations. This substantial change has occurred over the last three years. A drop of 10.4 percentage points has been recorded in the number of the indigenous population living below the poverty line as compared to 2003, when poverty among indigenous people stood at 29.4 per cent. The gap has therefore fallen from 11.3 per cent to 5.7 per cent between 2003 and 2006.

31. As for poverty, there has been a sharp drop in destitution. In 2003, 8.3 per cent of the indigenous population were destitute⁷, a figure which fell by 3.9 points in 2006. It should be

⁽⁶⁾ Chile comprises 15 territorial units known as Regions: Region I - Arica and Parinacota, Region II - Tarapacá, Region III - Antofagasta, Region IV - Atacama, Region V - Coquimbo, Region VI - Valparaíso, Region VII - O'Higgins, Region VIII - Maule, Region IX - Bío Bío, Region X - La Araucanía, Region XI - Los Ríos, Region XII - Los Lagos, Region XIII - Aysén, Region XIV - Magallanes and Antarctica, and Region XV - Metropolitan.

⁽⁷⁾ "Poverty line": minimum per capita income necessary to cover the cost of a basic basket of food plus other necessities for survival. "Destitution line" minimum per capita income required to cover the cost of a food

noted that destitution among the non-indigenous population stands at 3.1 per cent in 2006. The destitution gap between both population groups fell over the same period from 4.2 per cent in 2003 to 1.6 per cent in 2006.

32. Comparisons by area of residence show that one fifth of the indigenous rural population is living below the poverty line whereas in urban areas the figure is 18.4 per cent. Poverty and destitution affect indigenous men and women equally. Indigenous urban poverty has fallen by 9.7 percentage points compared to 2003. For the urban area, destitution among the indigenous population stands at 4 per cent, a fall of 2.4 points. The urban indigenous population living in poverty but not destitution stands at 14.4 per cent, a 7.3 percentage point drop on the figure for 2003 (21.7 per cent). Therefore both poverty and the poverty gap between the indigenous and non-indigenous populations is lower in urban areas than it is in rural areas.

33. In 2002 the “Chile Solidario” scheme was introduced to support the country’s poorest 225,000 families. The aim of the scheme is to cover families under the State’s social protection network, and thereby improve their living conditions and lift them out of destitution. Mideplan coordinates a set of public and private measures to that end at national, regional and local level depending on the needs and demands of the families which are members of the Chile Solidario scheme⁸. By October 2007, over 25,800 indigenous families had joined the scheme.

Income

34. Between 2003 and 2006 there was a significant increase in independent income⁹ and a reduction in the gaps between indigenous and non-indigenous peoples from 37.6 per cent to 27.4 per cent in urban areas and from 38.8 per cent to 35.9 per cent in rural areas. In urban areas, the indigenous population’s independent income grew by 21.9 per cent and in rural areas by 23.4 per cent over the same period. Increases in income have been lower among the non-indigenous population: 4.7 per cent in urban areas and 17 per cent in rural areas. In 2006 the average monthly independent household income by ethnicity stood at US\$ 904, whereas the same income for the non-indigenous population stood at US\$ 1,245. In rural areas that income stands at US\$ 486 and US\$ 758 respectively¹⁰.

Occupation

35. Information from Casen for 2006 shows that the proportion of posts filled by the indigenous population is slightly lower than for the non-indigenous population (52.6 per cent versus 53 per cent), and represents a closing of the gap recorded in 2003 (49.5 per cent

basket. Destitute households are households where, even when all income is used to meet the food needs of its members, those needs are not adequately covered.

⁽⁸⁾ For further information (in Spanish) see www.chilesolidario.gov.cl.

⁽⁹⁾ Independent income: payments received by a household as the result of holding factors of production, namely wages and salaries, profits from self-employment, self-supply of goods produced by the household, profits, interest, allowances and pensions. State benefits are not included.

⁽¹⁰⁾ That figure relates to the average observed rate for the American dollar for November 2006 as published by the Central Bank of Chile on <http://www.bcentral.cl>.

and 51.6 per cent, respectively). Similarly, the rate of employment participation is slightly higher for the non-indigenous population, standing at around 57.3 per cent for the non-indigenous population and 56.8 per cent for the indigenous population. The figures illustrate the trend to a fall in gaps in 2003 from 1.5 percentage points to 0.5 percentage points. When analysed by sex, there is a small difference between employed non-indigenous and employed indigenous women at 39 per cent and 38 per cent, respectively.

Wages

36. In 2006, the average monthly salary of the non-indigenous employed population was 257,543 pesos (492 dollars), whereas for persons belonging to the indigenous peoples it was 185,889 Chilean pesos (355 United States dollars)¹¹. In 2006, the average monthly wage for the indigenous population is 27 per cent lower than that for the non-indigenous population; since 2000 there has been a fall in the wage gap between both groups. Therefore, the wages of the indigenous population have risen by a greater percentage than those of the non-indigenous population (9.6 per cent compared to 7.2 per cent for the period 2003/2006)¹².

Illiteracy

37. The rate of illiteracy among the indigenous population is 6.8 per cent; among the non-indigenous population that rate is 3.7 per cent; even though illiteracy is greater among the indigenous population, the gap to the non-indigenous population has fallen over the last three years from 5.1 to 3.1 percentage points.

Schooling

38. Another gap observed in education shows that the indigenous population has had less schooling with the average duration of education being 8.7 years among the indigenous peoples as compared to 10.3 years among the non-indigenous population. Nonetheless it should be noted that that difference has fallen since 2003 from 2 years to 1.6 years. Although the majority of the indigenous population has no more than 8 years' schooling (62.7 per cent), over 1996/2006 the proportion of indigenous people who completed their secondary education has risen. Participation of indigenous people in higher education has grown from 9.6 per cent to 16.6 per cent in the same period. As far as pre-school education is concerned, coverage has risen significantly from 14 per cent in 1996 to 34.9 per cent in 2006, thereby practically closing the gap between the indigenous and the non-indigenous populations for this level of education.

(¹¹) In pesos and dollars as at November 2006.

(¹²) By Presidential Mandate the Ministry of Planning has taken on responsibility for coordinating the Council of Ministers for Social Matters; the duties of that Council include designing and implementing the Social Protection Scheme. One of its first tasks was to draw up and implement the instrument for accessing the system, known as the "Social Protection Card". The card is linked to a points-based calculation system which is used to select recipients and beneficiaries of allowances and social programmes. As regards the methodology used for assessing the families' socioeconomic conditions, the Social Protection Card incorporates two relevant variables linked to wage differences on the labour market, namely differences based on gender and indigenous ethnicity.

Housing

39. For housing, it should be noted that 97 per cent of the indigenous population lives in an “acceptable” dwelling, which can mean a house, apartment or a room in a “cité”¹³ block; there has been a significant drop in the number of people living in inadequate housing – whether self-help housing, huts, *ruka*¹⁴, or shacks, that figure has fallen by 9 per cent to 3 per cent between 1996 and 2006. Also worthy of note is the fact that 70 per cent of the indigenous population owns their own home, a higher proportion than for the non-indigenous population (69 per cent). Only 1.8 per cent of the indigenous population lives in overcrowded accommodation. In terms of the quality of the walls, roofs and floors, 70.8 per cent of the indigenous population have “acceptable”¹⁵ housing. There is a disparity here compared to the non-indigenous population where there is a slightly higher percentage of acceptable dwellings (77.4 per cent). However, the gap in question has fallen from 10.9 per cent in 1996 to 6.6 per cent in 2006. There is a significant gap between the non-indigenous and the indigenous populations with regard to sanitation; 92.4 per cent of the non-indigenous population has acceptable sanitation compared to 73.1 per cent of the indigenous population. This gap has, however, halved in ten years from 40.4 per cent to 19.3 per cent.

Access to health care

40. The indigenous population tends to use the public health system, and an average of 88.2 per cent of that population is affiliated to it with variations according to the area of residence: 96.2 per cent in rural areas and 84.6 per cent in urban areas. In rural areas 87.5 per cent of the indigenous population have free membership of the system, whereas the figure for urban areas is 61.2 per cent, including groups A and B of the National Health Fund (Fonasa)¹⁶. Coverage under the private health care system and membership of the private Health Insurance

⁽¹³⁾ Cité: a set of dwellings with a continuous façade looking onto a shared, private area with one or more points of access to the public highway.

⁽¹⁴⁾ Ruka: traditional Mapuche dwelling.

⁽¹⁵⁾ Acceptable housing: the Structural Condition of Housing Index classifies dwellings according to their structural condition into: "Acceptable", namely dwellings with walls, ceilings and floors which are classified as acceptable, in other words: 1) external walls are steel or reinforced concrete, brickwork, cement blocks or stone partitions lined on both sides (with wood or another material); 2) roof made of tiles, shingle, concrete slabs with an internal ceiling; zinc or slate with an internal ceiling, zinc, slate, tile, shingle or wood with no internal ceiling; floor made from foundation blocks, with covering (parquet, ceramic, board, linoleum, vinyl flooring, floor tiles, carpet, etc), board or parquet over the floor supports or joists.

⁽¹⁶⁾ Categories defined by Fonasa, the public health body with responsibility for funding health care both to people who pay contributions to the public health care system and to those who lack sufficient means to do so and are therefore funded by the State by means of a direct fiscal contribution. Under Act No. 18,469 the categories are: Group A – destitute: people who pay no contribution to any health care institution and who access health-care services upon production of evidence that they are destitute. Group B: persons who are members of Fonasa and whose taxable monthly income is such that they are exempt from paying for health care. Groups C and D: people who are members of Fonasa and who in the light of their taxable monthly income pay a percentage of their health care costs.

Institutions (Isapres)¹⁷, extends to 6.4 per cent of the indigenous population living in urban areas and only 0.5 per cent of that population in rural areas.

3. Legal reforms to strengthen the legal status of the indigenous peoples

41. There follows an account of a substantive situation which caused the Committee some concern, as stated in the Concluding Observations following consideration of the previous consolidated report, namely the initiative intended to strengthen the legal status of the indigenous peoples by recognizing them in the constitution and ratifying ILO Convention No. 169.

Constitutional amendment recognizing the indigenous peoples

42. This draft reform to the constitution has been the subject of legislative debate in the National Congress for over 15 years; the Government has forwarded four legislative proposals to the Congress which have hitherto been rejected by those who do not agree to the use of the concept of “indigenous peoples” on the ground that it would prejudice the territorial unity of the country.

43. In June 2000, the Government asked for legislation on this initiative to be treated as a matter of urgency, a request which was rejected by Congress when the quorum required for its approval, which is high (two thirds of serving Members of Parliament and Senators), could not be reached. In April 2002 the Government asked the Congress to consider a new proposal recognizing the indigenous peoples, which was rejected on 30 April 2003. The proposal was reiterated once again in March 2005 when, for the first time, use of the concept of “indigenous peoples” was accepted by an examining committee of Congress. However the proposal was ultimately rejected on 18 May 2005.

44. In April 2007, the President of the Republic, Mrs. Michelle Bachelet, undertook to push for constitutional recognition of the indigenous peoples in a reform which would incorporate the multicultural nature of the Chilean nation, the existence of aboriginal peoples and their rights, and the duty to protect indigenous peoples’ land and water. In October 2007 the draft constitutional amendment to that end was forwarded to the National Congress for approval.¹⁸.

(¹⁷) These are private bodies which fund health care services for their members.

(¹⁸) Sole Article – The following amendments are hereby made to the Constitution of the Republic:

- 1) The following fourth subparagraph shall be added to article 3:

The Chilean nation is multicultural;

The State recognizes the existence of the indigenous peoples who live on its territory and the right of indigenous peoples, communities and individuals to conserve, develop and strengthen their identity, languages, institutions and social and cultural traditions.

- 2) The following new subparagraph 10 shall be added to article 19, paragraph 24, and the current subparagraph 10 thereof shall become subparagraph 11:

"Therefore the law shall protect the land and water rights of the indigenous peoples and communities".

ILO Convention No. 169

45. A series of steps required in order to approve the above convention have been taken and various indigenous organizations have been consulted on the appropriateness of this body of law. In August 2007 the Executive asked the National Congress under the urgent parliamentary business arrangement to resume study of the convention with a view to its approval; the convention was approved by the Chamber of Deputies and referred to the Senate for the second stage in the legislative procedure, where in December 2007 it reached the final stage of the legislative process.

4. Detentions of Mapuche individuals in land disputes

46. The information below relates above all to the concern expressed by the Committee following consideration of the previous consolidated report in its concluding observations in relation to land disputes between the Mapuche people and national and multinational private companies, resulting in tension, violence, clashes with law enforcement officials and allegedly led to arbitrary arrests of members of the indigenous population.

47. Since 1999 minority sectors associated with claims for indigenous people's territorial rights began an offensive aimed at taking measures against forestry and farming companies in some of the provinces in the regions of La Araucanía (Region VIII) and Bío Bío (Region IX). Over the period from 2000 to 2003, there was a complex public order situation in those regions. There were unlawful occupations, theft and robbery of wood, arson attacks on woodlands and plantations, buildings and managers' homes, and of vehicles, farming and forestry machinery. Assaults were also carried out on employees and forestry brigade officers, Carabineros (uniformed police officers), the owners of the land concerned and their families, and there were even assaults on and threats to members of Mapuche communities who disagreed with these methods of action.

48. By an agreement adopted on 20 March 2002 the Senate of the Republic entrusted its Constitutional, Legislative and Justice Committee with the task of gathering information, analysing it and reporting on the numerous acts of violence which were repeatedly occurring in the regions of La Araucanía and Bío Bío; the perpetrators of the incidents were thought to be properly organized groups of hooded men who were using land demands as a pretext for scaring the population of the regions concerned into thinking that they might become victims of similar crimes. For its part the Chamber of Deputies notified the President of the Republic of a draft agreement¹⁹ expressing its rejection and condemnation of the acts of violence in question and asking the President to report on all legal proceedings brought as a result of those acts.

49. In view of the extreme seriousness of some of the situations described, the Government invoked the Antiterrorist Act in court. This has been the case in nine trials since 2001. The final occasion was in July 2003 following an attack against a witness, Mr Luis Federico Licán Montoya, in which he suffered injuries that have left him disabled for life.

¹⁹) Draft agreement No. 40 of 15 May 2002.

50. Because of the circumstances which led to the Government enforcing the Antiterrorist Act as against Mapuche individuals, the Government became the subject of accusations from various groups: some said it had failed to ensure that the rule of law prevailed in the maintenance of public order and protection of the right to property, and some that it had taken hard-hitting repressive measures and had criminalized sectors of society who said they had "legitimate claims" to land or other aspirations.

51. The legislation which punishes terrorist acts has been reformed under democratic governments by the so-called "Cumplido" Laws of 1992, and other legislation on the entry into force of reforms of criminal procedure which have raised the level of procedural guarantees. The process of charging someone with an offence has been governed by the legal category or nature of the offences under investigation and there has been no discrimination on grounds of the indigenous ethnicity of the accused in the investigations carried out. The objective of the legal actions taken was to punish the perpetrators of the offences, not the Mapuche people. Punishing people who commit an offence does not "criminalize" a social claim, never mind an entire people. The fact that these trials took place following complex events affecting internal security cannot lead to the conclusion that there is political persecution of the Chilean indigenous movement.

52. Guarantees of due process have been complied with in full in these trials: the defendants have had professional advice provided by the Public Defender's Office or the services of a private defence lawyer as they wish; furthermore the fact that there have been acquittals and access to prison benefits mean that the rule of law prevails in the country and applies to all its inhabitants.

53. According to information supplied by the Mapuche Public Defender's Office, in May 2007 the situations of the people who were the subject of formal proceedings by the Public Prosecutor's Office were as follows: in the period from 2001 to 2003, charges were brought against 28 Mapuche individuals for the offence of Illicit Terrorist Association provided for in the Antiterrorist Act. None of those persons was convicted of that offence and investigations were closed for various reasons, including dismissal of proceedings, acquittal or failure to pursue a charge. See table No. 2 in the annex.

54. Charges were drawn up for other offences under the Antiterrorist Act (arson for terrorist purposes or threat of terrorism) against 15 Mapuche individuals in two separate sets of legal proceedings referred to as the "Los Lonko" case and the "Poluco Pidenco" case. Some of the individuals charged were also charged with, but not convicted of, the offence of unlawful association. One individual was tried in both cases referred to, in other words there were 16 lists of charges against 15 individuals resulting in nine convictions, three acquittals, one temporary stay in proceedings, one dismissal of proceedings and two stays in proceedings for failure to appear (see table No. 3 in the annex). In addition, one Mapuche individual (Víctor Ancalaf Llaupe) was tried and convicted for an offence under the Antiterrorist Act by the criminal courts prior to the implementation of the criminal procedure reforms.

55. The debate on the return of land to the Mapuche people living in Regions VIII and IX has been resolved in the eyes of the law using the system of property registration which prevails in Chile. Registration certifies that a given property belongs to the bearer of the right according to a study of the titles registered, in chronological order, which establishes the succession of owners of the property in question.

56. The State of Chile has recognized the indigenous peoples' claim as legitimate. Their claims have been accepted on an on-going basis by democratic governments and have been processed through institutional mechanisms and channels. That much is demonstrated by the various measures taken in recent years to recover and extend the rights of indigenous peoples as referred to in this report.

B. Situation of the immigrant population

57. According to census data and the residency records kept by the Aliens Department of the Ministry of the Interior, there were 258,829 foreigners living in Chile in 2007. It is estimated that about 10 per cent of that total were in an irregular situation. The largest group of irregular migrants comes from Peru (50 per cent of the total). Some 77 per cent of immigrants to Chile are from ten countries; 53 per cent of the total are from border areas.

58. The estimate for the number of foreign citizens resident in Chile is as follows: 66,134 from Peru; 57,738 from Argentina; 14,716 from Bolivia; 13,252 from Ecuador; 10,532 from Spain; 9,859 from the United States; 8,316 from Brazil; 7,712 from Colombia; 6,286 from Germany; 5,235 from Venezuela; 59,049 from other countries; the approximate total number of foreign residents is therefore 258,829.

59. When the data on immigration to Chile is compared to information about Chileans abroad it is clear that the number of Chileans abroad is much higher than the number of foreigners in Chile²⁰.

60. Generally speaking immigrants are mainly from South American countries and the principal reason for coming to Chile is work-related; around 53 per cent of immigrants are women.

61. As migration is chiefly work-related the age profile of immigrants is characterized by the low number of children under 15 years of age who are registered – they account for the equivalent of 18 per cent of the total number of immigrants; this is especially true of the Peruvian and Bolivians population moving to Chile, of whom children make up approximately 10 per cent of the total.

62. For the Andean population, immigration to Chile is, with the exception of immigration from Bolivia, a recent phenomenon and most arrivals have occurred since 1996. In view of the information in the Population and Housing Census of 2002, and extrapolating on the basis of the total number of residency permits issued in Chile since that date it can be seen that over 50 per cent of all immigrants currently resident in Chile arrived in the country after 1996. That information is of particular relevance for the population of Peruvian, Colombian and Ecuadorean origin.

