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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 under article 9 of the Convention

Combined nineteenth to twenty-first periodic reports of States parties due in 2012

Chile*, **

[28 September 2012]

* This document contains the combined nineteenth to twenty-first periodic reports of Chile, due on 31 August 2012. For the fifteenth, sixteenth, seventeenth and eighteenth periodic reports and the summary records of the meetings at which the Committee considered these reports, see documents CERD/C/CHL/15-18 and CERD/C/SR.1950 and 1951, respectively.

** In accordance with the information transmitted to the States parties regarding the processing of their reports, the present document was not formally edited before being sent to the United Nations translation services.

Contents

Annexes*

* The annexes to the present document are being circulated in the original language only.

Abbreviations and acronyms

CASEN	National Socioeconomic Characterization Survey
CONADI	National Indigenous Development Corporation
ILO	International Labour Organization
PDI	Chilean Police Detective Force
SEIA	Environmental Impact Assessment System

I. Introduction

1. The specific combined nineteenth to twenty-first periodic reports on the implementation of the International Convention on the Elimination of All Forms of Racial Discrimination (the Convention),[1] prepared in accordance with article 9, paragraph 1, of the Convention and with the harmonized guidelines on reporting[2] as recommended by the Committee on the Elimination of Racial Discrimination (the Committee) itself,[3] contains detailed information on legislation, progress and concrete measures adopted by the Chilean State to ensure the full exercise and enjoyment of the rights recognized in that instrument. Its contents cover the period from 13 and 14 August 2009 (the dates on which the fifteenth, sixteenth, seventeenth and eighteenth periodic reports were considered by the Committee) to 13 August 2012.

2. Background information on the political structure of Chile and its general legal protection framework for human rights may be consulted in the core document (HRI/CORE/1/Add.103). An updated version of that document will be available during the second half of 2012. The two documents, the core document and the specific document, constitute the combined nineteenth to twenty-first periodic reports under the Convention submitted by the Chilean State for consideration by the Committee.

3. The core document contains information on discrimination in Chile, and particularly demographic and socioeconomic information on the situation of the indigenous and migrant populations.

4. The specific document contains more detailed information on implementation of each article of the Convention and responses to the observations and recommendations made by the Committee after consideration of the fifteenth, sixteenth, seventeenth and eighteenth periodic reports (CERD/C/CHL/15-18).

5. The present document was prepared by the Office of the Minister and Secretary-General of the Presidency with the assistance of the Department of Human Rights of the Ministry of Foreign Affairs,[4] the Ministry of the Interior and Public Security, the Ministry of Justice and the Division of Social Organizations of the Office of the Minister and Secretary-General of Government.

6. As recommended by the Committee in paragraphs 30 and 31 of its concluding observations, non-governmental organizations in civil society were given the opportunity to participate in the preparation of this report at a seminar held at the Ministry of Foreign Affairs on 3 August 2012. Participants in the seminar were informed of the main measures, plans and policies being pursued by the Government to promote human rights and combat discrimination in general and racial discrimination in particular, with special reference to migration and indigenous peoples, and the views, criticisms and doubts of civil society were noted.

[1] The Convention was approved on 21 December 1965 at the twentieth session of the United Nations General Assembly (resolution 2106 A [XX]). In accordance with its art. 19, the Convention came into force on 4 January 1969, the thirtieth day following deposition of the twenty-seventh instrument of ratification. Chile was one of the first countries to sign, on 3 October 1966. The Convention was ratified on 26 October 1971 and came into force the next month. Ministry of Foreign Affairs Decree No. 747 (D.O. 12/11/1971).

[2] CERD/C/2007/1 and HRI/GEN/2/Rev.6.

[3] CERD/C/CHL/CO/15-18, para. 32.

[4] See: www.minrel.gob.cl/prontus_minrel/site/edic/base/port/derechos_humanos.php.

7. This report will be made publicly available from the date of its submission to the Secretariat of the Committee by being published on the Department of Human Rights website. It may be noted here that all periodic reports of the treaty bodies, together with information on the process, including the concluding observations of the committees, are widely disseminated by the Chilean State through its institutional websites and at meetings held to keep civil society informed.

II. Discrimination in Chile: the general situation

8. The programme for government of the current President of Chile, Sebastián Piñera, states emphatically that one of its objectives is to "pursue a policy of respect for all, regardless of religious, political or sexual orientation or ethnic or racial origin, ensuring that there is no arbitrary discrimination against minorities".