63. Where the Casen Survey of 2006 refers to the integration of immigrants into economic activities it shows that the activities with the greatest take-up are as employees or workers

²⁰) According to national censuses and the INE-DICOEX register for 2003/2004, the number of Chileans resident abroad is 857,781.

(70 per cent of men, 48 per cent of women); domestic service (34 per cent of women); self-employment (21 per cent of men, 13 per cent of women); employers (6 per cent of men, 4 per cent of women); other (3 per cent of men, 4 per cent of women).

64. One feature which stands out when information from the 1992 and 2002 censuses is compared is the increase in the economically active population at the time the survey was conducted. The immigrant population in this category rose from 31 per cent in 1992 to 48 per cent in 2002. Also worthy of note in this regard is the fall in the number of professional, technical and similar workers among the economically active population: although in 1992 64 per cent of immigrants said they fell into this category, in 2002 the percentage describing themselves as such had fallen to 45 per cent.

65. Where the territorial distribution of immigration by region is concerned, there is a significant concentration in the Metropolitan Region, where some 63 per cent of all immigrants reside. The Regions with the next highest concentrations of immigrant populations are Valparaíso Region and the former Region of Tarapacá (which is now covered by the Arica Parinacota Region and the Region of Tarapacá), where approximately 7.79 per cent and 7.1 per cent of the total immigrant population reside, respectively.

III. INFORMATION RELATING TO THE ARTICLES OF THE CONVENTION

A. Article 2

1. Government policy of non-discrimination

Government policy of non-discrimination 1998/1999

66. Over this period the Research Department of the DOS was in charge of conducting a series of seminars in various regions of the country in conjunction with the Department of Sociology at the University of Chile and the Fundación IDEAS; the nature of the seminars was academic, theoretical and social.

67. The seminars, along with research based on opinion polls by both bodies, made it possible to develop a clearer conceptualization of the views within our society with regard to class-related, sexist, homophobic and racist prejudices²¹. The first national survey in 1996, referred to in the previous report, produced a slew of information illustrating the situation in the country and alerting us to the urgent need to take measures to overcome it. The information was compounded by certain aspects of the Chilean sociocultural context highlighted in the Human Development Reports of the United Nations Development Programme (UNDP) on the situation of social relations and participation in the country. This helped bring to light a number of behaviours which discriminate against vulnerable groups and individuals including indigenous peoples, the disabled, groups living in poverty, sexual minorities, religious minorities, immigrants and people living with HIV/AIDS.

²¹) Social Organizations Division. *Revista Territorios de Participación Cultural*, (Review of Areas of Cultural Involvement) Year II, N° 4, spring 2001, pp 13 and 14.

Government policy of non-discrimination 2000/2006; Tolerance and Non-discrimination Programme

68. Concern over the existence of the forms of discrimination against vulnerable citizens and groups referred to in the preceding paragraph, and the success of the seminars, led the Government of then President Ricardo Lagos in 2000 to propose establishing a pilot project aimed at increasing understanding and overcoming discrimination Chile with a view to deepening the process of democratization in the country²². In May that year the initiative became reality with the establishment of the Tolerance and Non-discrimination Programme within the DOS. This marked the beginning of work to heighten awareness among stakeholders, whether in the government or civil society sectors, and to increase cooperation between them to construct public policies which incorporated variables related to diversity and non-discrimination²³.

69. That programme is the framework for promoting the construction of a more democratic country where there is respect for the various ethnic, religious, sexual, age-related and social identities which exist in Chile today²⁴. The declared purpose of the Programme is "To work in conjunction with public institutions and organizations representing groups vulnerable to discrimination to develop and support initiatives which encourage a gradual reduction in the various forms of discrimination and intolerance in different areas of society, and to raise awareness of their work in written and audiovisual form as well as in the media"²⁵.

70. The latter purpose is made reality every day by a professional team working on the focal points of the programme,²⁶ one of which is the need to draw up a public policy which can overcome discrimination using two alternative yet complementary routes. One of the alternatives, which has already been implemented, is based on formulating a National Plan to Overcome Discrimination in Chile and is explained in detail below. The other alternative is to integrate the programming proposals set out in the Plan into the Participation Act which is currently being worked on by the Government and the DOS.

Working Methodology for the Tolerance and Non-discrimination Programme over the period 2000/2006

71. Since July 2000, two networks working on the Tolerance and Non-discrimination Programme have been functioning, namely the Inter-Ministerial Network comprising ministers

(²²) See www.tolerancia.cl [Translator's note: link appears to be broken]

(²³) See www.tolerancia.cl [Translator's note: link appears to be broken]

(²⁴) Social Organizations Division, *Revista Territorios de Participación Cultural*, Year II, N° 4, spring 2001, pp 13 and 14.

(²⁵) Social Organizations Division. Tolerance and Non-discrimination Programme. Working Document, 2002, Mimeo.

(²⁶) The programming themes developed from the exchange of information which occurred as part of the processing itself: primary processing (through a focal group and interviews) and secondary processing (bibliographic review of the material produced under the Programme).

and public bodies, and the Multicultural Citizens' Network comprising civil society organizations.

Inter-Ministerial Network of the Tolerance and Non-discrimination Programme

72. The aim of the Programme is: "to incorporate the perspective of minorities' rights into non-discrimination in public policies". The network comprises 46 representatives from Ministries and public services. Its task relates specifically to designing and implementing measures within each institution for its users; the intention behind the measures should be to overcome the inequalities experienced by some groups within our society; this involves achieving a sustained momentum in favour of conferring rights to ensure that the most glaring exclusions are overcome.

73. The State draws up specific policies and measures for the majority of groups which experience discrimination and acts as a conduit for demands relating to education, housing, health, justice, social provision and work. These areas are the focal points around which policies and social intervention are conceived in an effort to mitigate various inequalities and achieve the goal of equal opportunities.

74. Generally, the achievements of the Inter-Ministerial Network relate to the realization on the part of Ministries and public services that the Plan of Action against Racism and Other Discriminatory Practices is their job and that the Network is key to the Plan's implementation. There is also an understanding that the Civil Society Network, referred to below, is a major asset as it enables the administrative machinery to interact with the component groups of that Network, all of which are affected by discrimination, and their demands; the result has been a close relationship between the two sides in terms of cooperation and follow-up of strategies to overcome discrimination.

Multicultural Civil Society Network of the Tolerance and Non-discrimination Programme

75. The key aim of the Civil Society Network is to provide the Inter-Ministerial Network with the main thrust of the demands and needs of the various groups affected by discrimination, the aim being to conduct a thorough and genuine investigation of the circumstances involved. Additionally, the Network carries out measures to improve individuals' circumstances as well as monitoring the commitments taken on by Ministries and public services under the Tolerance and Non-discrimination Programme.

76. The Multicultural Civil Society Network comprises over 60 community organizations and includes representatives of the poor, the disabled, indigenous peoples, people living with HIV/AIDS, persons deprived of their liberty, foreign immigrants, sexual minorities, religious minorities, women, children, adolescents and young people, the Roma people, the disabled, the elderly, health and self-help organizations, among others.

77. The main achievements of the Multicultural Civil Society Network are: the commitment to continue working on an ongoing basis as a Network to promote the right to non-discrimination and an acceptance of diversity; and the establishment of a more comprehensive picture of discrimination which makes it easier to establish strategic alliances between different stakeholders which go beyond their specific difficulties.

Strands of the Tolerance and Non-discrimination Programme in the period from 2000 to 2006

78. The strands of the programme are a way of classifying the measures to be taken under the three major priorities for action laid down by the DOS, namely the design of public policy, public participation and communications. As examined below, the three strands of the Programme are: a) the Plan of Action against Racism and Other Discriminatory Practices, b) the promotion of community initiatives, c) raising awareness of initiatives relating to tolerance and non-discrimination.

a) Plan of Action against Racism and Other Discriminatory Practices

79. The aim of this strand is to lay the institutional foundations in public policy to overcome discrimination in our country. The work of the Networks referred to above in the various types of discrimination experienced by individuals and groups, and an analysis of their proposals for overcoming that discrimination, led to the drafting of the "General Guidelines for the Plan of Action against Racism and Other Discriminatory Practices"; the guidelines stated that their period of application was 2001/2006²⁷.

80. The Guidelines are "a tool for organizing action to be taken as they set out the strategies and responsibilities needed for public bodies in relation to issues where discrimination is involved"²⁸. The Tolerance and Non-discrimination Programme states that overcoming discrimination is not the sole task of the State; rather, groups and individuals are called on to develop and support measures which will enable the cultural changes sought to be achieved. As noted above, stress is laid on the fact that change requires time so that attitudes and behaviours can shift, meaning that across-the-board involvement of the various public stakeholders and civil society is crucial.

81. The main activities under the Plan were: a) the process of signing Ministries and public services up to commitments, currently under way; b) awareness-raising information days for public servants (in the Coquimbo, Valparaíso and Metropolitan Regions) through workshops and courses constructed around demands received; c) promotion of initiatives to combat discrimination in Ministries and public services so as to improve the quality of life of groups vulnerable to discrimination with whom those Ministries and services work, for example work done with the Alien Status Office at the Ministry of the Interior to regularize migrant groups' records; and d) monitoring by civil society of progress in the commitments taken on by each of the public services and Ministries under the Plan; the aim is to generate ongoing information on the situation and to that end working boards have been set up comprising the relevant community organizations and government bodies.

⁽²⁷⁾ Social Organizations Division, Tolerance and Non-Discrimination Programme, General Guidelines for the Plan of Action to Combat Racism and Other Discriminatory Practices in Chile, 2001/2006, mimeograph, but without publication information.

⁽²⁸⁾ Op.cit.

b) Promotion of community initiatives

82. The aim of this strand is to support Multicultural Civil Society Network member organizations' initiatives which promote non-discrimination as part of the organizational mission of the DOS. The strand is implemented through the competitive tender mechanism which allows organizations to receive funding for initiatives costing between 800,000 pesos (US\$ 1,531) and 1,300,000 pesos (US\$ 2,488) each, which must be carried out within a maximum period of six months. Consideration is also given to the supply of technical support to organizations which request it.

c) Publicizing of initiatives relating to tolerance and non-discrimination

83. This strand aims to: a) publicize initiatives of public and private bodies in the form of printed materials (brochures, posters, leaflets) and in the media; and b) raise awareness of activities conducted under the Tolerance and Non-discrimination Programme, and advertise the Programme's work. The media used to that end are: a web page (www.tolerancia.cl), audiovisual materials, printed materials, a link to mass media (radio slots, publication of articles by people working on the Programme who are press professionals), seminars, courses. The main target group for this information comprises children and adolescents. As part of this strand a public competition was also held on "Non-discriminatory Practices", the aim being to identify public and/or private institutions which had conducted projects which incorporated groups vulnerable to discrimination.

Policy of Tolerance and Non-Discrimination since 2006 – Department of Diversity and Non-Discrimination

84. Since the Government of President Mrs. Michelle Bachelet took office, the Tolerance and Non-discrimination Programme has had a more prominent place within the Office of the Minister and Secretary-General of Government, and has become the Department of Diversity and Non-Discrimination under her Programme of Government for the years 2006/2010. The effect of this change is to extend this issue by means of a *Pro-participation Agenda* which embodies a set of initiatives fostered by the Government and aimed at promoting participation, the exercise of civic rights, partnership and respect for diversity and non-discrimination.

Working methodology of the Department of Diversity and Non-Discrimination

85. The work of the department aims to heighten awareness among stakeholders, whether in the government or civil society sectors, and to increase cooperation between them to construct public policies which incorporate variables related to diversity and non-discrimination²⁹. The department's activities are carried out by two sections: a) non-discrimination and b) diversity.

²⁹) See www.tolerancia.cl.

a) Activities in the Non-Discrimination Section

86. By way of illustration, some of the activities which took place in 2007 were as follows:

- a) Analysis of government proposals on diversity and non-discrimination: between June and November 2007 the Regional Ministries and other public bodies in the Inter-Ministerial Coordinating Body for Civil Society Participation (CIPAC) were the basis for a survey of diversity and non-discrimination in public services in twelve regions of the country³⁰. A “diagnostic form” drawn up by officials at the Department of Diversity and Non-Discrimination was used in the study. The Non-Discrimination Section is drafting the report on the results;
- b) Topic-based seminars: involving various public stakeholders, academics and civil society representatives who contributed their views and comments for consideration for inclusion in the Plan of Action against Racism and Other Discriminatory Practices;
- c) Drafting of a document defining the principles underlying the Plan of Action against Racism and Other Discriminatory Practices: this is a guide for drawing up public policies which include aspects specifically intended to combat racism and discrimination; representatives of groups affected by discrimination, Ministries and public services have been involved in formulating it; the document will be submitted in 2008;
- d) Working day "Towards the Regional action plan to combat racism and other discriminatory practices": attended by 35 representatives from CIPAC;
- e) Workshop and seminar: "Chile and international human rights law": attended by representatives of community organizations affected by discrimination, public officials and academics³¹.

b) Activities in the Diversity Section

87. This section is the conduit for identifying, formalizing and publicizing the successful projects conducted by public, private and civil society organizations, the aim being to promote the take up of good practice in the area of diversity and non-discrimination. Some of the activities carried out in 2006 and 2007 are set out below.

(i) The "Chile somos todos" (Chile is all of us) Competition to reward Best Practice in respecting Diversity and Non-Discrimination

88. The aim is to reward the good practice of public, private and community organizations which promote respect for and inclusion of individuals and groups affected by discrimination

⁽³⁰⁾ Tarapacá, Antofagasta, Atacama, Coquimbo, Valparaíso, Libertador Bernardo O'Higgins, Maule, Bio-Bio, Araucanía, Los Lagos, Aysen, General Carlos Ibáñez del Campo and Magallanes.

⁽³¹⁾ For further information (in Spanish), see:
www.participemos.cl/index.php?option=com_content&task=view&id=614&Itemid=1.

such as the disabled, people living with HIV/AIDS, the poor, the elderly, migrants, persons belonging to the indigenous peoples, women, and sexual and religious minorities.

89. In 2006, entries were accepted for 34 projects representing 10 regions of the country. The winning projects included the Civil Registry and Identification Service's "Integration of indigenous peoples" project which was inaugurated in 2005; the project makes information and signage available to members of the indigenous population in their own languages in its major offices; the major aspects of particular note under the initiative include marriage ceremonies in the presence of an interpreter into the language concerned and information leaflets on the various procedures carried out by the Service such as actual possession, registration of birth, marriage and death in indigenous languages (Mapuche and Aymará initially). Also praised was the newspaper project "*Sólo Noticias*" (Just News), run by a private undertaking which has been distributed free of charge since 2004 in Santiago and Concepción; aimed at migrants, especially the resident Peruvian community, it promotes measures to enable them to integrate effectively into Chilean society.

90. In 2007 entries were accepted for 53 projects representing 13 regions of the country. The winning projects included the following: the project run by Fundación Telefónica Chile (Chile Telecom Foundation) entitled "Diversifying the workplace with a view to excellence" which sought to recruit and retain staff who value and respect different philosophies, beliefs, sexes, races, etc, through workshops, seminars and art competitions; the "Minibus tardes peruanas" project (Peruvian evenings minibus) developed by the radio programme "Tardes peruanas" (Peruvian evenings) which fosters recreation and economic tourism among Peruvian, Chilean and Latin American families generally; the project entitled "Educar sin discriminar, escuela sin fronteras" (Education without discrimination, school without frontiers) run by the German school which promotes the integration of Peruvian boys and girls but takes account of their nationality and national traditions. There are 304 boys and girls on the school roll, of whom some 105 are foreigners, mainly from Peru; the project "Escuela para la comunidad gitana de Santiago, de la Corporación Iglesia Adventista" (Adventist Church Corporation School for the Gypsy Community of Santiago), the aim of which is to provide Gypsy adults and children, both male and female, with the opportunity to attain a certificate attesting to their level of schooling, thus improving their employment opportunities.

ii) Hosting of the seminar "Intolerance, totalitarian ideologies and Internet use"

91. Representatives of the United Nations Development Programme, UNDP Chile, the Human Rights Centre at the Law Faculty of the University of Chile, the criminal investigation police, the Agrupación de Migrantes Andinos Pro Andes (ProAndes Andean Migrants' Group) and academics were involved in the day's activities. The aim of the seminar, which was held in Santiago in August 2006, was to reflect on the use of new technologies by totalitarian groups operating in Chile which have recently orchestrated discriminatory incidents and violent assaults against indigenous peoples, foreign immigrants, people living on the streets and sexual minorities³².

⁽³²⁾ For further information, see: www.participemos.cl/index.php?option=com_content&task=view&id=463&Itemid.

iii) The cultural diversity in education project to prevent discrimination

92. In cooperation with the Programa de Integración de la Municipalidad de Pedro Aguirre Cerda (Pedro Aguirre Cerda Municipality Integration Programme), a pilot educational project on non-discrimination and multiculturalism in schools was initiated, targeting 150 students at Lo Valledor state school; the project ran between September and November 2006 and involved students in years five, six, seven and eight, offering two sessions per year-group³³.

iv) Nationwide publicity days for the bill on anti-discrimination measures

93. The aim is to reflect on discrimination and publicize the impact of the bill which is currently going through the National Congress. Meetings were held with public officials, the leaders of community organizations and university students; press conferences and radio interviews were carried out with ministerial representatives³⁴.

v) Quantitative study of male and female officials at the Treasury of the Republic³⁵

94. The study was conducted by the Department of Diversity and Non-Discrimination in conjunction with the Treasury of the Republic. Its aim is to use various methods to prevent discriminatory behaviour among public officials. The study asked about levels of discrimination and intolerance towards various groups and topics. The definitions used were those proposed by the Department of Sociology at the University of Chile in its report "Intolerance and discrimination survey 2000". Replies were received from 376 officials at the Treasury of the Republic, including administrative, professional, managerial, auxiliary and technical staff from all over the country, of whom 182 were men (48.4 per cent) and 194 women (51.6 per cent). From the figures obtained it is possible to make some preliminary remarks on racial discrimination, and these are given below.

95. Xenophobic prejudice was highest in response to the two statements which follow. Most respondents (57.4 per cent) said they were in agreement or in full agreement with the statement that "Chileans should be given priority over foreigners for posts carrying a high level of responsibility". Additionally, women show a higher incidence of xenophobic prejudice than men. A majority (58.4 per cent) also agreed with the xenophobic idea of "putting a halt to

(³³) For further information, see: www.participemos.cl/index.php?option=com_content&task=view&id=487&Itemid=1; www.msgg.gov.cl/noticias/subse/005.pdf; www.msgg.gov.cl/noticias/subse/not_subse_005.htm.

(³⁴) For more information, see: www.participemos.cl/index.php?option=com_content&task=view&id=495&Itemid=1; www.participemos.cl/index.php?option=com_content&task=view&id=597&Itemid=1; www.participemos.cl/index.php?option=com_content&task=view&id=638&Itemid=1. For further information on work in the regions, see: www.participemos.cl/index.php?option=com_content&task=view&id=546&Itemid=1; www.participemos.cl/index.php?option=com_content&task=view&id=580&Itemid=1.

(³⁵) Preliminary report on the quantitative study of diversity in the workplace, Diversity and Non-Discrimination Department, October 2007.

immigration in order to afford Chileans priority in securing employment". Again, that idea found support more frequently among women.

96. The figures for topics related to racial prejudice towards Chile's indigenous peoples were very low: under 5 per cent of respondents supported statements discriminating against such groups³⁶.

vi) The diversity and non-discrimination project in Valparaíso

97. The project is being implemented in cooperation with the Provincial Governor's Office in Valparaíso and the Regional Ministerial Secretariat-General for Region V. The project seeks to introduce good practice which promote respect for and inclusion of the vulnerable individuals and groups within our society, especially people living on the street, Latin American foreigners, homosexuals, lesbians and transgender individuals. It is envisaged that these aims will be achieved by means of awareness-raising workshops for officials working in the public services and for police officers³⁷.

vii) International Day for Tolerance, 16 November

98. This day has been celebrated for three consecutive years starting in 2005. The event is informative, artistic and cultural in tone and public bodies take part alongside organizations representing areas of civil society affected by discrimination³⁸.

viii) Diversity in employment project

99. This project consists on the one hand in making public officials aware of instruments which penalize and preclude discriminatory behaviour, and on the other hand making them aware of and promoting projects which show respect and appreciation for cultural diversity in the workplace. The activity is conducted by way of discussion groups, publicity materials, training workshops, award of diplomas, results and assessment days. Its specific aims are to collate and analyse what public officials say about cultural diversity; analyse and share legal instruments (both governmental and international) and methodological tools which aim to respect the right to identity; prevent attitudes, behaviours or habits which are hostile to or dismissive of the various identities in the workplace. The direct targets of the workshops are public officials (administrative, technical, professional, managerial); the indirect targets are

⁽³⁶⁾ For more information, see: www.participemos.cl/index.php?option=com_content&task=view&id=616&Itemid=1.

⁽³⁷⁾ For more information, see: www.participemos.cl/index.php?option=com_content&task=view&id=622&Itemid=1; www.participemos.cl/index.php?option=com_content&task=view&id=631&Itemid=1.

⁽³⁸⁾ For more information, see: www.participemos.cl/index.php?option=com_content&task=view&id=479&Itemid=1; www.participemos.cl/index.php?option=com_content&task=view&id=650&Itemid=1.

people who use public bodies. On 30 December 2007 the number of public bodies participating in the project stood at 47³⁹.

ix) The "I DON'T discriminate" campaign

100. This campaign is at the design stage and will be implemented as of March 2008. The lead department on the campaign is the Under-Secretariat-General and it will aim to prevent discrimination at school. The starting point of the process saw involvement from second-tier leaders from the Metropolitan Region and the managers of the Provincial Secretariat of Education.

Legal structure of the government's policy of non-discrimination

101. Chile has a set of legal principles and rules which provide for equality before the law and preclude government from providing for arbitrary differences in law. Alongside the public policy of non-discrimination described above which the Government is implementing through the Office of the Minister and Secretary-General of Government, there are other State bodies which deal with the specific issues facing the most vulnerable individuals and/or groups in society, namely the National Service for Minors (SENAME), the National Service for Women (SERNAM), the National Disability Fund (FONADIS), the National Service for Older Persons (SENAMA), the National Commission on AIDS (CONASIDA) and the National Indigenous Development Corporation (CONADI), whose job is to make indigenous peoples' rights effective in accordance with the Indigenous Act and whose work is discussed in this report.

102. There are currently no rules in the Chilean legal order specifically aimed at eliminating discrimination in general, neither are there any norms which provide for criminal penalties for racism, discrimination or xenophobia. A bill, described below, aimed at changing that situation is currently before the National Congress; the bill provides for better guarantees for equality and for a duty upon the State to draw up policies and take the measures necessary to ensure that individuals are not discriminated against in the enjoyment and exercise of their fundamental rights. The initiative so described relates to discrimination in general, rather than racial discrimination specifically, and it penalizes acts of discrimination including those committed on the grounds of race, or national or ethnic origin, in line with the recommendation made in that regard by the Committee on the Elimination of Racial Discrimination Racial following its consideration of the previous periodic report of Chile.

Bill providing for anti-discrimination measures⁴⁰

103. In short the aim of this bill is to preclude and penalize any arbitrary discrimination against any individual person or group of people. Arbitrary discrimination is the only discriminatory behaviour prohibited under the bill. Unlawfulness is not one of the requirements in the definition of this offence, instead, the offence is characterized by a lack of justification or of proportionality or deviation from purpose. In other words, unreasonable conduct motivated by

³⁹) For more information, see: www.participemos.cl/index.php?option=com_content&task=view&id=588&Itemid=1.

⁴⁰) *Legislative Bulletin* No. 3815-07.

prejudice (for example failing to offer someone a job because that person lives in a poor area of the city, or because that person is a woman or a single mother, or has an indigenous surname or any other reason related to the intrinsic circumstances of an individual or a group).

104. The bill states that "‘arbitrary discrimination’ means any distinction, exclusion, restriction or preference based on grounds of race or ethnicity, colour, national origin, socioeconomic circumstances, geographical area, place of residence, religion or belief, language, ideology or political opinion, trade union membership or involvement in labour-based organizations, sex, gender, sexual orientation, civil status, age, filiation, personal appearance, genetic structure or any other social circumstance which may deprive, distort or threaten the legitimate exercise of the rights established in the legal order, including the international treaties in force and ratified by Chile ". A subsequent legislative note from the President of the Republic added to the above definition as follows: "‘arbitrary discrimination’ means any distinction, exclusion, or restriction *on the part either of the State or of individuals*, based on [...]".

105. Under that bill, the courts will have sole competence to determine whether an act of discrimination is arbitrary and, in the event that it is, to penalize the offence and establish civil damages for the person or persons concerned. To that end the bill introduces a new legal concept referred to as a "special non-discrimination action" which may be brought before the Court of Appeal for acts or omissions involving discrimination. In the event that the action is ruled admissible the Court will immediately take the steps it considers necessary to re-establish the rule of law and ensure due protection for the person or persons concerned; it also falls to that court to give a ruling on the appropriateness where necessary of any compensation to repair the moral prejudice and capital impairment incurred. In the event that an action is declared admissible the person responsible is to be sentenced to the penalties provided for in the bill.

106. The bill includes a criminal rate for the commission of acts or omissions classed as arbitrary discrimination; the punishment is a fine on taxable profits of a maximum of 100 UTM (monthly taxation units) (US\$ 6,550)⁴¹.

107. Other measures under this initiative which are aimed at eliminating discrimination are the following amendments to the Penal Code: a) the following factor is added to the list of factors aggravating criminal responsibility: "committing the offence for reasons of discrimination on grounds of the ideology, religion or beliefs of the victim, the ethnicity, race or nation to which the victim belongs, the victim’s sex, gender, sexual orientation, or an illness or disability which the victim has" b) it states that someone who "[...] by any means makes statements or performs acts intended to incite hatred or violence toward a group by reason of its ethnicity, race, sex, gender, sexual orientation, religion, ideology or nationality [...]" is guilty of an offence; furthermore, it makes such an offence punishable by medium-term rigorous imprisonment in the minor and medium categories (between 61 days and 3 years).

108. The bill contains qualified quorum provisions, in other words a simple majority is not enough for it to be approved, meaning that it will require the support of Senators on the Government and the opposition benches in order for it to become law.

⁴¹) Using the monthly tax unit for December 2007 this sum equates to 34,222 Chilean pesos.

Incorporation of the convention and the rights enshrined therein into the domestic legal order

109. The International Convention on the Elimination of All Forms of Racial Discrimination is one of the sources of law in the domestic legal system, as it is a treaty ratified by Chile, promulgated, published and thus in force⁴². Thus, the Convention has been incorporated into domestic law, and its applicability is guaranteed by the system of legal sources.

110. Some legal writers consider the rights, duties and guarantees provided by international human rights instruments to have the same constitutional status as the human rights enshrined in the Chilean Constitution, in accordance with the provisions of article 5, second paragraph, of the Constitution⁴³. This provision affords current judicial law valuable opportunities for the defence of human rights. Other constitutional experts assign only legal value to the instruments in question, or an intermediate rank between the law and the Constitution.

111. As for the national case law regarding the hierarchy of international treaties dealing with human rights, which include the Convention, it has oscillated between according them the rank of a law and a rank above that of a law, but beneath that of the Constitution. In an important ruling, the only one in which the Constitutional Court has directly dealt with this subject, the Court found that international human rights treaties did not have a hierarchical rank equal to that of the Constitution, and referred to a doctrinal theory that essentially held that international human rights treaties “. have higher legal force than the law, without ceasing to be, from a formal point of view, at the same level.” and that “. while treaties and laws have the same normative rank or hierarchy, in the application of both in a given case, the treaty shall have primacy over the law”⁴⁴.

112. As regards international treaties, the constitutional reforms of August 2005 laid down a series of rules which clarify the gaps in Chilean legislation relating to the exclusive role of Congress in approving or rejecting international treaties submitted to it by the President prior to ratification. The most important of these rules indicates that the provisions of a treaty may be set aside, modified or suspended only in the manner laid down in the treaty itself or in accordance with the general rules of international law, an area not regulated before this reform.

(⁴²) Article 5, second paragraph, of the Constitution, in relation to articles 32 (15) and 54 (1).

(⁴³) Article 5, second paragraph, of the Constitution reads as follows: “. It is the duty of State bodies to respect and promote such rights, as guaranteed by this Constitution, as well as by the international treaties ratified by Chile which are in force.”

(⁴⁴) Constitutional Court ruling, docket No. 346. Cons. 75, citing the arguments put forward by the constitutional scholar Alejandro Silva Bascuñán.

113. Consequently, and in the light of the foregoing, while there is no rule explicitly establishing the position of the Convention in the domestic legal order, it may be concluded without any doubt that:

- (a) The International Convention on the Elimination of All Forms of Racial Discrimination, together with the other ratified international human rights treaties that are in force, has been incorporated into the system of sources of domestic law;
- (b) The Constitutional Court has held that the international human rights treaties are in an intermediate category between the Constitution and laws;
- (c) Following the reform of August 2005, the Constitution prescribes that: “the provisions of a treaty may be set aside, modified or suspended only in the manner laid down in the treaty itself or in accordance with the general rules of international law.”. This provision is of the highest importance in terms of respect for international human rights law domestically, since it means that no international human rights standard which is binding on the State can be ignored or nullified by a domestic measure⁴⁵.

2. Government policy towards indigenous peoples and its legal structure

114. The Indigenous Act is the principal body of law providing for the rights of the indigenous peoples. The previous report explained that since the restoration of democracy Chilean society, the Government and the indigenous peoples have made significant progress on indigenous rights, as reflected in the entry into force of the Indigenous Act, the establishment of public institutions to deal specifically with this sector, and the implementation of public policies on the restitution and protection of land and waters, development of production and the affirmation of indigenous culture and education. The content of the Act was commented upon in the previous report⁴⁶ and in the presentation to the Committee at its 1346th and 1347th meetings in August 1999.

115. As described in the previous report, the Act introduces a special indigenous status and, recognizing the State’s obligation to take appropriate measures in this area, establishes the National Indigenous Development Corporation (CONADI), a decentralized public body with legal personality and own resources which reports to the Ministry of Planning and Cooperation, and tasked with promoting, coordinating and implementing action by the State to encourage the full development of indigenous individuals and communities.

116. As described in the previous report, CONADI runs the Indigenous Lands and Waters Fund, whose purpose is the purchase by the State of land which will restore land to indigenous

⁽⁴⁵⁾ Article 54 (1) of the Constitution. According to legal writers, this means that “. if such treaties are in force under international law, they shall become domestic law without ceasing to be international law; however, unlike domestically generated norms, they shall not be subject to unilateral derogation by the State, as they shall take precedence over domestic law, in accordance with the free and voluntary consent given by the State. This view was expressly endorsed by the Government and by the various sectors represented by the Senate at the first stage of consideration of this constitutional reform.” Nogueira, Humberto. “Aspectos Fundamentales de la Reforma Constitucional de 2005 en Materia de Tratados Internacionales”, in *Reformas Constitucionales*, Francisco Zúñiga, ed., LexisNexis, 2005.

⁽⁴⁶⁾ Document CERD/C/337/Add. 2 of 29 October 1998.

inhabitants or extend the boundaries of the land currently owned by them. Its aim is also to regularize, restore and purchase water rights in cases where the indigenous inhabitants have lost them, particularly in the case of the Aymará and Atacameño communities in the north of Chile. CONADI also runs the Indigenous Development Fund which is intended to facilitate the development of production by indigenous peoples who have received land purchased through the Lands and Waters Fund.

Indigenous affairs policy since 2000

117. Having regard to the progress described above, and in order to lay the foundations for a new deal between the State, society at large and the indigenous peoples, in March 2000 the then President, Mr. Ricardo Lagos, called on indigenous, State and business organizations and the churches to form an Indigenous Peoples' Working Group. The task of the Group was to prepare a plan of action to step up efforts by society and the State in support of all Chile's indigenous peoples. As a result of the Group's proposals, in May 2000 the President announced a set of 16 concrete measures to boost the development of the indigenous peoples, chief among them being a) pressing ahead with the restitution and protection of lands, water and irrigation; b) implementation of the "Origins" Comprehensive Development Programme; and c) the establishment of the Historical Truth and New Deal Commission, as referred to below.

a) Progress with the restitution and protection of lands and water

118. The return of indigenous communities' land and waters, the very source of their culture and development, constitutes recognition of the land rights of which they were deprived, often in painful and abusive circumstances. The focus on an institutional approach to achieve this has facilitated progress in meeting this historical claim.

Mechanisms for reclaiming indigenous heritage

119. There follows an overview of the main mechanisms for reclaiming indigenous heritage:

(a) *Land subsidies (Act No. 19253, art. 20 (a))*: used to expand land boundaries when the land area is too small for families and communities to develop. This mechanism gives access to a non-refundable contribution that is personal and non-transferable, and payable to anyone who sells property to the beneficiary.

(b) *Purchase of disputed land (Act No. 19253, art. 20 (b))*: this mechanism provides financing for efforts to solve land-related problems arising as a result of legal disputes over some historical act that led to the illegal loss of land by indigenous people (squatting, erection of fences, fraudulent sales, expropriation during agrarian counter-reform, etc.).

(c) *Transfer of State property to indigenous communities (Act No. 19253, art. 21)*: this mechanism gives CONADI the power to take possession of State lands, holdings, properties and water rights, for transfer to indigenous communities or individuals. This concerns State holdings that have historically been occupied or claimed by indigenous families and communities.

(d) *Subsidy for upgrading and regularization of indigenous land*: this subsidy aims to confer legal certainty on indigenous property where no such certainty exists for various reasons, and thus to consolidate the indigenous heritage.

Land transferred using the mechanisms described above

120. Between 1994 and 2005, some 493,000 hectares of land were returned to indigenous communities, benefiting over 18,800 families, and using the whole range of mechanisms at the State's disposal, as described above. Using only the mechanisms for land subsidy and purchase of disputed land, some 85,000 hectares were returned in that same period, benefiting over 374 communities.

121. Between 2006 and 2007, these two mechanisms alone accounted for the return of some 23,000 hectares of land, benefiting a total of 2,200 indigenous families from 110 indigenous communities. In 2008, the total budget for the Indigenous Land and Water Fund is 23.314 billion pesos (US\$ 44,622,657), of which 19.555 billion pesos (US\$ 37,427,986) are for land purchase alone.

Protection of indigenous water rights and progress in irrigation

122. Between 2000 and 2005, 8,165 hectares of irrigated land were added, bringing the total to 16,056 hectares. At the same time, 209 litres per second of water were acquired for Atacameño communities in a high water-risk area; the water capacity acquired in regions I and II is currently 838 litres per second. During this period, rights relating to 8,643 litres per second of capacity were awarded as a result of the reform of water rights.

b) Multiphase Comprehensive Development Programme for Indigenous Communities (“Origins Programme”)

123. This Programme is a Chilean Government initiative to promote and establish a new type of relationship with the indigenous peoples by improving their living conditions using a comprehensive approach which takes account of cultural and ethnicity-based considerations. Its purpose is to improve living conditions sustainably and to promote “development with identity” among the Aymará, Atacameño and Mapuche peoples in rural areas, particularly in the economic, social, cultural, environmental and legal spheres.

124. The programme is being financed by monies from the Chilean State and a multi-phase loan from the Inter-American Development Bank (IDB). The first phase was from 2001 to 2005 under a US\$ 133 million loan. During that phase the programme was the direct responsibility of the Ministry of Planning.

125. During this first phase, Origins promoted and supported participatory local and regional planning processes as well as the implementation of community projects in production, cultural activities and traditional medicine. It also supported the implementation of a bilingual intercultural education model in over 160 schools as well as intercultural health-care models.

126. Communities drew up plans to develop production incorporating over 4,000 projects supporting organizations and indigenous medicine. At the same time public service provision of intercultural health care and education improved as did the public bodies' skills in delivering services in a culturally sensitive way.

127. In 2006, the Government signed a second loan agreement with the IDB in order to implement the second phase of Origins, thereby pursuing its policy. In this phase, which is

currently under way, the programme is being operated by CONADI in the regions of Tarapacá, Arica-Parinacota, Antofagasta, Bío Bío, La Araucanía, Los Lagos and Los Ríos. The budget envisaged for the phase is 59.346 billion pesos (US\$ 113,587,383).

128. The approach underlying the working method currently in use groups indigenous communities who live in the same area on the basis of cultural criteria. Work is being done in this area on a sector-by-sector basis through Mesas de Planificación Local (Local Planning Boards) (MPL), set up by the communities themselves. The total number of rural indigenous communities which will participate in this phase is 1,206 (34,443 families). Inclusion is envisaged as a gradual process beginning in 2006 covering all communities in 2008 and concluding its work with all of them in 2010.

129. Various public services are involved in the “Origins” Programme as executing agencies responsible for certain specific areas of action: the Instituto Nacional de Desarrollo Agropecuario (National Institute for Agricultural Development (INDAP) and the Corporación Nacional Forestal (National Forestry Corporation) (CONAF), which report to the Ministry of Agriculture, to implement income-generating production projects; the Ministry of Health for the inter-cultural health strand and the Ministry of Education for the implementation of the bilingual intercultural education strand.

c) The Historical Truth and New Deal Commission and its recommendations

130. Established in January 2001 under the leadership of the former President of the Republic Mr. Ricardo Lagos, the Commission invited distinguished figures from many areas of national life to attend so as to give itself a wide-ranging, multi-faceted membership which would allow it to prepare the foundations for bringing together the various cultures which live alongside each other in Chile.