9. In order to implement non-discrimination policies and disseminate a culture of inclusion in line with the international commitments accepted by the Chilean State, and in the full conviction of the importance of the constitutional declaration asserting that all people are born equal in dignity and rights and prohibiting arbitrary discrimination, the Government has initiated a number of legislative and administrative measures to fully discharge this duty.

10. In addition to the work of different public bodies responsible for developing policies and programmes targeted at groups and minorities in the areas of health, education, work, poverty, etc., the Government has a Diversity and Non-Discrimination Section within the Division of Social Organizations of the Office of the Minister and Secretary-General of Government to coordinate and publicize the work required to promote interculturality and equality in diversity.

11. Specifically, the activity of the Government where ethnic or racial minorities are concerned is focused on four main areas: greater participation by and consultation with indigenous peoples on matters affecting them, as provided by the International Labour Organization (ILO) Indigenous and Tribal Peoples Convention, 1989 (No. 169), which has been ratified by and is in force in Chile; greater all-round development of their productive capabilities; high-quality education for all their children; and protection and respect for their culture and identity at all times.

The situation of ethnic or racial minorities

1. The indigenous population

(a) The demographic situation

12. According to the National Socioeconomic Characterization Survey (CASEN) held in 2009, 1,188,340 people, or 7 per cent of the country's population, identified themselves as members of indigenous groups, which represents a rise on the 2006 figure, as the chart in annex III shows. Identification is with nine ethnic groups: Aymara, Alacalufe or Kawésqar, Atacameño or Likan Antai, Colla, Diaguita, Mapuche, Quechua, Rapa Nui and Yámana or Yagán.

13. As noted in the previous report, a majority (68.9%) of the indigenous population live in cities.

(b) The socioeconomic situation

14. According to the findings of the 2009 CASEN survey, poverty in general had risen in Chile since 2006, from 13.3 per cent to 14.8 per cent. However, poverty rates were higher in the indigenous population, rising from 19.0 per cent to 19.9 per cent.

2. The migrant population

(a) The demographic situation

15. On the basis of the information available from the residence records supplied each year, and in the light of the information from the 2002 Population Census, the immigrant community in Chile is put at about 369,436 people. It is estimated that 82 per cent of this community comes from 10 countries, and 61 per cent from the neighbouring countries (Peru, Argentina and the Plurinational State of Bolivia).

16. As regards its most visible characteristics, it can be said that the immigrant community in Chile is mainly of South American origin, with the largest communities being from Peru (37%), Argentina (16.9%), the Plurinational State of Bolivia (6.1%), Ecuador (5.4%) and Colombia (3.9%).

17. A majority of this population are young and female[5] and migrated mainly for reasons of work. Children under 15 are recorded as making up about 15 per cent of all immigrants.

18. One characteristic brought to light by comparing information from the 1992 and 2002 censuses is the increase in the economically active population as of the survey date (the population belonging to this group rose from 31 per cent of all immigrants in 1992 to 48% in 2002). There was a substantial decline in the proportion of technically trained professionals and the like in the economically active population, as 64 per cent of the immigrant population claimed to belong to this category in 1992, whereas in 2002 the share was just 45 per cent.

19. Where the territorial distribution of immigration by regions is concerned, there is a marked concentration of resident immigrant communities in the Metropolitan region, which accounts for 64.94 per cent of the total. Other regions with numerically substantial communities are Arica and Parinacota, Tarapacá and, more recently, Antofagasta.

(b) The socioeconomic situation[6]

20. Members of the resident foreign community have about two years more education on average than the country's non-foreign residents. Unemployment in this community increased from 5.0 per cent in 2006 to 7.9 per cent in 2009.

21. With regard to pay, the survey reveals that the foreign community earns more than the non-foreign community in Chile.

22. The survey results indicate that poverty levels are lower in the foreign community than in the non-foreign one (10.65% and 15.12%, respectively). Nonetheless, indigence among members of the foreign community doubled from 2.13 per cent in 2006 to 4.84 per cent in 2009.

[5] About 53 per cent of all immigrants are female.

[6] The information given is based mainly on CASEN records from 2006 and 2009. As of the date of issue of the present report, CASEN 2011 data had yet to be validated.

III. Information relating to specific articles of the Convention

Article 1

1. The legal structure of Government non-discrimination policy

23. Equal treatment and non-discrimination are explicitly enshrined in the Chilean Constitution, with article 1, paragraph 1, stating: “People are born free and equal in dignity and rights”. This is reinforced by the constitutional guarantees established in article 19, and in particular that contained in paragraph 2, which states: “In Chile, there are no privileged people or groups”, adding: “No arbitrary differences may be established by law or by any authority”. Likewise, paragraph 16, subsection 2, of the same article 19 states, in relation to the freedom to work and protection thereof: “Any discrimination not based on personal skills or suitability is prohibited […]”.

24. Article 2 of the Labour Code reinforces the prescriptions of the Constitution, especially in its subsections 3 to 6, which establish: “Acts of discrimination are contrary to the principles of employment law”. These “are distinctions, exclusions or preferences based on race, colour, sex, age, marital status, union membership, religion, political opinion, nationality, national extraction or social origin which have the purpose of nullifying or impairing equality of opportunity or treatment in a person’s employment or occupation”. Notwithstanding this, those based “on the qualifications required for a job shall not be deemed discriminatory”. What will be considered discriminatory is “the offer of positions of employment by an employer […] in which any of the conditions referred to is made a precondition for applying […]”.

25. Chile reiterates that it has treated, is treating and will continue to treat everyone living in the country with respect, irrespective of ethnic, racial, political, religious or any other status or origin. Likewise, the country is vigorously pursuing a clear policy against discrimination, whomever it may affect. This includes Afro-descendants, whom preliminary estimates number at about 3,000, most of them living in the Valle de Azapa in the Arica and Parinacota region.

26. The distinctive characteristic of the nine indigenous peoples recognized by Act No. 19253[7] (the Indigenous Act) is that these human groups inhabited the territory before the arrival of European colonization. Accordingly, the indigenous peoples are those referred to in article 1, paragraph 2, of the Act, which reads: “The State recognizes as the main indigenous ethnic groups of Chile: the Mapuche, Aymara, Rapa Nui or Easter Islanders, the Atacameño, Quechua, Colla and Diaguita communities in the north of the country, and the Kawésqar or Alacalufe and Yámana or Yagán communities of the southern channels. The State values their presence as an essential part of the roots of the Chilean nation, their cohesiveness and their development in accordance with their customs and values.”

2. The Anti-Discrimination Act

27. The Anti-Discrimination Act (known in full as the Act Establishing Measures against Discrimination) was published on 24 July 2012 with the number 20609. The anti-discrimination bill began its first stage in the Chamber of Deputies on 22 March 2005 as a message from the then President of Chile, drafted jointly by the Government of the time and civil society organizations. Seven years later, in 2012, the murder of a young

[7] Library of the National Congress, Santiago, Chile, www.leychile.cl/Navegar?idNorma=30620&buscar=ley+19.253&r=5 [retrieved on 24 August 2010].

homosexual, Daniel Zamudio, affected public opinion in the country and raised awareness of the issue among all political authorities, hastening the passage of the bill.

28. As its article 1 states, the fundamental purpose of the Act is to establish a legal mechanism that effectively enforces the rule of law whenever an act of arbitrary discrimination is committed. It is thus up to each and every body in the State administration, within its sphere of competence, to develop and implement policies that guarantee everyone, without arbitrary discrimination, the enjoyment and exercise of their rights and freedoms as recognized by the Chilean Constitution, the laws and the international treaties ratified by and implemented in Chile.

29. Article 2 defines what is meant by arbitrary discrimination, namely "any distinction, exclusion or restriction made without reasonable justification by agents of the State or private individuals that causes deprivation of, interference with or threats to the legitimate exercise of the fundamental rights established in the Constitution or in international human rights treaties ratified by and implemented in Chile, in particular when based on grounds such as race or ethnic origin, nationality, socioeconomic status, language, ideology or political opinion, religion or beliefs, union membership or participation in trade organizations or lack thereof, sex, sexual orientation, gender identity, marital status, age, filiation, personal appearance and disease or disability".

30. Section II of the Act regulates actions for arbitrary discrimination, which may be brought by those directly affected by an action or omission involving arbitrary discrimination, their legal representative or whoever is responsible in practice for their care or upbringing. Actions may also be brought by anyone on behalf of affected individuals when the latter are not in a position to do so in person or via their representatives.

31. The court will state in its ruling whether or not arbitrary discrimination has taken place. If it has, the court will strike down the discriminatory act, order that it should not be repeated, or order the omitted act to be performed. It may also order such other measures as it deems necessary to re-establish the rule of law and ensure the needful protection for the affected person. If there has been arbitrary discrimination, the court will also fine those directly responsible for the discriminatory act or omission between 5 and 50 monthly tax units (UTM), payable to the public exchequer.