131. The President of the Republic asked the Commission to inform him about the history of the relationship between indigenous peoples and the State and to make proposals and recommendations to him for a New Deal Policy. The policy had to refer to the institutional, legal and political mechanisms for achieving full participation, recognition and enjoyment of the rights of indigenous peoples within a democratic system based on social consensus and a process to rebuild confidence in their history. The report issued by the Commission was submitted to the President of the Republic and the country at the end of October 2003. The fundamental value of the report lies in the fact that it attaches importance to the indigenous peoples’ view of the country’s history.

132. The report allowed a shift in focus of some of the definitions and policies of the past and its recommendations included constitutional recognition of the indigenous peoples; enshrinement in the constitution of the collective rights of indigenous peoples, particularly in the areas of politics, territory and culture; the definition and implementation of public policies in matters involving the interests of indigenous peoples; historic recognition of the genocide to which the Aónikenk and Selk'nam peoples were subjected; measures necessary to ensure the survival of the Kawésqar and Yagán peoples, which are in danger of extinction; approval and ratification of international instruments on indigenous matters, especially the ratification by the National Congress of Convention No. 169 of the International Labour Organization concerning Indigenous and Tribal Peoples in Independent Countries, of 1989; measures relating to the consolidation of a Chilean society which recognizes and values its cultural diversity and

indigenous peoples' rights through the education system. The measures taken in response to these recommendations are referred to in paragraph 140 et seq. of this report.

The National Debate of Chilean Indigenous Peoples - 2006

133. In Nueva Imperial in January 2006, while running for the office of President of the Republic, Mrs. Michelle Bachelet made a commitment to the indigenous peoples that she would protect and extend their rights by establishing the conditions needed to sustain a flowing, on-going dialogue.

134. Once elected to the office of President, Mrs. Bachelet convened the National Debate of Chilean Indigenous Peoples, which was officially inaugurated on 23 June 2006, as part of celebrations of the national day of indigenous peoples.

135. The debate as a whole lasted nine months, culminating in March 2007. During that time some 200 local community, municipal, provincial and regional meetings were held as well as one national event. Over 120 organizations representing the indigenous peoples of the country participated and made commitments and there was direct discussion with at least 5,000 leaders of grass-roots associations and communities. There was publicity and coverage of the process after the debate had closed.

136. In April 2007, the President of the Republic referred to the proposals made by the organizations and noted the major exercise in involvement, dialogue and proposal-writing made by all indigenous peoples, an effort which offered a glimpse of a new agenda for them. At the same time she praised the suggestions made by CONADI, indigenous women and the Coordinator of Mapuche Organizations as well as contributions made by indigenous political leaders and parliamentarians and restated the importance of maintaining and strengthening indigenous peoples' leadership systems and organizations.

137. In the same speech the President restated the Government's intention to move forward in the following areas: strengthening the forms of participation in political and social matters for indigenous peoples; recognition and deepening of their rights; urban indigenous policy; education, culture and women in indigenous communities.

Measures taken with regard to indigenous peoples under the new deal policy

138. In April 2004, on the basis of the recommendations of the Report of the Historical Truth and New Deal for Indigenous Peoples Commission, the former President of the Republic, Mr. Ricardo Lagos, announced the new deal policy for indigenous peoples which focuses on the following priorities: a) More extensive recognition of the rights of indigenous peoples by facilitating the exercise of the political, cultural, social and economic rights already enshrined in national law; b) Further development of "development with identity" strategies; c) Reconfiguring the State to accommodate cultural diversity.

More extensive recognition of the rights of indigenous peoples by facilitating the exercise of the political, cultural, social and economic rights already enshrined in national law

139. The most significant measures include those set out below:

(i) Indigenous development areas

140. Indigenous development areas (ADI) are located in areas where the population of indigenous people is high; their creation is part of the action-targeting process which State administrative bodies must follow to further the harmonious development of indigenous peoples and their communities. Between 2000 and 2007, the Government established seven new ADIs, thus fulfilling its commitment to have ten ADIs on the national territory.

(ii) Special administrative status for Easter Island

141. On the basis of the declared aspiration of the Rapa Nui people, on 16 August 2005 the Executive submitted to the National Congress a draft amendment to the constitution which provides for the special territories of Easter Island and Juan Fernández Archipelago, and defers the establishment of special administrative status to a subsequent Constitutional Act.

(iii) Legal recognition for the Lafkenche Mapuche people of their ancestral rights to use and exploit coastal areas

142. In October 2002, the former President of the Republic, Mr. Ricardo Lagos, received a proposal from Lafkenche leaders on the law governing coastal areas; it was generic in nature and did not include forms of words recognizing the right of coastal Lafkenche communities to the natural resources and areas they have traditionally used. In February 2005 the Under-Secretaries of Fisheries, the Marine Environment and Planning met Lafkenche leaders from Regions VIII, IX and X, and were able within the framework of the current legislation to produce a form of words to recognize ancestral use of coastal areas by indigenous communities.

143. On 31 August 2005, a bill establishing the indigenous peoples' marine and coastal zone⁴⁷ was submitted to the Chamber of Deputies. This new legal concept establishes a delimited maritime area the administration of which is the responsibility of associations of indigenous communities who have exercised customary use. A management plan which has the approval of the competent authority is to be used to administer the area and will be required to provide for conservation of the resources there. The bill was passed unanimously by the Senate of the Republic on 31 October 2007.

(iv) Protection Plan for the Kawésqar and Yagán peoples

144. The protection of peoples in danger of extinction began in 2001 when a plan focused on the Kawésqar people in the southern area of Chile, who are in danger of extinction, was drawn up. Under the comprehensive protection plan some 290 initiatives have been conducted in the fields of public health, housing, development of production, environment, education, culture and identity, and social security. The measures taken have helped both the Kawésqar and Yagán peoples and the Williche Mapuche communities in the Magallanes Region.

⁴⁷) Boletín (Official Gazette) N° 3968-12.

145. Of the measures envisaged, the following have been carried out: delivery of 30 dwellings for Kawésqar and Yagán settlements in Punta Arenas; passes giving entitlement to health care free of charge for the most vulnerable indigenous population in the region; recovery of some 7,000 hectares of lands which have traditionally been occupied by southern indigenous groups; support for many family business projects under the Indigenous Development Fund; implementation since 2005 of a language revival programme to train monitors for the Kawésqar and Yagán languages, and training initiatives.

146. Implementation of the above measures required an investment of approximately 3.9 billion pesos (US\$ 7,464,543) in the peoples concerned between 2000 and 2005; a further 3 billion pesos (US\$ 5,741,956) were committed by various public and private stakeholders for the four years subsequent to that period. Of note are the construction of a quay in Puerto Edén, tourist development projects and projects concerning the building of infrastructure.

(v) Memorial to the extinct Aónikenk and Selk'nam peoples

147. In fulfilment of the commitment to construct a memorial in honour of the extinct peoples from the extreme south of the country, a large-scale monument to commemorate the Selk'nam people was inaugurated in November 2005 in the presence of the President of the Republic. It is located at the northern entrance to the city of Punta Arenas and was inspired by the richness of the southern peoples' vision of the cosmos and their spiritual world.

148. In August 2005, the Indigenous Affairs Office in Punta Arenas signed an agreement with the Municipality of San Gregorio, one of the most symbolic places settled by the Aónikenk in ancient times, the aim being to build a memorial in their honour.

(vi) Creation of new indigenous towns

149. During 2004, the towns of Chol Chol and Alto Bío Bío were established in Region IX and Region VIII respectively, one of the ADIs. Although these are newly formed towns the hope is that they will develop locally and have their own identity with the support of the Under-Secretariat of Regional Development and their respective regional governments.

Further development of “development with identity” strategies with the aim of reducing poverty

150. The “development with identity” policy postulates that state plans and programmes must not only seek to improve the material living conditions of indigenous peoples, especially those living in poverty, but also they must ensure that development initiatives are run in a participatory manner and are not at odds with the world views, values, cultural practices and individual aspirations of the indigenous communities. To that end culture must not be regarded as an obstacle but as an asset for the sustainable development of each people. The policy of “development with identity” is based on three key principles: a) education and socio-cultural strengthening of indigenous peoples; b) development of production; and c) return of land.

151. For information on return of lands, see paragraphs 119 to 121 of this report. An account of measures related to the policy of development with identity in education and strengthening of indigenous sociocultural identity is given in the section dealing with article 5 of the Convention.

Below we shall set out the measures related to the policy of development with identity in production-related matters.

Policy of development with identity in production-related matters

152. Between 2000 and 2004, cumulative public investment in indigenous communities in production-related matters was in excess of 82.7 billion pesos (US\$ 158,286,600). Towards the end of 2005, cumulative investment stood at over 100.4 billion pesos (US\$ 192,164,143). This was the result of the work of the institutions referred to below.

Development of production strand of the Origins programme – phase one

153. The co-executing agencies are the National Institute for Agricultural Development (INDAP), the National Indigenous Development Corporation (CONADI), and the National Forestry Corporation (CONAF). Working in cooperation with the communities, these agencies have managed to execute 2,800 projects using a participatory, cross-sector approach to work and have achieved investment of over 10 billion pesos (US\$ 19,135,850). Communities have implemented agricultural and non-agricultural projects with support under the Origins programme. The work the programme has done with communities in drawing up regional development plans has made an important contribution to building up the skills needed for communities to play an active part in their processes of development, which in turn constitutes a basic pre-requisite for the sustainability of the initiatives which have received the programme's support.

The CONADI Indigenous Development Fund

154. In its work in the development sphere, CONADI complements the Origins Programme through the Indigenous Development Fund; under the fund over 8.6 billion pesos (US\$ 16,460,275) were invested during the period 2000/2004 in investment feasibility studies, work to encourage indigenous economic development, social management support and initiatives to develop capacity and participation mechanisms. During the period in question, over 150,000 members of indigenous communities benefited from the fund.

Programmes run by the National Institute for Agricultural Development, the National Forestry Corporation, the Crop and Stock-Farming Service (SAG) and the National Irrigation Commission (CNR), which report to the Ministry of Agriculture

155. Since 2000 the Ministry of Agriculture has, through the services named above, carried out a Production Support Programme for Native Peoples in which over 63.29 billion pesos in total (US\$ 121,136,141) has been invested between 2000 and 2004, as set out below:

(a) Through INDAP: an average sum of 9.6 billion pesos has been invested annually (US\$ 18,374,260), meaning that total investment stands at over 52 billion pesos (US\$ 99,527,245) for the period 2000/2004, and accounting for over half of total public investment in development of production in that period. The investment has been channelled principally through the Prodesal Programme which provides the poorest producers with technical assistance.

(b) Through the CNR: a special tendering process has been established for indigenous peoples which has provided funding since 2000 for 100 projects to 1,770 indigenous producers, and providing irrigation to an area of 2,352 ha. That area includes 1,490 ha where irrigation is now mechanical. The CNR has invested approximately 1.8 billion pesos (US\$ 3,445,173) in the tendering processes over the period 2000/2004.

(c) Through the SAG: mention should be made of the investment made between 2002 and 2004 of over 1.2 billion pesos (US\$ 2,296,782) in the recovery of degraded soil to improve the quality of the indigenous communities' resources for production.

(d) Through the CONAF: investment in programmes concerning forestation, woodland management and protected forested areas has increased and the amount of investment aimed at the indigenous population for the period 2000/2004 stood at 6 billion pesos (US\$ 11,483,912). The commitment of CONAF as an institution is also evident in the participatory management approach taken under the National System for Forested Areas Protected by the State, which views indigenous peoples as strategic partners in the conservation of natural heritage; this allows indigenous communities to use the protected forested areas and even participate in their management. Worthy of note is the work undertaken in the National Flamingo Reserve in Region II where a tourism-based ecological management model is being implemented through a partnership contract with indigenous Atacameño communities. In 2004, 212 million pesos (US\$ 4,057,649) were earned through tourism-focused management, 30 per cent of which were reinvested in community projects with the remaining 70 per cent being invested in running the project and in conservation activities.

Reconfiguring the State to accommodate cultural diversity

156. The new deal policy calls for universally accessible public programmes to be geared to satisfying the needs and requests of indigenous peoples effectively. Cultural appropriateness of government policies and programmes can be interpreted as express recognition and respect for the multicultural nature of Chilean society, as can the adjustment of tools to accommodate the specific concerns and demands of indigenous peoples. The aim of this is to prevent measures taken by the State, whether by act or omission, from bringing about a deterioration in indigenous cultural identities.

157. Projects or programmes which aim to benefit all citizens without distinction of any kind must protect the cultural heritage of any indigenous peoples who may be involved. Efforts to that end must be based on knowledge, understanding and respect for the cultures concerned and on establishing effective mechanisms for informing, consulting and involving indigenous communities and their organizations in at least the crucial parts of the drafting and management cycle.

158. In order to achieve the objectives set out above there is a network in place comprising over thirty public bodies linked to twelve ministries. Some of them already have thorough plans of action for indigenous peoples, such as the Bilingual Intercultural Education Programme set up in the Ministry of Education, the Health and Indigenous Peoples Programme at the Ministry of Health and the Plan of Action at the Ministry of National Assets.

159. Furthermore, Regional Indigenous Councils have been established in the regions with higher indigenous populations. The Councils' purpose is to review and improve the appropriateness of universally accessible public programmes.

160. Worthy of note among the measures taken to configure the State to accommodate cultural diversity include those set out below.

Training of public servants to close the cultural gap

161. The Origins Programme rolled out a training programme aimed at managers and officials in various Ministries and services to increase understanding of the particularities of indigenous peoples. Between 2004 and 2005 the course for a "Certificate in cultural appropriateness of service provision" was taken by 500 public sector officials in the north and the south, 10 per cent of whom were in managerial posts.

Public policy for urban indigenous communities

162. The latest census (2002) shows that the distribution of the entire population in the country is such that 64.8 per cent reside in urban areas and 35.2 per cent in rural areas. The Casen Survey 2006 confirms that the indigenous population is predominantly urban and shows that for that year 69.4 per cent of the indigenous population were urban dwellers; a significant proportion of indigenous urban dwellers live in the Metropolitan Region; additionally, a significant proportion of indigenous peoples is permanently resident in regional capitals and major settlements. Accordingly, the process of reconfiguring the State administration must include not only those public sector bodies operating in rural communities but also any public programmes running in the urban environment. The main thrust of urban indigenous policy is made up of the following initiatives:

a) The following centres have been built into the urban indigenous cultural infrastructure: the Cerro Blanco Ceremonial Centre, the Ayllarewe of Quilicura, the Botanical Gardens Centre in Viña del Mar, the Aymará Centre in Pukara de Chena and the construction of over 12 traditional Mapuche "rukas" in the Metropolitan Region and Region V. Worthy of note are the Ceremonial Centre of the Mahuidache Indigenous Peoples of El Bosque settlement in the Metropolitan Region, which was managed by the Mahuidache Indigenous Association and financed by an investment of 84 million pesos (US\$ 160,744) from the National Regional Development Fund for the Metropolitan Region. To these projects one can add the Cerro Welen Crafts Centre, the Manuel de Amat Residence for students from indigenous communities, community centres and other support for Community customs and cultural revival.

b) In 2001, the Indigenous Affairs Council for the Metropolitan Region was set up and over 70 indigenous organizations representing four indigenous peoples and 35 public services were invited to become involved in its work; together they formed five working committees for the region. The Council conducted a participatory evaluation of its performance and planned its work in the form of an annual diary. The Indigenous Affairs Council for the Valparaíso Region, in which 36 organizations and 22 public services participate, has been in operation since 2004.

Contribution in infrastructure made by the Ministry of Public Works

163. Between 2000 and 2005, investment by the above ministry in road-widening, improvements and other works in municipalities with a large indigenous community exceeded 86 billion pesos (US\$ 164,602,752). Of the improvement works specific to indigenous communities the following examples stand out:

a) As of 2001 the Indigenous Development Programme (PDI) has been operational in Araucanía region, following up the work done in the communal dialogues. The aim is to improve living conditions and passability of the roads to the various indigenous communities in the region, replacing the standard earthen tracks with hard core. The Programme has benefited approximately 505 communities in the region and an estimated 950 kilometres of roadway have been improved for an estimated investment of over 5 billion pesos (US\$ 9,569,927 dollars) over the period 2001/2005.

b) As well as carrying out improvements to the road network, thereby opening up communication routes and markets which are of special importance to the most outlying indigenous communities, the Ministry of Public Works has made significant progress in incorporating mechanisms for participation and cultural appropriateness into public actions in infrastructure matters. Of significance among these efforts are the work done by the Environment and Territory Secretariat (SEMAT) which in 2004 drafted and published the "Guide to participation for the Macro South Region, Mapuche People". Furthermore, the Architecture Department of the same Ministry drew up the "Mapuche and Aymará Architectural Design Guides" published in 2003, the aim of which is to contribute to the creation of public works which are appropriate to local needs while conserving the values which underpin the Mapuche and Aymará peoples' ways of life.

Contribution made by the Ministry of Labour

164. The work done by the Ministry of Labour and its services in the field of indigenous affairs bore a direct relation to the levels of training of the workforce in the communities. Also worthy of note from the Under-Secretariat of Labour is the drafting of a booklet providing information on labour rights in Mapuche translation.

The Chile Solidario social protection system

165. In paragraph 33 of this report we comment on the system established in 2002 to support the country's poorest 225,000 families with a view to lifting them out of poverty. We noted that by October 2007, over 25,800 indigenous families had joined the scheme.

Sustained funding of indigenous policy

166. The budget priority that continues to be afforded to initiatives targeting persons belonging to the indigenous peoples should be noted. The draft budget for 2007 allocated over 37 billion pesos (US\$ 70,817,463) to CONADI for programmes benefiting indigenous communities. That figure represents an increase of 21 per cent compared to 2006 and 29 per cent compared to 2005 when the budget was over 29 billion pesos (US\$ 55,505,579) and over 26 billion pesos (US\$ 49,763,622), respectively. It should be observed that the budget allocated to the CONADI

Indigenous Lands and Waters Fund equates on average to 60 per cent of CONADI's total budget.

167. Also of importance is the funding of the Origins Programme; over 13.7 billion pesos (US\$ 26,221,601) are required in order for the second phase to get under way in 2007, the sum of almost 11 billion pesos (US\$ 21,053,840) already having been invested in the first phase (now closed).

Government policy towards immigrants

168. Migration has become an issue which has led to growing scrutiny on the part of the government bodies since 1990. Government action in relation to migration has sought to improve the living conditions of aliens so that their stay in the country can be of benefit both for the migrants themselves and to Chile.

169. Chile has a sound policy of openness to migratory flows and it is based on respect for migrant workers' human rights as enshrined in the Constitution and the international treaties signed by Chile. Implicit in this is the notion that aliens who decide to reside in the country should be treated in a non-discriminatory fashion in a framework of respect for the democratic institutional system and in particular for specific legislation governing migration.

170. The priority of government management, namely concern for migrant workers' human rights, is based on two management principles as follows: regularizing residency situations, and equal treatment in terms of application of labour rights for Chilean nationals and aliens, whether the immigration status of the alien concerned is regular or irregular.

171. As far as migratory regularization is concerned, Government policy encourages foreign nationals to hold the residence permits necessary for them to pursue activities, especially work. The reason behind this is that irregular residency can have undesirable effects both for the foreigners concerned and for the community in general. Irregular status is the cause of defects in the labour market which make it easier to circumvent labour laws and preclude individuals whose situation is irregular from access to the social security and health systems. This means that employers using this type of labourer obtain unfair advantage as they can recruit for rates of pay lower than the minimum wage or less than the rate established by the market.

172. Returning to the process of modernizing migration management, a constant feature of democratic governments since 1990, President Bachelet expressly referred to the process in her Programme of Government. This presents a significant landmark since despite the progress made by the three previous governments, none of them had made express commitments on migration in their programmes.

173. There are at least four strands to the commitment made in President Bachelet's Programme of Government, as follows:

(a) To recognize the support received by thousands of Chileans abroad now and in the past. In terms of immigration, this is a commitment for Chile which will have to study the issue and propose government policies with a human rights perspective.

(b) To promote new aliens legislation incorporating the international commitments entered into by Chile.

(c) To raise the issue of migration at the regional integration forums in which Chile participates.

(d) To incorporate the issue of immigration into the school curriculum.

174. As far as the legal structure of migration policy is concerned, the Ministry of the Interior has, under the Programme of Government for 2006/2010, made leading development of a national migration and refugee policy one of its strategic objectives. The complex nature of migration currently means that initiatives will have to be drawn up in a fairly diverse range of areas including modernization of institutions and legislation, and multilateral treatment of migration as an issue in regional integration forums. It also makes inter-institutional coordination necessary so that sectoral public policies can be fostered which incorporate immigrants as specific users of the services delivered by the State. The strategic outcomes by which that objective can be described are as follows:

(a) Analysis of applications for temporary residence, permanent residence and asylum;

(b) Promotion of welcoming measures which encourage the migrant community to integrate;

(c) Promotion of the process of modernizing institutions, legislation and the management of migration in Chile;

(d) Encouragement for the development of a regional agenda on migration.

Legal structure of government migration policy

International rules

175. An important aspect of the legal foundation for a migration policy is the ratification by Chile of the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, which has been in force in Chile since 2005. Additionally, the United Nations Convention against Transnational Organized Crime, and two supplementary protocols thereto, namely the Protocol against the Smuggling of Migrants by Land, Sea and Air and the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, have also been in force since 2005.

Draft legislation on migration

176. Work is under way to incorporate two preliminary bills on migration and asylum into the legislative agenda of 2008. As far as migration is concerned, the preliminary bill incorporates guiding principles on migration management concerning respect for human rights, non-discrimination, family re-unification and equal rights and obligations in the workplace; modernization of residency categories in accordance with international standards; modernization of systems for implementing migration penalties; amendment to grounds for refusal, revocation and expulsion, bringing them into line with the new procedural concepts set out in the Code of

Criminal Procedure; standardization of grounds for expulsion and establishment of officials with responsibility for implementation thereof; establishment of administrative control measures; standardization of the remedies available to challenge an authority's decision in a matter of migration.

177. As far as asylum is concerned, the preliminary bill covers: modifying domestic legislation to comply with the international commitments entered into by Chile, especially the provisions of the Convention relating to the Status of Refugees and the Protocol thereto; separating legislation on asylum from legislation on migration; formalizing the existence of an institutional body with responsibility for conferring refugee status; establishing specifically the rights of refugees; establishing the grounds for cessation and loss of refugee status; establishing the grounds for refusing applications and grounds for revoking status already conferred; extending responsibilities in the integration process as it relates both to applicants and persons upon whom refugee status has already been conferred to a wider range of State agents, thereby providing a more coordinated response to refugees' needs; establishing a commission to recognize refugee status.

Measures taken in relation to immigrants

178. The formal establishment of targets on migration-related matters referred to in the preceding paragraph has led to the emergence of a number of initiatives in various fields of government activity through which a cross-sector approach has been taken to respond to the needs of foreign nationals.

Initiatives related to entry and residence requirements

179. At the Specialized Forum on Migration of MERCOSUR an agreement was signed which will lead to a procedure for the verification of entry and exit documentation for minors among member and associated States of MERCOSUR. The purpose of the agreement is to increase protection for minors who travel between the countries in the region with the aim of preventing illicit trafficking of minors.

180. On the acquisition of residence permits, Chile has since 2003 been running a scheme to make it easier for Argentine nationals to obtain residence in Chile. Under the scheme Argentine nationals can obtain temporary residency for up to two years solely on the basis of their nationality. The bases of the initiative are the Agreement on residency for the nationals of MERCOSUR, Bolivia and Chile, the and the Agreement on the Regularization of Internal Migration of Nationals of MERCOSUR and associated States, which were signed at the Specialized Forum on Migration of MERCOSUR.

Initiatives on labour migration

181. At the Ibero-American Summit 2007 Chile signed the Ibero-American Convention on Social Security which will allow migrant workers resident in any of the signatory countries to transfer their social security funds to their country of origin or residence when they retire.

Initiatives on irregular migration

182. The following initiatives have been taken on human trafficking and the smuggling of migrants.

183. In 2005 a provision was introduced into the Labour Code which allows a criminal action to be brought in the event of violations of laws on child labour⁴⁸. That provision authorizes any individual to report violations related to child labour which come to their knowledge to the Labour Inspectorate.

184. A bill characterizing the offence of trafficking of children and adults and laying down rules to prevent it and make criminal prosecution of the offence more effective has been approved by the Chamber of Deputies and is pending before the Senate⁴⁹. The bill is the result of successful cooperation between the National Congress, civil society and the Government. The bill provides for characterization of the offence of smuggling of migrants and the offence of human trafficking; mitigation for effective cooperation; new tools to investigate the offence; the possibility for foreign victims of the offence to apply for residency; measures to protect the identity of the victims of crime; conferral of greater powers upon the border control agency to monitor cross-border movement into as well as out of the country.

185. Since May 2005 a support agreement has been operating between Save the Children and Raíces (both of which are NGOs), the Ministry of the Interior, the Public Prosecutor's Office, the Carabineros, the criminal investigation police and SENAME. The aim of the agreement is to implement the "Disappeared Chileans Programme" for establishing a central register of missing persons using standardized information to help solve reported cases swiftly and to encourage family reunification.

186. In 2006 a "Geographic and Social Map of the Republic of Chile" was plotted, the purpose of which was to identify potential routes for human trafficking. The mapping process, which was organized by Save the Children and Raíces, involved officers from the criminal investigation police, the Carabineros and officials from the migration section of the Ministry of the Interior. The results of their work were forwarded to senior officials at the Ministry of the Interior as a tool around which policies and measures to prevent, suppress and punish human trafficking could be based.

187. In November 2007, the same bodies together with a number of government officials working in the field of migration carried out a "Second Geographic and Social Map of the Republic of Chile", specifically in the northern Regions of Arica and Parinacota, Tarapacá and Antofagasta, in other words the regions of the country where migration-related issues, and consequently issues such as human trafficking, have become more visible. The information set out in that piece of work will also be used to improve information systems and input to define public policy in this area.

⁴⁸) Act No. 20069 of November 2005.

⁴⁹) *Boletín* [Official Gazette] No. 3778 of 18 January 2005.

188. Where cooperation between government agencies is concerned, an initiative was rolled out by the Aliens and Migration Department of the Ministry of the Interior and the National Service for Minors, which led to a system to review all applications for residence submitted in Chile by children and adolescents who are not accompanied by their parents. The method of working in place means that all applications submitted by such individuals must be the subject of a social analysis by the authority responsible for minors in Chile, and that analysis will form the basis of a decision on approving the application for residence. If the report is negative then measures will be taken as provided for in law to ensure the safety of minors who may be the victims of trafficking.

189. Another initiative involving coordination between government agencies is the Human Trafficking Commission headed by the Ministry of the Interior; the task of that Commission is to propose measures by sector to prevent, suppress and punish the offence of human trafficking in Chile. One of the main purposes of the Commission is to produce a national strategy on this topic.

190. A Plan of Action to Combat Human Trafficking was signed as part of the regional integration process at the Meeting of Ministers of the Interior of Mercosur and its Associate States; the plan is a regional instrument which seeks to some extent to embody the commitments taken on by the signatory countries to the United Nations Convention against Transnational Organized Crime and the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children. It does so with a view to using the tools of international cooperation to seek joint solutions to problems in these fields in the member and associate countries of Mercosur; it is an international instrument which does not need to be incorporated into the legal order of the States Party and Associate States as it regulates aspects of the organization or operation of Mercosur.

191. The work done at Mercosur has also led to an improvement in migration control systems for children and adolescents in the member and associate countries. The tool produced involves cross-checking of the migration information which allows minors to cross the borders in the region both when leaving their country of origin and in the country of destination; in so doing it seeks to prevent children and adolescents becoming the victims of human trafficking and migrant smuggling.

192. Another important aspect is the opening of an extraordinary procedure to regularize migrants' status, which has been running since 22 October 2007, and aims to tackle the status of irregular migrants. Through the procedure, aliens with a Latin American or Caribbean nationality in Chile whose status is irregular may apply for a residence permit for Chile. The aim of the measure is to provide the people involved with the residence permits needed to get on with their daily lives, especially their working lives. The justification for the procedure is that irregular residence status has, as noted above, undesirable effects both for aliens and the wider community. When the measure was taken, account was also taken of security considerations; in other words the country needs to ensure that as many immigrants as possible are duly documented. By December 2007 some 39,000 foreign nationals had applied for residence and some 37,000 residence permits had been issued.

Initiatives on asylum and international protection of refugees

193. A framework cooperation agreement was signed with the Office of the United Nations High Commissioner for Refugees (UNHCR), which meant that seven missions to resettle refugees located in various countries could be carried out. As part of those missions, Chile agreed to a proposal to resettle a number of Palestinians who were refugees on the border between Iraq and Syria; as a result of that decision, approximately one hundred people will be settled in the country, the first of whom will arrive in April 2008.

Obligation incumbent on public authorities and institutions not to engage in any practice of racial discrimination; training of law enforcement officials

194. In accordance with article 2, paragraph 1, of the Convention, States parties have undertaken that all public authorities and public institutions, national and local, will not engage in any practice of racial discrimination. As the Committee has noted⁵⁰, the fulfilment of these obligations very much depends upon national law enforcement officials who exercise police powers, who should receive intensive training to ensure they respect as well as protect and uphold the human rights of all persons without distinction as to race, colour or national or ethnic origin. Information follows on the training given to these officials and other measures taken by the institutions to which they belong in order to prevent discrimination.

195. Under the military regime both the (civilian) Criminal Investigation Police and the Carabineros (uniformed police), reported to the Ministry of Defence. Pursuant to a constitutional reform of August 2005 that situation came to an end and both police services will again report to the Ministry of the Interior once a legal initiative to that end currently pending in the National Congress is approved.

196. In the Carabineros, as in the Criminal Investigation Police, there is a Code of Ethics setting out the values governing the conduct of officers. Regulations and internal guidelines refer to the protection of fundamental human rights. Any violation of those regulations or guidelines gives rise to the corresponding penalties which may result in internal sanctions ranging from a warning to dismissal without prejudice to any criminal or civil penalties which may apply.

Training of Criminal Investigation Police

197. The tenets of the Code of Ethics of the Criminal Investigation Police include the application of the Universal Declaration of Human Rights, the Code of Conduct for law-enforcement officials approved by the General Assembly and international human rights treaties; one of the articles of the Code of Conduct embodies the principle of non-discrimination when it states that police officers must act with professional impartiality without discriminating between people on grounds of their social, cultural, or economic status, religious beliefs, political ideas, responsibilities or rank in society.

198. The training centres for the Criminal Investigation Police are the School for Investigative Police, the Higher Academy for Police Studies and the Professional Training Centre.

⁵⁰) General recommendation XIII, 1993.

The School for Investigative Police is the main centre and trains future investigative police officers; since 1995 its curriculum has included a course on “Human rights” comprising 32 hours over six months and other associated subjects such as “Police ethics”. Both the Professional Training Centre, which trains general support staff, and the Higher Academy, which trains future police chiefs, run courses in those two subjects.

199. In order to offer opportunities for equal access to the Criminal Investigations Police and in line with Government policy towards indigenous peoples, the Huelén scholarship has been offered to applicants from the Mapuche community since 2001⁵¹.

Training of Carabineros

200. Carabineros records show that for 2006 a total of 38,617 people were working for this institution, including uniformed staff and civilian equivalents. Of these, 2,177 are descendants of indigenous peoples, in other words 5.63 per cent of the total staff. Of the personnel appointed by the institution, 161 women and 1,964 men are of indigenous descent, in other words 0.13 per cent of women and 5.50 per cent of men. For senior personnel the records show that 52 people (5 women and 47 men) are of indigenous descent.

201. As regards the plans and programmes in which instruction is given at the training schools for Carabineros, the subject “Human rights” is covered at the Academy of Police Sciences, the School for *Carabineros*, the School for Non-Commissioned Officers and Carabineros Training Groups, in other words instruction in human rights is given to all ranks during basic and developmental training.

202. Beyond the formal instruction environment, the on-going training of police officers has regard to the distinctive features of each area of the country. Courses, workshops and conversations of this kind increase rapprochement and integration with indigenous ethnicities in the regions where most of the indigenous community lives. The most significant effort to that end was made in 2004 and 2005 in Regions VIII, IX and X, in the form of awareness-raising and staff training activities entitled "Conflict resolution workshops", which were scheduled and conducted by the Carabineros with involvement from CONADI and the German Development Service (DED) as part of the Civil Peace Service Programme financed by the German Government.

Training of prison service guards

203. The National Department of the Prison Service, which reports to the Ministry of Justice, is responsible for running prisons. It is responsible for the care and custody of detainees in pre-trial detention and convicted prisoners. The service is provided by public officials who are subject to Prison Regulations⁵² which guarantee inmates’ rights, and to an administrative statute which sets

(⁵¹) The scholarship was awarded to: 1 male applicant in 2001; 4 male applicants in 2002; 3 female applicants and 1 male applicant in 2003; 2 male applicants in 2004; 1 female applicant and 5 male applicants in 2005; and 2 male applicants in 2006. In other words, over the period 2001 to 2006 it was awarded to four female applicants and 16 male applicants.

(⁵²) Supreme Decree No. 518 of 1998, as amended by Supreme Decree No. 1248 of 2006.

out the sanctions for infringements of those rights by prison officers. As the bedrock of prison policy the regulations embody respect for a prisoner's basic rights and expressly state that prison duties must be performed within the guarantees and limits provided for in the Constitution of the Republic, international treaties in force, the law, regulations and judicial rulings. Any officials who violate those limits will be answerable under the law in force. The Office of Administrative Oversight for the prison service is now responsible for, among other things, the most important proceedings in which prison guards are accused of acts which prejudice the proper performance of their duties.

204. The National Department of the Prison Service has improved the curricula offered to trainee prison guards and trainee officers at the School for Prison Guards by incorporating modules on "Human rights" and "Democratic Culture". The aims of the courses are to familiarize students with the various agreements and treaties signed by Chile from the standpoint of the real situation in prisons; the democratic system of institutions in Chile is discussed from the standpoint of participation by citizens, and of citizens' rights and obligations.

B. Article 3

1. International contribution by Chile to the condemnation of racial discrimination

Preparatory Regional Conference of the Americas against Racism, Racial Discrimination, Xenophobia and Related Intolerance

205. Between 5 and 7 December 2000, Chile hosted the above conference in preparation for the World Conference in Durban. The event was held in the national capital, Santiago, and during it 35 governments from South and North America agreed to draw on their historical memory, analytical capabilities and political will to scrutinize their societies in order to move towards a better, more humane, more egalitarian and more tolerant co-existence. The President of the Republic and the Minister for Foreign Affairs were joined by other senior Chileans at the opening ceremony; also in attendance were other figures from the Ministry of Foreign Affairs and the Ministry of Planning. At the meeting the United Nations High Commissioner for Human Rights and Secretary-General of the Conference signed a Memorandum of Intent with the Government of Chile to establish a framework for cooperation to implement technical cooperation programmes with the support of the Office of the United Nations High Commissioner for Human Rights.

206. Three important landmarks of the conference were: a) for the first time the term "pueblos indígenas" (indigenous peoples) was used at an international conference instead of "poblaciones indígenas" (indigenous populations), which failed to convey their status as entities with their own linguistic, cultural, land-related and other features; b) for the first time reference was made in an international text to people of African descent; and c) the idea that provision should be made for discrimination on grounds of sexual orientation was approved. The first two of those points were subsequently confirmed in the Durban Declaration and Programme of Action, but not the third.

Conference of Citizens against Racism, Xenophobia, Discrimination and Intolerance

207. This Conference was held on 3 and 4 December 2000 in the capital city of Chile, in parallel to the Preparatory Regional Conference referred to above. As a forum it had massive

participation on the part of civil society organizations of the Americas. The attendance of a vast swathe of civil society demonstrated the wealth of diversity and the most significant moment was a move towards a joint appraisal for recognizing “different” and “other”.

Chairmanship of the Intergovernmental Working Group on the Effective Implementation of the Durban Declaration and Programme of Action

208. A further demonstration of the commitment made by Chile to building an international community where there is no exclusion and no discrimination was its chairmanship of the above Working Group between 2002 and 2007 following a resolution of what was then the Commission on Human Rights. The first mandate of the Working Group was to study national action plans to combat racism, and distinguished experts were on hand to showcase specific expertise in that regard. The second mandate was to prepare supplementary international standards to strengthen and update the standards already in place, and to that end a working group was formed with one expert for each of the five regions, and given the task of reporting on the supplementary standards. The mandates were fulfilled according to the principle of consensus as was the case in Durban in 2001.

Santiago + 5 Pre-Conference

209. This Pre-Conference was held at the headquarters of the Economic Commission for Latin America and the Caribbean (ECLAC) on 10, 11 and 12 August 2005 in Santiago, the capital of Chile, and the delegates attending represented both Government and civil society. Delegations from 11 American States took part (Argentina, Bolivia, Brazil, Chile, Ecuador, Guatemala, Mexico, Panama, Peru, Bolivarian Republic of Venezuela and Uruguay). Officials from the Embassies of the United States and Canada participated as observers on the ground that they were not experts on racism and racial discrimination. Non-governmental organizations from all over the region also took part, principally those working in the fields of indigenous, women’s and migration affairs. The inaugural session saw a speech by the Minister for Foreign Affairs of Chile in which he stated that the right to live in a more inclusive, tolerant world was one of the major challenges facing us in this era of globalization. Work at the conference was carried out in five working committees, one each on indigenous peoples, people of African descent, migrants, women and discrimination and intolerance; the Committees worked in an atmosphere of cooperation and presented their conclusions to the plenary session on the final day.

210. The general objectives proposed at the conference were to monitor the Declaration and Plan of Action approved at the Regional Conference in preparation for the World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance held in Chile in 2000.

211. The specific objectives were as follows: to encourage the establishment and strengthening of government bodies in the region to drive racial equity policies; to assess the extent to which commitments entered into by governments in December 2000 in Chile have been fulfilled and to draw up national and regional policies and measures against racism, racial discrimination, xenophobia and related intolerance; to increase the levels of organization and the ways in which identity can be asserted, especially by movements and bodies representing indigenous peoples, people of African descent and migrants; to drive forward the agenda to combat racism and other related forms of intolerance in the regional human rights organizations and civil society bodies which promote respect for diversity; and finally, to prepare the content of programmes for the

Regional Conference of the Americas on Progress and Challenges in the Programme of Action against Racism, Racial Discrimination, Xenophobia, and Related Intolerance, which was held in Brazil in July 2006.

Participation by Chile in the International Panel on Affirmative Action and the Millennium Development Goals

212. This meeting was held in Brasilia on 28 and 29 June 2005, as a precursor to the National Conference on the Promotion of Racial Equality. The aim of the panel was to reflect on affirmative action policy in the context of the Millennium Development Goals adopted by the General Assembly.

Participation by Chile in the MERCOSUR and Associated States Working Group to combat Discrimination

213. As an associate State of MERCOSUR, Chile participates actively in this Working Group at the four annual Meetings of High-Level Authorities in Human Rights and Ministries of Foreign Affairs of MERCOSUR.

United Nations Declaration on the Rights of Indigenous Peoples

214. Chile voted for this Declaration, which was adopted by the General Assembly in September 2007. A statement in explanation of vote made at the time recognized the valuable contribution made by indigenous peoples to the construction and development of societies; the importance of the Declaration for the construction of a more inclusive and tolerant society; and stated that the Declaration would serve to strengthen national efforts carried on in this field through dialogue, fulfilment of international commitments, respect for the unique features of the country and above all its system of institutions.

C. Article 4

215. The Constitution enshrines the freedom of all individuals to express their opinions and to provide information without prior censorship in any form and by any means without prejudice to answering for any offences or abuses which may be committed in the exercise of such freedoms. In that regard Chilean law on freedoms of opinion freedom of information and the freedom to exercise the profession of journalism⁵³ imposes a fine on anyone who by any means of social communication produces publications or make transmission intended to incite hatred or hostility towards individuals or groups on grounds of their race, sex, religion or nationality. In the event of a repeat offence the maximum fine of 200 UTM may be imposed (US\$ 13,100)⁵⁴.

(⁵³) Act no. 19733 of 2001.

(⁵⁴) Using the monthly tax unit for December 2007 this sum equates to 34,222 Chilean pesos.

D. Article 5

1. The right to equal treatment before the tribunals and all other organs administering justice

216. Equality before the law, which is enshrined in the Constitution⁵⁵, and the other guarantees related to due process are applicable to everyone living in the country without distinction. It is the task of the courts of justice to hear all legal actions brought within the territory of the Republic whatever their nature or the status of the persons who are parties thereto, without prejudice to the derogations provided for in the Constitution and laws. In order to make these rights effective in practice without distinction on grounds of race, colour or national or ethnic origin, a set of measures are in the process of adoption, as set out below.

Measures adopted by the National Department of the Prison Service of Chile

217. As noted above, the National Department of the Prison Service is responsible for running prisons; it reports to the Ministry of Justice, and the people in its employ are subject to Prison Regulations which incorporate the principles of the Convention, stating that the norms which the prison regulations lay down ". Must be applied impartially, and there can be no differences of treatment based on birth, race, political opinion, religious belief, social status or any other circumstances. The prison administration will endeavour to ensure the effective enjoyment of the maximum number of human rights compatible with the status of the prisoner.". Anyone, regardless of nationality or ethnicity receives equal treatment in accordance with the norms set out in the regulations he or she has equal right to prison benefits, to the legal provisions on remission of sentences and to information on his or her rights and duties. The precepts described comply with the Organization Act governing the service, which states that the prison system is incompatible with any arbitrary discrimination or privilege except the differences required by segmentation policies for social rehabilitation and to safeguard the safety of the accused, the convicted and society.

218. In January 2004, the document "Foundations for an institution-wide policy of Tolerance and Non-Discrimination in the Chilean Prison System" was published as part of the Institutional Restructuring Plan for the National Department of the Prison Service. Procedures have been coordinated for people of foreign nationality held in prisons whether as detainees, defendants or convicted prisoners in order to strengthen their support networks as that is one of the main problems affecting the foreign prison population, especially for convicted prisoners. Since 2004 contact has been made with Consulates so that they can safeguard the rights of their fellow nationals.

219. A raft of training activities has also been running on the culture of indigenous peoples for officials of the National Department of the Prison Service, as set out below:

(a) In June 2003, an international seminar was held by ECLAC, involving 21 officials with direct experience and professionals working at the National Department of the Prison

⁵⁵) Art. 19, nos. 2 and 3.

Service, on the topic "Indigenous peoples in the international context, human rights and case-law of the Inter-American Court of Human Rights on indigenous matters".

(b) In July 2003 the seminar "Indigenous peoples" was held with the three most representative cultures (Aymará, Rapa Nui and Mapuche) in the Metropolitan Region of Santiago, aimed at 80 officials with direct experience and professionals.

(c) In 2004, an educational project to restore the standing of Mapuche culture was approved and 33 officials enrolled on it, of whom 60 per cent were members of that culture and 40 per cent had one Mapuche surname.

(d) In 2004, as part of the "Cultural Interpreters Project", seven officials who were members of the Mapuche people were selected and awarded certificates as cultural interpreters, the aim being for them to provide training through discussion and video for 60 officials and 60 detainees from two detention centres and one rehabilitation centre⁵⁶; in addition to undergoing a process to restore their identity, the persons receiving the training will act as facilitators between the authorities and prisoners who are members of indigenous peoples.

(e) In 2005 a training day was held in Region IX for officials with direct experience and professionals on indigenous peoples entitled "Justice, gender and indigenous peoples". Between 2003 and 2006, the training became part of the National Training Programme of the National Department of the Prison Service, through which it obtained access to funding and a broader and more uniform spectrum of participation was established covering all regions of the country; in 2003 and 2004 the training was done at national level; in 2005 a programme was established in cooperation with the regional tiers, which meant that in 2006 it was possible to run joint training programmes at regional and national levels.

Measures taken by the Forensic Medical Service

220. The Forensic Medical Service, which reports to the Ministry of Justice, provides a high-calibre service in the form of expert testimony in forensic matters to the organs administering justice; it also conducts scientific research, teaching and outreach programmes in areas within its competence. An Equal Opportunities Plan has been introduced to help fulfil the requirements of the reform of criminal procedure in a timely fashion as they relate to modernizing management of the service, cutting the time spent dealing with people and delivering expert post-mortem, psychiatric, clinical and laboratory reports. Information leaflets have been issued in that regard in the Aymará language for the cities of Arica and Iquique, in Region I and in the Mapuche language in Regions VIII and IX. Signage is also being updated at the head offices of the Forensic Medical Service to include the languages of the indigenous peoples; the process is currently under way at the office in Temuco, the capital of Region IX, where a high proportion of the user population is Mapuche.

221. Another target associated with the Equal Opportunities Plan relates to the training of officials who deal directly with service-users. In that regard, the Information, Complaints and

⁵⁶) Santiago South and Puente Alto Preventive Detention Centres; and Manuel Rodríguez Open Rehabilitation Centre.

Suggestions Office teamed up with the Training Section of the Human Resources Department of the Forensic Medical Service in 2006 and ran a course in sign language for officials who deal with the public in the service's offices. The same officials also received training within the Service on how to deal with requests from the public in a non-discriminatory, egalitarian manner.

Measures taken by the Civil Status and Identification Service

222. To promote equity and facilitate integration of the indigenous population pursuant to the Indigenous Act and the New Deal Policy, the Civil Status and Identification Service is making signage and information leaflets about the products they offer and the function they perform available in indigenous languages at its main offices nationwide to users from indigenous ethnic groups. It is also holding weddings in the presence of a translator of indigenous languages. The direct beneficiaries of these measures are 600,000 individuals of Mapuche ethnicity, 50,000 individuals of Aymará ethnicity and 5,000 individuals of Rapa Nui ethnicity.

Measures taken by Legal Aid Corporations

223. The role of the Legal Aid Corporations is to provide legal aid, free of charge, in those cases which are still regulated by the previous Code of Criminal Procedure. The Legal Aid Corporations in the municipalities of Puente Alto, Maipú, La Florida and La Pintana, which are in the Metropolitan Region, have carried out activities to promote rights to their users, some of whom belong to indigenous ethnicities. In the north of the country efforts have been made to uphold an agreement signed with the Municipality of Ollagüe, to bring justice closer to the people of the municipality, most of whom are of Quechua ethnicity (62.8 per cent of the population). The Legal Aid Corporation of Valparaíso has been making arrangements with the Bureau on Easter Island, where the Rapa Nui people live. Furthermore, an institutional cooperation agreement is in force with CONADI with a view to taking measures to improve opportunities for access to justice by indigenous individuals and their communities.

Publication of the book *Reforma Procesal Penal: una visión de los derechos indígenas* (Reform of Criminal Procedure: a view of indigenous rights)

224. This publication, responsibility for which lay with the Origins Programme, the Vice-Secretariat of Justice and the German Development Service, is a working and learning tool for professionals working in the legal field, students and others with an interest in the topic. It is a compendium of the historic and legal processes which have produced the indigenous system of institutions in Chile, Bolivia, Mexico and Guatemala, and contains specific analysis of the systems of criminal procedure and their application to individuals from the indigenous communities.

2. The right to 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

225. The Constitution of Chile contains provisions on the right to personal freedom and individual security and other provisions which prohibit arbitrariness, the use of violence and

bodily harm⁵⁷. As far as the protection afforded by the State to individuals is concerned, the Constitution notes the possibility for any person whose rights are infringed by the State Administration, its agencies or the municipal authorities, to lodge a complaint with the courts specified in law, without prejudice to any liability incurred by the public official who is alleged to have caused those rights to be infringed⁵⁸. The Penal Code punishes any act of violence or bodily harm, whether inflicted by government officials or by any individual, group or institution⁵⁹. Paragraphs 183 et seq. of this report provide background information on the training in human rights provided to police officers.

The Work of the Mapuche Public Defender's Office

226. Pursuant to the provisions of article 54 of the Indigenous Act, the Public Defender's Office incorporated standards concerning the safeguarding and dignity of indigenous status into the basic standards for conducting a public defence. This means that where a defendant is a member of an indigenous community, he or she should be defended by a public defender who has specialized in indigenous affairs or directly by the Mapuche Public Defender's Office, in other words a specialized service is provided to members of indigenous communities.

227. July 2001 saw the opening of the Mapuche Public Defender's Office in the city of Temuco in Region IX; it is just like the other local branches of the Public Defender's Office nationwide, but distinguished by the fact that it provides a service in the region to members of the Mapuche community. Two public defenders, one intercultural facilitator and an assistant secretary work in the office. The aim is to provide defendants of Mapuche ethnicity throughout Region IX with legal assistance which takes account of their culture, language and geographical distribution.

228. The Mapuche Public Defender's Office deals with the following types of cases:

(a) Cases related to the Mapuche conflict, in other words all cases arising from unlawful acts which are committed because of Mapuche demands generally, territorial demands, grievances against forestry companies, cultural claims for recognition of ancestral lands.

(b) Cases which have arisen in the following circumstances within the Mapuche community in which both victim and defendant are Mapuche: where in view of the nature of the accusation there are significant cultural issues to be taken into account to resolve the case; where they concern traditional authorities or leaders of indigenous organizations; where they arise from conflict between members of the indigenous community, essentially where they concern issues of tenancy or ownership of land and also where they arise through disagreement over benefits granted by State bodies; and where they arise from incidents related to cultural demands.

(c) Cases in which the defendant or his or her family are Mapuche speakers. The most likely scenario is that cases which fall under this category also fall within the preceding one, essentially making this category supplementary in nature. Justification for it lies in the fact that

⁵⁷) Article 19, paragraph 7, of the Constitution.

⁵⁸) Article 38 of the Constitution.

⁵⁹) Article 390 to article 411, and article 494, paragraph 5.

communication must be established with the defendant, especially because the family is the group best placed to supply useful background information for the defence.

(d) Cases in which the people concerned are resident in an indigenous community and their mother tongue is Mapuche, provided that the case in question is of some importance or displays a certain degree of complexity.

229. The characteristics referred to in the subparagraphs above are presumed to be present in the following offences: a) theft of wood; b) unlawful felling of woodland; c) encroachment of land; d) encroachment of water; e) ordinary arson and terrorist arson; f) ordinary threats and terrorist threats; g) injury; h) extortion; i) minor public disorder offences⁶⁰; j) public order offences⁶¹; k) attacks on public authorities; l) kidnap; m) damage - minor offence⁶²; n) damage - offence⁶³; o) violation of the State Security Act.

230. Conversely, the following offences are presumed not to have the characteristics described above: a) robbery; b) theft in a place of residence or from a place intended as a residence; c) theft without violence or intimidation; d) theft in a non-residential place; e) fraud in its various guises; f) offences committed by public officials. See tables 4 to 8 in the annex for statistical information on cases dealt with at the Mapuche Public Defender's Office.

Work of intercultural facilitators in criminal matters

231. As regards providing a defence, three cultural facilitators have been recruited whose main role is to act as translators in the regions of Tarapacá, Maule and Bío Bío.

3. Political rights

232. Aliens over 18 years of age on polling day who have been resident in Chile for over five years may register on the Electoral Roll in order to exercise the right to vote. The list of exemptions from registration and voting and the suspension of the right to vote does not include any circumstance which could involve discrimination on racial or any other grounds.

233. There has been growing recognition of indigenous leadership, and it has gained further support in forums of political representation. The representational capacity of indigenous leaders was reflected in the recent municipal elections when 16 [indigenous] mayors were elected, accounting for nearly 5 per cent of all elected mayors in the country, along with 136 indigenous municipal councillors, accounting for 6.38 per cent of all councillors in the country.

234. In August 2005, the city of Concepción hosted the "First Meeting of Indigenous Mayors and Councillors", which was organized by CONADI. The event meant that the elected

⁽⁶⁰⁾ Article 494, paragraph 2 of the Penal Code.

⁽⁶¹⁾ Article 269 of the Penal Code.

⁽⁶²⁾ Article 495, paragraph 21, of the Penal Code.

⁽⁶³⁾ Articles 484 to 486 of the Penal Code.

indigenous authorities were able to fully digest the importance of the amendment on constitutional recognition of indigenous peoples and ILO Convention 169 as well as other issues directly related to municipal management.

4. Other civil rights

235. The right of personal freedom which is enshrined in the constitution and enjoyed by all residents of the country, is related to the right of every individual to freedom of movement throughout the national territory unless that right has been removed by a specific measure handed down by the courts such as a precautionary measure in a criminal trial preventing a particular individual from frequenting particular areas. The right to choose one's residence is also guaranteed in the constitution, as is the right to enter, leave and return to the country, provided that the conditions provided for are complied with. The Constitution lays down the mechanism for acquiring and losing Chilean nationality; the criteria and conditions in that regard do not include any principle of racial discrimination.

236. The definition of marriage in the Civil Code does not include any kind of racial discrimination; it merely refers to different sexes, man and woman, the duties and obligations of marriage and its purpose. Marriage is deemed in law to be a contract and is regulated by the Civil Code and the Civil Marriage Act. The aforementioned Act⁶⁴ refers specifically to the fact that one of the contracting parties may belong to an indigenous ethnic group; in accordance with article 2 of the Indigenous Act, notification of the contracting parties' intention to marry, the witness statements and the marriage ceremony itself may be conducted in their mother tongue of the parties concerned.

237. The sole restriction imposed on the right to property in its various manifestations as enshrined in the Constitution over all types of tangible and intangible goods, relates to its use, enjoyment and disposal and concerns the obligations arising as a result of its social function; there is therefore no type of racial discrimination with regard to the right to property.

5. Economic, social and cultural rights

The right to work

238. Paragraphs 35 to 37 of this report set out the statistics on the rate of occupation and wages of the indigenous population. The statistics on the employment of immigrants are given in paragraphs 62 to 65 of this report.

Legal framework of non-discrimination in employment

239. The Constitution prohibits any discrimination not based on personal skills or capability, although the law may require Chilean nationality or lay down age limits in certain cases⁶⁵. The right not to be discriminated against in the labour market is set out in greater detail in the Labour Code which deems acts of discrimination incompatible with the principles of the

⁶⁴) Art. 13.

⁶⁵) Article 19, paragraph 16.

employment laws. Acts of discrimination are defined as any distinction, exclusion or preference made on the basis of race, colour, sex, age, civil status, trade union membership, religion, political opinion, nationality, national extraction or social origin, which has the effect of nullifying or impairing equality of opportunity or treatment in employment or occupation. Any distinction, exclusion or preference in respect of a particular job based on the inherent requirements thereof are not regarded as discrimination⁶⁶.

240. The discriminatory grounds set out in labour law do not comprise an exhaustive, closed list which preclude other examples of unequal treatment which are not necessarily included in the list set out in law or which are difficult to categorize under that list as discriminatory.

That conclusion can be deduced from the provision of the Constitution which prohibits any discrimination not based on personal skills or capability⁶⁷; since the Constitution is at the top of the hierarchy in the system of sources, this opens the way to the incorporation of other differences in treatment which are not provided for in labour law. The Constitution provides for the sole legitimate ground for different treatment in the labour market and describes all others as discrimination, thereby establishing an open, anti-discriminatory model.

241. If that were not the case one would be forced to conclude, for example, that discrimination on grounds of sexual preference or choice (sexual minorities) or on grounds of physical appearance are not discriminatory behaviour actionable in law, an assertion which obviously does not stand up to analysis. The same conclusion would hold with regard to discrimination in employment on grounds of pregnancy or on grounds of being a carrier of the HIV virus or on grounds of disability unless they were expressly prohibited as a ground for different treatment.

242. This open wording linked to the personal skills or capability of the worker means that certain types of behaviour which are in common use as corporate controls are discriminatory, such as tests for drugs or alcohol. This means that the way our legal system treats the right to non-discrimination is compatible with the international rules it has undertaken to comply with, in particular the provisions of the ILO Discrimination (Employment and Occupation) Convention, 1958 (No. 111), and the ILO Declaration on Fundamental Principles and Rights at Work and its Follow-up, adopted in 1998, which considers the right to non-discrimination as a fundamental right.

243. For its part, the Labour Code provides that the exercise of the powers conferred by law on employers are limited by the constitutional guarantees of workers⁶⁸. In a statement on that provision, the Labour Department recognized "the limiting function of fundamental rights with respect to corporate powers. this provision will become the framework or the basic structural component of the substance of our system of labour regulations ... Fundamental rights necessarily constitute the insuperable limits of corporate powers; the principle therefore obtains that ordinary legislation is to be interpreted in conformity with the Constitution with the result that any interpretation of the regulations, regardless of their rank or subject-matter, must be in

⁶⁶) Article 2, indents 3, 4 and 5 of the Labour Code.

⁶⁷) Article 19, paragraph 16, indent 3 of the Constitution.

⁶⁸) Article 5, indent 1 of the Labour Code.

compliance with the notion of the worker as a holder of rights which are protected by the Constitution⁶⁹.

244. Additionally, non-discrimination is a pre-requisite for any control measure; that idea has been recognized not only in case-law but also in legal texts where the Labour Code provides that any control measure imposed on a worker must be implemented universally thereby ensuring the impersonal nature of the measure and thus respecting the worker's dignity⁷⁰. It should be noted that in other cases, such as infringements of trade union freedoms, discriminatory behaviour generally constitutes an offence (anti-trade union conduct).

Scope of application of the law on non-discrimination in employment

245. The protection afforded by the right to non-discrimination applies to the employment relationship in its entirety; wherever corporate powers are exercised, the right to non-discrimination will always have to be borne in mind. Both at the beginning of the employment relationship or even before, during the staff selection process, and while it is in place and at its end, the right to non-discrimination acts as a restraining factor on corporate powers. The matters in which that right can be exercised include not only conduct associated with access to employment (job offers and staff selection) but also conduct during the employment relationship proper, namely working conditions and grounds for termination of the relationship.

Administrative sanctions for discrimination in employment

246. As noted above, staff cannot be recruited on the basis of requirements which clearly go beyond the sole factors which the Constitution deems legitimate, namely personal skills or capability. Labour inspectors may impose a fine of between one and ten UTM (US\$ 65 to 655)⁷¹ on undertakings which habitually infringe that rule in the recruitment adverts they place in newspapers.

247. The statistics held by the Directorate of Labour on penalties imposed for discriminating in or imposing conditions on the recruitment of a worker, whether directly or through third parties, in the press, on radio, television, or the internet, on the basis of race, colour, sex, age, civil status, trade union membership, religion, political opinion, nationality, national extraction or social origin, are as follows:

- a) 2004: 32 penalties;
- b) 2005: 140 penalties;
- c) 2006: 14 penalties.

(⁶⁹) Ordinary Communication No. 2856/162, 30 August 2002.

(⁷⁰) Final indent of Article 154 of the Labour Code.

(⁷¹) Using the monthly tax unit for December 2007 this sum equates to 34,222 Chilean pesos.

Training of indigenous workers

248. The policies of the National Training and Employment Service (SENCE) (Social Programmes, Programme of Individual Training Scholarships for Indigenous Students in Urban Settlements and the Special Indigenous Training Programme) had trained 11,584 indigenous workers by 2004, with an estimated investment of 2.25 billion pesos (US\$ 4,306,467) for the period 2000/2004. Overall, all the programmes linked to the Ministry of Labour targeting the indigenous population through the Ministry's services and programmes involved an investment of 7.8 billion pesos (US\$ 14,929,086) over the period 2000/2004.

The right to housing

The housing situation of the indigenous population

249. Paragraph 40 of this report provides statistics on the housing situation of the indigenous population. See tables 9 and 10 in the annex.

Non-discrimination in public housing policy

250. Access to housing in Chile is regulated by a set of rules governing various subsidy schemes. The rules are adopted by supreme decrees which are binding on public services and guarantee an individual's right to use the rules and procedures laid down in the regulations without exception. There is no discrimination on grounds of nationality, sex, civil status, religion or ideology, social status or location. Foreign residents enjoy the same benefits as Chilean nationals, and Chileans living abroad have the same rights too, regardless of whether they have taken another nationality or not.

251. There are only two grounds for discrimination: age – only persons of age (over 18 years old) may accede to property ownership; and family size – under the subsidy scheme aimed at the poorest section of the population there are limits on the participation of single-person households in each project.

252. There are various grounds for positive discrimination in the housing access programmes and they favour the following vulnerable groups: the disabled; the elderly; indigenous people; single-parent households; victims of human rights violations⁷².

253. The special measures for people from indigenous ethnic groups are as follows: higher subsidy in the Indigenous Development Areas; recognition of the method for declaring oneself a member of an indigenous ethnicity provided for in the Indigenous Act; recognition of civil status as set out in the Indigenous Act; recognition of availability of land in accordance with the Indigenous Act; treatment of single-person households; implementation of participatory projects which have taken cultural identity on board at the design and drafting stages.

254. The role of the Ministry of Housing and Town Planning in improving the quality of life of indigenous people has essentially been through the rural housing subsidy. Firstly, when the rules

⁷²) People declared to be victims in the Report of the National Commission on Prison, Politics and Torture of December 2004.

on the rural subsidy were amended in 2001 the special indigenous subsidy was established, increasing the maximum amount of the subsidy from 150 to 250 Development Units (UF) (US\$ 5,633 to US\$ 9,389)⁷³, for families who apply for it for the purpose of acquiring or constructing a dwelling in one of the Indigenous Development Areas in the country. Secondly, between the years 2000 and 2004 the same Ministry granted over 3,000 subsidies to indigenous families living in the Indigenous Development Areas of Alto Bío Bío and Lleu Lleu, in Bío Bío Region; Lake Budi and Puel Nahuelbuta in Araucanía Region; and to families falling under the Indigenous Development Plan for the Los Lagos Region, and allocated over 10 billion pesos (US\$ 19,139,854) in subsidies over that period; the subsidies described accounted for 7.2 per cent of all subsidies awarded in 2004. Thirdly, a special effort was made to design dwellings that were culturally appropriate, as was the case for example in the blueprints for Alto Bío Bío, where the families themselves chose the designs from among the three models supplied by the Housing and Town Planning Service (SERVIU).

The right to health

255. Paragraph 41 of this reports provides statistics on health-care for the indigenous population.

Intercultural health policy for indigenous peoples

256. The pre-eminence of biomedical science and the progress it has made has led to individuals being treated with no consideration for their environment and their culture. Chile is not immune to this. Medical treatment is supplied from a viewpoint which sees the population as a uniform group, overlooking each [ethnic] people's own characteristics. This is compounded by the lack of favourable policies, acculturation, the dictation of exogenous models of development and the accelerated globalization of information.

257. Incorporating an intercultural approach into health is an attempt to bring about a major cultural shift in policies towards indigenous peoples. The shift lies in introducing a new form of understanding relations between different cultural worlds, while recognizing their diversity and promoting rapprochement between them; this also involves acknowledging the validity of the health-care knowledge and practices employed by the various indigenous peoples throughout their history.

258. In this field the drive for policy generation has come from the State and its agencies, which have recognized the indigenous peoples' right to participate. One of the bases for an intercultural health policy is recognition of the fact that no medical system is capable on its own of satisfying all the health demands of a population, meaning that the biomedical model ceases to be the only desirable and valid system. Without calling the success of the national health system into question, it must be presumed that there are different concepts of health and disease and that there are traditional specialists in the indigenous world for diseases that the official health system will never be able to treat as it does not hold the keys to understanding their aetiology and therefore their treatment, much less their prevention.

⁷³) Using the development unit for December 2007 this sum equates to 19,622.66 pesos.

259. On the basis of the calls made by international bodies⁷⁴, the processes implemented in the Araucanía Regional Health Service (Region IX) through the Programme with the Mapuche People which began in 1992, and the mandate given in the Indigenous Act, the Ministry of Health began in 1996 to implement a Special Health and Indigenous Peoples Programme which aimed to formulate technical and policy approaches to intercultural health at national level. The economic resources allocated to the programme in the first few years were small. Nevertheless, the technical teams took up the gauntlet and made themselves pioneers of change; methodical work with indigenous peoples commenced and gradually extended its coverage nationwide. The process was not free of difficulties, but little by little, against a backdrop of respect and participation the team gained the confidence of indigenous communities. On the way resistance was overcome and they managed to spotlight things that had previously been invisible came into the spotlight, namely: the fact that not all Chileans are equal, especially if they are indigenous Chileans.

260. The purpose of the programme is to help improve the health situation and environment of the indigenous peoples who live in the national territory by driving the development of strategies to satisfy their needs while at the same time having regard to their cultural, linguistic and socio-economic characteristics and involving them in identifying and resolving their problems. The programme is currently running in Regions I, II, III, IV, V, VIII, IX, X, XI, XII and the Metropolitan Region, and 24 Health Services are involved.

Legal bases of the intercultural health policy

261. Where the legal framework of health reform is concerned, intercultural relations have been incorporated into the Health Authority Act and into the Organizational Regulations governing the Ministry and Regional Ministerial Health Departments⁷⁵. Administrative Technical Standard no. 16 was drafted on the basis of vast experience in intercultural relations gained in health service work; the Standard sets out findings of work done and identifies the practices and strategies that can be followed in the provision of public health care for indigenous peoples.

Implementation of the intercultural health policy

262. The purpose of the Health and Indigenous Peoples Programmes in place in the various regions of the country is to change the paradigm of our health system through a series of steps and strategies to improve the quality and access to health care⁷⁶; improve the ability to resolve health issues⁷⁷; train human resources⁷⁸; social participation⁷⁹; and intercultural relations.

(⁷⁴) Especially Resolution V of the Pan American Health Organization (PAHO)/ World Health Organization (WHO) which urges Ministries of Health to formulate national strategies for the health of indigenous peoples.

(⁷⁵) Article 21 of the Regulation states that: "it is the duty of the Ministry of Health to formulate policies incorporating an intercultural health approach into health programmes, allowing and encouraging collaboration and complementarity between the health care provided by the public health system and that provided by indigenous medicine, so that individuals in communities with high concentrations of indigenous people can have their health needs addressed in a timely and comprehensive manner and in their cultural context". [Translator's Note: the words highlighted do not appear in the version of the text I found at <http://www.leychile.cl/Navegar?idNorma=237230>]

(⁷⁶) Using the following measures: bringing intercultural facilitators on board; provision of office information, signage and notices in the local language; production of socially and culturally appropriate educational material

263. Where intercultural relations are concerned, the Health and Indigenous Peoples Programmes have been put into operation in 24 of the country's Health Services (SS). The process of setting up intercultural health projects has involved health teams and officials from all tiers of the public system as well as indigenous health workers and representatives of indigenous peoples. The way in which western health care, indigenous medicine, and the institutional and community networks in each area combine is different for each project.

264. The intercultural relations projects which are most advanced are: a) complementary care in the municipality of Putre, where traditional Aymará doctors participate in medical rounds (Arica SS); b) the construction and fitting-out of three rukas for local machi at the Lof Pantano intercultural health centre (North Araucanía SS); c) treatment room for Mapuche health personnel, overhaul of the care and training system used by the team at the Boroa Filulawen health centre (South Araucanía SS); d) construction and fitting-out of an intercultural health centre (Bío Bío SS); e) the Mapuche unit at Nueva Imperial Hospital, with care provision by Mapuche health-care personnel (South Araucanía SS); f) training of an intercultural maternity health care team involving four matrons, one doctor and a midwife to assist at delivery (Iquique SS); g) establishment of a referral and counter-referral system to medical personnel validated by the communities themselves; h) inclusion on indigenous in-patients' clinical records of the assessment made and instructions given by the indigenous health worker; i) provision of care by indigenous specialists to in-patients.

Role of the Origins Programme in Health

265. The Origins Programme has been implemented in nine Health Services over five regions in the country where the percentage of indigenous people is high. As part of the programme to

aimed at preventing the most significant health problems; holding of clinics in remote communities by increasing the number of medical rounds; improving the structures and supply of rural medical posts and stations in the most inaccessible areas; provision and supervision of accommodation for families from rural areas who need care in urban areas; funding of travel by Mapuche patients and relatives for referrals to centres dealing with more complex problems; mobilization aimed at transporting Mapuche individuals under the care of Machi (the North Araucanía Health Service).

(⁷⁷) Using the following measures: increase in human resources on indigenous health teams; increase in human resources and equipment in rural sectors; provision of specialist care to indigenous patients (ophthalmologist, ENT specialist and odontologist); enhancement of measures in health plans for places where the concentration of indigenous people is high; acquisition of mobile dental clinics to provide care to indigenous communities.

(⁷⁸) Using the following measures: awareness-raising and training for health teams on an intercultural approach and strategies for working with indigenous peoples; incorporation of social science professionals (anthropologists, social assistants and/or sociologists) into health teams; hosting of seminars, workshops and technical meetings attended by indigenous leaders; on-going training of officials in the assistance network on topics such as indigenous health systems, view of the world, language and identity, complementarity of systems, intercultural management, inter-ethnic relations; targeted, more in-depth training and advice for highly motivated clinical teams.

(⁷⁹) Using the following measures: dialogue with indigenous communities to identify health needs and demands; assessment and exchange of experience within and between regions involving indigenous leaders and advisers; implementation of local projects promoting health and care for the environment delivered by indigenous organizations and health teams; involvement of health advisers in indigenous festivals and indigenous sporting events; recruitment of indigenous advisers as members of health care teams; establishment of stakeholder panels at municipal, provincial and regional level.

rehabilitate and strengthen indigenous medicine, consultations have been carried out and funding provided to 374 projects submitted by indigenous communities and organizations, as well as by health teams. The projects aim to improve the conditions of the indigenous health care premises (rural medical posts and stations); validate and raise the profile of the role of specialists in indigenous medicine; re-educate the *kimun* (knowledge); provide training in indigenous health within communities; carry out an exchange of knowledge and expertise between communities; rehabilitate and improve ecosystems; analyse and reflect on legal recognition for indigenous medicines and the implications of such recognition. Additionally, training has been given to 4,420 health service officials.

Access to health services for immigrants

266. The Government is seeking to formulate inclusive measures to incorporate immigrants into the health service, especially the most vulnerable; this has meant that the initial focus of integration management has been on women and children. The following initiatives in the health-care field are either in operation or about to be put into operation:

- a) Inclusion of pregnant immigrants in health systems by regularizing their migration status; since 2004 the following number of residence cases have been approved under this initiative: 2004 - 13; 2005 - 383; 2006 - 410; 2007 (January to August) - 429.
- b) Regularization of the status of foreign children aged under 18 to enable them to have access to the health systems nationwide on an equal footing with Chilean children, regardless of the migration status of their parents. The Ministry of the Interior and the Ministry of Health are working together on this matter and have already signed a cooperation agreement which, it is anticipated, will enter into force in the first half of 2008.
- c) Inclusion of asylum-seeking foreigners as beneficiaries in the benefits system of the National Health Fund (FONASA). The Ministry of the Interior and the Fund are working together on this initiative.

Intercultural health policy for immigrants

267. The Ministry of Health needs information and studies on the immigrants settling in the country, numbers of whom have been increasing markedly, in order to formulate policies and measures which are specific in their impact on general health policies and in relation to the health services they need. This in turn means coordinating all the measures taken in this area by the various departments within the Ministry and other interested public bodies. In view of the above a Working Group on Health and Migration has been established⁸⁰.

268. The Working Group's aims are to ensure that there is proper coordination between the various departments within the Ministry on matters relating to immigrants; provide advice and propose courses of action in relation to proposals or measures referred to by non-ministerial Chilean or international bodies; conduct studies and propose normative measures on the relationship between health and migration.

⁸⁰) Exempt Resolution No. 837, Santiago, 7 December 2006.

269. The Working Group triggered the process of executing the project entitled “The mental health of immigrants resident in the northern area of the Metropolitan Region of Santiago de Chile: assessment and analysis of the overall feasibility of implementing local mental health policies ”.

The right to education

Chilean education system

270. Starting in 1920, when four years' compulsory schooling was introduced for all boys and girls, access to education expanded until the Constitutional reform of 2003 introduced free, compulsory secondary education and the State was made responsible for guaranteeing access to education for all Chileans until the age of 21. The plan for full schooling includes a graduated pro-retention subsidy for educational establishments serving the poorest students between year 7 of primary education and year 4 of secondary education, inclusive. The plan also steps up measures to encourage completion of schooling and prevent dropping-out, teenage pregnancy and child labour. In 2007 it became compulsory for the State to guarantee boys and girls free access to and government funding for the upper foundation level programme, which precedes primary education.

271. Consequently Chile has an education system which provides 13 years of free schooling comprising one year of the upper foundation level, or kindergarten, eight years of primary education and four years of secondary education⁸¹. The system is one of formal education delivered through educational establishments which are either municipal schools or subsidized or fee-paying private schools.

Legislative reforms incorporating measures to guarantee equality and non-discrimination in education

272. The following amendment was introduced under a reform to the Constitutional Act on Education⁸²: "Processes to select pupils shall be objective and transparent and shall respect the dignity of the pupils and their families in accordance with the guarantees provided for in the Constitution and the treaties signed and ratified by Chile ".

273. Each year some 40,000 teenagers aged between 15 and 19 give birth in Chile, according to figures provided by the Civil Register Service. One third of these mothers are school-girls. The fact of being pregnant was often used by educational establishments to turn down applications from girls and as grounds for expelling a girl from the establishment at which she was studying.

274. In order to eradicate this discriminatory behaviour, the Constitutional Act on Education was amended to state that pregnancy and motherhood must not to constitute an obstacle to entry to and continuation in educational institutions at any level. The institutions were also required to

⁸¹) Act No. 3694 of 1920, Constitutional Reform Act No. 19876 of 2003 and Constitutional Reform Act No. 20162 of 2007.

⁸²) Act No. 19979 of 2004.

provide appropriate academic facilities⁸³. That legislation was subsequently improved when an economic penalty was imposed on educational establishments which committed discrimination of this kind and provision was made for the amount of the penalty to be doubled in the event of a repeat occurrence⁸⁴.

275. Another reform to the Constitutional Act on Education established the duty of the State to encourage the development of education at all levels, especially nursery education, and to promote the study and knowledge of the essential rights inherent in human nature, to promote peace, encourage scientific and technological research, artistic creativity, the playing of sports and the conservation and growth of the national cultural heritage⁸⁵. That reform allowed a legal framework to be structured via which the Ministry of Education regulated the fundamental objectives and minimum compulsory contents of the various levels of education. As a result civic education, which lays emphasis on the principles of the rule of law and democracy as a political system, is covered in the curriculum under the primary education section on “Studying and Understanding Society”.

276. The aim of the fundamental objectives and minimum compulsory contents of secondary⁸⁶ and adult education⁸⁷ in history, social sciences, philosophy and psychology is to develop students' knowledge and skills so as to allow them to construct a model for understanding their social environment and teach them to act in a critical and responsible way in society, guided by principles of solidarity, care for the environment, pluralism, respect for both democracy and national identity. It also seeks to instil in students a respect for the historical and cultural diversity of humanity, to respect human beings for their essential dignity as people and to regard a human person as an independent individual endowed with skills and rights. In nursery education, the new curriculum dovetails with the principles and values set out in the Universal Declaration of Human Rights and the Convention on the Rights of the Child. The plans and programmes of the Ministry of Education are implemented in accordance with those objectives for each year of primary and secondary education and any educational establishment which chooses to adopt its own plans and programmes must ensure that they are in line with those objectives.

Draft legislation to eliminate discriminatory practices currently being debated by Congress

277. The Congress of the Republic is currently debating a bill tabled by the Executive on preferential subsidy. The aim of the bill is to improve the quality of education for children from vulnerable families by targeting more resources where the need is greatest and where they will redress inequality most effectively. The bill shows that the Government accepts not only that

⁸³) Act No. 19688 of 2000.

⁸⁴) Act No. 19979 of 2004.

⁸⁵) Act No. 19771 of 2001 amending article 2 of Act No. 18962.

⁸⁶) Supreme Decree No. 220 of 1998.

⁸⁷) Supreme Decree No. 239 of 2004.

our society has its vulnerable sectors but that trying to ensure that the same thing is provided to everyone when their needs are different is also discrimination.

278. Also currently in debate is a bill which seeks to provide equal opportunities to disabled pupils giving them access and allowing them to progress in their development and learning.

Educational situation of the indigenous population

279. Statistics in this regard are set out in paragraphs 38 and 39 of this report.

Educational Programme and interculturality

280. The Indigenous Act imposes specific obligations on the State with regard to education and interculturality. The first of those obligations is to coordinate various state bodies in areas where there is a high indigenous population in order to roll out a system of bilingual intercultural education to prepare indigenous learners to cope appropriately both in their society of origin and in society as a whole. The second educational obligation it imposes on the State is to set aside special resources in the Public Sector Budget Act for the Ministry of Education earmarked for a scholarships programme for indigenous students.

Bilingual Intercultural Education Programme

281. The Bilingual Intercultural Education Programme (PEIB) is a recent aspect of the national education system introduced by the Ministry of Education. It was introduced in 1996 pursuant to the Indigenous Act. Its general objective is to improve upon progress in learning by strengthening the ethnic identity of girls and boys attending primary school in areas of cultural and linguistic diversity. Since 2000, the Ministry of Education has increased the budget available to this programme by 40 per cent and allocated something over 400 million pesos (US\$ 765.594) to it in 2004. The programme operates in 365 schools in regions I, II, V, VIII, IX, X, XII and the Metropolitan Region.

282. The PEIB started out as five pilot projects in regions where the indigenous population is high, each lasting for a period of three to four years. Five regional universities were selected as a result of a public tendering process to provide technical advice to the schools selected. There were two aims behind this: first, to identify strategies relevant to the cultural and linguistic diversity of the pupils; and second, to provide general guidance on improving and contextualizing teachers' methods of work, the teaching materials used by the pupils and the national curriculum.

283. Once concluded, the outcome of the pilot projects led in 2000 to the PEIB becoming part of the institutional fabric as a targeted Programme (until that point it had been part of the Rural Primary Education Programme), meaning that a targeted policy could be drawn up and gradually extended to establishments whose characteristics were similar to those of the pilot schools. The PEIB now entered a new phase covering the years 200 to 2004. During that period a pedagogical proposal was drawn up incorporating the lessons learned.

284. Indigenous languages are taught in schools which are part of the PEIB, although the process is only in its infancy as yet. To complement this work new technologies and "cultural assessors", most of whom are speakers of indigenous languages, have been introduced into the

schools and they carry out an essential role by taking on the responsibility of honouring ancestral wisdom in education.

Role of the Origins Programme in the PEIB

285. At the end of 2001, a new element was added to the Origins Programme, its aim being to reinforce the chief aim of the PEIB, namely to draw up a pedagogical proposal to improve the scope and quality of learning under the national primary education curriculum in 162 target schools attended by children from the Aymará, Atacameño and Mapuche indigenous peoples, with an investment of 3 billion pesos (US\$ 5,741,960) over the period from 2001 to 2005.

286. The following measures were taken in that regard: adjustment of the school curriculum to take account of the cultural and linguistic features of each target people by creating appropriate school text books for the first four years of primary education; training and further training of teaching staff in intercultural education; establishment of libraries and publication of books with intercultural content; implementation of information and communications technologies (computers, audiovisual equipment, internet centres, publication of videos and software, satellite television and purchase of television programmes with cultural content); Bilingual Intercultural Education Plans in 31 schools with an average investment of 8.621 billion pesos (US\$ 16,500,470).

Role of the National Indigenous Development Corporation in the PEIB

287. The Education and Culture Fund of CONADI has supplemented the work done by the Ministry of Education and the Origins Programme with regard to intercultural education, developing it so that the bilingual intercultural design of the curriculum can be used by teachers.

Indigenous Grants Programme

288. With regard to the obligation imposed on the State in relation to intercultural education the Public Sector Budget Act includes special resources earmarked for the indigenous student scholarships programme. The “Indigenous Scholarship” Programme has been running since 1991 through the National School and Scholarship Assistance Council (JUNAEB), pursuant to a set of rules and an annual adjustment. This determines the value of the scholarships awarded under the Budget Act by level of education and the principal measures and responsibilities of the stakeholders involved in implementing them. The scholarships are awarded to indigenous students in primary, secondary and higher education.

289. Access to and investment in the Indigenous Scholarship Programme has been gradually increasing. Between 2000 and 2007 the budget framework has increased by nearly 155 per cent and its access by over 133 per cent. See table 11 in the annex.

Educational programmes for indigenous children

290. The National Kindergartens Board (JUNJI) and Fundación Integra operate preschool programmes for over 1,500 preschool indigenous children at 78 kindergartens in regions I, II, III, VIII, IX, X and XII, with an accumulated investment of over 2.8 billion pesos (US\$ 5,359,159).

291. In 2007 funds were allocated for 30 intercultural kindergartens in the country. Construction will begin in 2008 and the reference value is 60 million pesos (US\$ 114,839) per establishment. One example of this strategy is the opening of the extension offering crèche facilities at Ukika Ethnic Kindergarten in the municipality of Puerto Williams which has an intercultural curriculum for the Yagán world.

Policy of development with identity in education and strengthening of indigenous culture and society

i) Training to strengthen indigenous communities

292. One of Government's on-going concerns has been to produce a greater capacity for negotiation and self-management in the indigenous communities, with particular stress being laid on capacity-building in the regions. In that field the Origins Programme has invested over 3.8 billion pesos (US\$ 7,273,144), which have been put to use in over 780 community and regional initiatives. These initiatives allow communities to make long-term plans for a particular area. Some of the projects of this type are: meetings in the municipality of San Pedro de Atacama (Region II), organized by members of the town of Parinacota (Region I), where they learned about the work being done by the communities of San Pedro in tourism with a view to undertaking similar activities themselves; running of a digital training programme for 2,500 indigenous people through a mobile education system for young people and adults in Galvarino in the south of the country giving them basics of computing and surfing the internet; they are in addition to the 2,500 Aymará and Atacameño graduates in the north of the country, who personify the attainment of one of the targets set in the Origins Programme.

ii) Strengthening, rehabilitation and promotion of the languages of the indigenous peoples

293. Currently only five indigenous languages, in different states of health, survive in Chile: Aymará, Quechua, Mapuche, Rapa Nui and Kawésqar. The results of the Casen Survey 2003 show that there has been a significant increase in the numbers of people who speak and/or understand their ethnic language as compared to 2000; in 2003 over 35 per cent of the indigenous population stated that they understand their indigenous language (35.7 per cent), and of that number, some 16.8 per cent state that they can both speak and understand it. Compared to 2000, there has been a significant increase of almost 8 percentage points for both categories added together (7.9 per cent).

294. Over the period 2000 to 2004 CONADI has invested over 1.6 billion pesos (US\$ 3,062,376), in this field in areas where the density of the indigenous population is high, with the aim of restoring the status of indigenous languages and developing them by codifying, standardizing and modernizing them or by rehabilitating languages which are dying out by taking action to make sound recordings of indigenous languages; publish dictionaries and grammars; train community monitors to pass on and teach the language; support the formation of Indigenous Languages Commissions in each Region with the task of overseeing the development of a language policy to recognize, revitalize and develop languages; train human resources; organize Academies of Culture and Language; hold the first "National Seminar on Indigenous Languages" in 2005; open the "Programme to Revitalize, Protect and Promote Indigenous Languages" in 2006, a programme which is to run for 60 months.

Measures in the field of education for immigrant pupils

295. As noted above, the Government is implementing inclusive measures to incorporate immigrants, especially more vulnerable women and children. The following initiatives in the field of education are either in operation or about to be put into operation:

a) Regularization of the residency status of any child enrolled in an educational establishment recognized by the State; since 2004 the following number of residence cases have been approved under this initiative: 2004 - 147; 2005 - 291; 2006 - 268; 2007 (January to August) - 208.

b) Access to pre-school education for immigrant and refugee children. JUNJI and the Ministry of the Interior have already signed a cooperation agreement on this matter which, it is anticipated, will enter into force in the first half of 2008.

296. In 2005, in order to ensure equality before the law and freedom from discrimination for everyone, the Ministry of Education delivered an instruction on entry to, continued enrolment in and rights of immigrant children in educational establishments⁸⁸. The instruction calls on educational establishments to allow immigrant children to enrol at educational establishments on a temporary basis. Presentation of an authorization issued by the appropriate Provincial Education Department is sufficient for entry and that authorization must be issued promptly by the Provincial Education Department upon presentation of documents providing evidence of the identity, age and most recent courses studied by the pupil concerned in his or her country of origin without any requirement for legalization. Any person who is temporarily enrolled must be regarded as a regular pupil for academic, curricular and legal purposes, without prejudice to the requirement to obtain a residence permit as a regular student as soon as possible. Educational establishments must advise that immigrant pupils should upgrade their temporary status and enrol permanently within three months calculated from the date of conferral of temporary enrolment status.

297. The same instruction suggests that the heads of educational establishments should facilitate access to immigrant pupils by, for example, offering the opportunity to benefit from fee-remission arrangements, and more relaxed requirements for attendance and school uniform. It also states that the school rules governing life within educational establishments must foster integration between Chilean and foreign pupils and reprimand those members of the school community whose actions or words are discriminatory on grounds of nationality, race, skin colour, etc. The fact that the Customer Service Department at the Ministry of Education only recorded two complaints concerning immigrant pupils' right to education over the period 2006/2007 could be regarded as a positive indicator for the practical implementation of the instruction.

⁸⁸) Official communication No. 07/1008 (1531) of 2005.

The right to participate in cultural activities

Measures to strengthen and promote the heritage and sociocultural systems of indigenous peoples

298. The following measures have been taken in this field:

- (a) Recognition of the traditional Mapuche game *palín* as an official sport since June 2004. The game is played with a hockey-like stick or *wiño* which is used to hit a ball or *pali* measuring between 6 and 8 centimetres in diameter over a pitch measuring between 180 and 200 metres. Following the promulgation of the Sport Act⁸⁹, moves have been made to promote the formation of indigenous sports clubs nationally. Significant support has been forthcoming for *palín* under the scheme. In the Los Lagos Region five sports clubs have been set up with indigenous members who are working to revive the game among Mapuche children. It is anticipated that a regional *palín* association will soon be established
- (b) CONADI and Chile Sports have signed an agreement to co-finance projects leading to the promotion spread, and take-up of traditional indigenous recreational sport and sport and physical activity in general.
- (c) Over the period 2006/2007, CONADI earmarked 380 million pesos (US\$ 727,314), for grant funds to promote indigenous artistic and cultural initiatives. There are two areas of action in this field: one is to subsidize the spread and promotion of indigenous cultures and includes a grant fund for initiatives involving the production of promotional material in printed form or for radio and television and the other is to protect the endangered cultural, architectural and historic indigenous heritage and to promote traditional indigenous medicine.
- (d) The Council for National Monuments has implemented a plan to protect the architectural, archaeological, cultural and historic indigenous heritage; over 1,600 heritage sites have been registered in Regions VIII, IX, X and the Metropolitan Region, five of which have been upgraded to the historic monuments category.
- (e) The Ministry of Culture has, through its grant funds for indigenous peoples, promoted the execution of 185 projects throughout the country with an investment of 520 million pesos (US\$ 995,272). Since 2004, the National Fund for Indigenous Arts has had an annual budget of 150 million pesos, not including the resources also available since 2005 for indigenous craftsmen and women under the Traditional Crafts Development Fund.
- (f) The Origins Programme has implemented over 380 community-initiative projects with investments of approximately 500 million pesos (US\$ 956,992), including the following:
 - i) a Mapuche silversmithing workshop in Puerto Saavedra where the women form the town make Mapuche jewellery and become micro-businesswomen;
 - ii) the stories told by kimches (sages) and lonkos (traditional chiefs) are being used by 140 families in the municipality of Chol Chol to revive their language and customs;
 - iii) a group of 26 women from Icalma, a municipality in Lonquimay, have been trained by the Chol Chol Foundation under an agreement between the

⁸⁹) Act No. 19712 of 2001.

Technical Cooperation Service (Sercotec) and the Origins Programme and are creating textiles with commercial potential; iv) the First Art and Culture Exhibition was held in the city of Arica and attended by 45 exhibitors from the indigenous towns of Putre, Ticnamar, Saxamar, Chujlluta, Chislluma, Alcérreca, Cosapilla and Caquena; v) the "Futa Trawün Mapuche Williche" was held in Valdivia, where almost 300 traditional leaders and authorities from the indigenous world gathered to discuss the culture of Mapuche-Williche people and assess the work of the Origins Programme; vi) drafting of a *Manual of Mapuche Textiles in the municipality of Nueva Imperial*, by the Trabla Mañío community, which sets out the profound knowledge of the art of Mapuche weaving and silversmithing; vii) implementation of a project by the Ignacio Elgueta Mapuche community of Nueva Imperial to revive their customs as a result of young people's concerns; viii) holding of the First Regional Exhibition of Indigenous Art and Culture in Antofagasta Region, in which over one hundred exhibitors participated, passing on the artistic traditions of the Atacameño and Quechua communities from the indigenous development areas of Atacama la Grande and Alto El Loa.

(g) A significant success for the New Deal Policy was the holding in January 2006 of the first Indigenous Art and Culture Biennial at the Mapocho Cultural Centre in the Chilean capital, Santiago. The aim of the event was to exhibit Chile's indigenous art from ancient times to the present day and put the multicultural reality of the country on display. The event was unprecedented in its scale, scope and levels of participation by the establishment, the people, and the indigenous communities. There were exhibits by 120 artists selected from an extensive range and the event was visited by over 15,000 people.

E. Article 6

299. All legal actions brought within the national territory, whatever their nature or the status of the persons parties thereto – whether Chilean nationals or not, are heard by the courts referred to in the Courts Organization Code⁹⁰.

1. Rulings of courts of justice recognizing specific rights as applied to indigenous individuals and communities

300. We note the following cases illustrating the fact that the competent national tribunals and other State institutions afford effective protection and remedies to everyone within the jurisdiction of the State against any acts of racial discrimination which violate their human rights and fundamental freedoms.

⁹⁰) The ordinary courts of justice of the judicial system comprise the Supreme Court, the Court of Appeals, the Presidents and Members of those Courts, the oral proceedings courts in criminal matters, the courts of first instance and courts responsible for procedural safeguards. The special courts of the judicial system comprise the family courts, the labour courts, the wage deductions and social security payments courts, and courts martial in peace-time. They are all governed in terms of their organization and powers by the constitutional organizational provisions contained in the Labour Code, the Military Justice Code and the relevant supplementary legislation. The provisions of the Courts Organization Code apply to the latter courts only where the Labour and Military Justice Codes refer expressly to them. The other special courts are governed by the laws establishing and regulating them without prejudice to the application of the general provisions of the Court Organization Code.

2. Ruling of 14 November 2001 of the Court of Appeals: the Case of the Antonio Lepileo community

301. By a ruling of 14 November 2001, the Court of Appeals, Valdivia, overturned the ruling at first instance of 14 May 2000 given by the Court of First Instance, Panguipulli, in which Jaime Alegría Lefíán had been found guilty of the offence of squatting in a meadow in the "Chuaquén" sector of Panguipulli municipality, owned by the Sociedad de Inversiones Los Ángeles Ltda (Los Ángeles Investment Society, Ltd). The judgment recognizes the cultural diversity and the problems over land which the indigenous communities in Chile have historically had. It specifically recognizes that the temporary occupation of a meadow in order to attract the attention of the political authorities is a traditional form of Mapuche social behaviour and does not constitute the offence of squatting.

3. Ruling of the Court of Appeals, Temuco, remedy of protection in case number 1029-2005

302. Eleuterio Antío Rivera, representing the Pedro Ancalef indigenous community, used this remedy to claim that the following constitutional guarantees had been violated: the right to life and physical and mental integrity of the person; freedom of conscience, expression of any belief and the free exercise of any form of worship not inconsistent with public morals or order; the right to live in an unpolluted environment and the right to own property. This was in response to the approval of a project for a sewage plant in the municipality of Villarrica, in region IX, which had not taken into consideration the fact the sewage plant could affect the health, the production-related and cultural activities, and the sacred sites located on lands bordering the plant, which are inhabited by indigenous peoples who are protected under the Indigenous Act. On those grounds, they requested that the project be halted and requested an environmental impact study.

303. The Court of Appeal's judgement upheld the application for protection, which was confirmed by the Supreme Court on 5 January 2006. The operative part of the judgement acknowledged that indigenous communities are regulated by the legal statute of the aforementioned Act, which recognizes their legal personality to act on behalf of the members of their indigenous community, through their legal representatives. The judgment makes reference to the opinion proffered by CONADI on the health risks posed to the Mapuche population by the quantity and quality of the outflows, waste and emissions, and the adverse effect on natural resources such as water, soil and air could result in to changes to the way of life and customs of the population, as well as adversely affecting places of cultural interest.

304. On those grounds, the contested decision was found to be arbitrary as it contravened the applicable laws and because the opinion of the indigenous communities had not been taken into account. Their members could be adversely affected by the planned sewage plant owing to the proximity of their residences to the plant and to the changes to their cultural and religious rituals that take place in places that border the planned plant. The application for protection was upheld by the Supreme Court.

4. Ruling of the Supreme Court on water rights

305. Under a historic ruling the indigenous community of Toconce, in Region II of the country, recovered rights to water (100 litres per second), marking a legal victory over the Empresa

Sanitaria (Water-Treatment Company) of Antofagasta (ESSAN), following a dispute lasting eight years. The community was advised by CONADI's Programme for Legal Advice and Advocacy Service for Indigenous Peoples. Consideration was given in the case to the ancestral rights of indigenous peoples over the scarce water resources in the area; furthermore, the ruling favoured the survival of the Atacameño culture, which is protected under the Indigenous Act.

F. Article 7

306. Reference has been made throughout this report to measures adopted in the fields of teaching, education, culture and information, with a view to combating prejudices which lead to racial discrimination and to promoting tolerance among nations and racial or ethnical groups.

307. Paragraphs 272 to 278 contain general information on the education system, the reforms that have been made to it to guarantee equality and non-discrimination and to the curricula aimed at developing respect in pupils for humanity's historical and cultural diversity.

308. With regard to efforts aimed at disseminating information to help combat racial prejudices and promote tolerance, we have noted the work done by the Tolerance and Non-discrimination Programme of the Social Organizations Division of the Office of the Minister and Secretary-General of Government (paragraphs 84 and 86 *et seq.* of this report); in that regard we have supplied details of the information publicized by the DOS on its web-site about the measures being undertaken in this field, which include the "International Day for Tolerance" on 16 November each year.