32. Lastly, the Act amended other legislation such as the Administrative Statute and the Municipal Officials Administrative Statute to prohibit the officials concerned from carrying out any act that is an affront to the dignity of other officials, with arbitrary discrimination as defined by article 2 of the Anti-Discrimination Act being deemed an act of this type. Such behaviour may even by punished by dismissal of the offending official. The Penal Code was likewise amended so that it became an aggravating circumstance when the motivation for committing or participating in a crime was the victim's ideology, political opinion, religion or beliefs, the nation, race or ethnic or social group to which the victim belonged, or the victim's sex, sexual orientation, gender identity, age, filiation or personal appearance, or any disease or disability from which the victim might suffer.

Article 2

1. Government policy on non-discrimination

33. The Diversity and Non-Discrimination Section of the Division of Social Organizations of the Office of the Minister and Secretary-General of Government is responsible for promoting respect for social diversity and interculturality and discouraging arbitrary discrimination in any form among public institutions and civil society by supplying guidelines and methodological tools to public-sector officials for dealing with arbitrary discrimination. It has done this by holding diversity and non-discrimination

training events whose objective is to raise awareness and work with sectoral public institutions to promote the integration of all persons irrespective of their social, economic, racial or other status, by creating forums for dialogue and reflection for public-sector employees and civil society.

34. During 2010 and 2011, a national study on the way the public sector dealt with diversity and non-discrimination was carried out by the Diversity and Non-Discrimination Section of the Division of Social Organizations (the results are attached in annex II), with a view to determining the situation of diversity and possible arbitrary discrimination in the public-sector machinery and thus have a basis for preparing a manual of good practice on the subject. The information was descriptively analysed, after which the results were sent out to all regions for information and dissemination purposes.

35. The Diversity and Non-Discrimination Section also coordinates and supports intersectoral actions and projects aimed at doing away with arbitrary discrimination and ensuring respect for diversity through the work of the Intersectoral Committee on Diversity and Non-Discrimination (since September 2010), whose membership is composed of different public services including: the National Service for Women, the National Service for Minors, the National Service for Older Persons, the National Service for the Disabled, the Ministry of Education, the National Youth Institute, the National Indigenous Development Corporation, the National Programme for the Prevention and Control of HIV/AIDS and STDs of the Ministry of Health, and the Aliens Department of the Ministry of the Interior.

36. Each year, the Division of Social Organizations invites public and private-sector institutions and civil society organizations to participate in the Good Practices Competition with a view to highlighting good practices in the areas of diversity and non-discrimination, i.e., actions or initiatives that have a positive effect on the participation and integration of individuals and/or groups vulnerable to discrimination. The Competition will be held for the eighth time this year.

37. Among the most important activities carried out to publicize these issues, the following may be mentioned:

(a) In 2010, the National Day of Indigenous Peoples (24 June), International Migrants Day (18 December) and other dates relevant to non-discrimination were publicized on the www.participemos.gob.cl website;

(b) In 2011, the Division of Social Organizations publicized a number of dates of relevance to the struggle against discrimination; especially important for the purposes of this report was the publicization of International Migrants Day (18 December);

(c) Different dates associated with diversity and non-discrimination have continued to be publicized in the present year. So far this year, dates publicized on the Division of Social Organizations website have included the International Day for the Elimination of Racial Discrimination (21 March), World Refugee Day (20 June) and the National Day of Indigenous Peoples (24 June).

38. To promote respect for social diversity and interculturality and discourage arbitrary discrimination in any form among public-sector institutions and civil society, a variety of activities aimed at public-sector employees, civil society, university students and educational communities were carried out during 2010, 2011 and 2012. Section A of annex I includes a table detailing what was done in 2010.

39. Similarly, 11 training events for public-sector employees were held from April to September 2011, as detailed in the table in section B of annex I.

2. The creation of the National Institute of Human Rights

40. In response to the recommendation in paragraph 14 of the concluding observations of the Committee, the Committee is hereby informed of the creation of the National Institute of Human Rights (INDH) in accordance with the Paris Principles. It was set up as an autonomous body under public law by Act No. 20405, published in the Official Journal of 10 December 2009, and constituted on 20 July 2011.

41. The INDH has the function of promoting and protecting the human rights of all Chileans as defined by law and the Constitution and in the international treaties signed and ratified by Chile, together with those deriving from the general principles of law as recognized by the international community. Its most important functions include issuing an annual report on the human rights situation in Chile, working to ensure that the country's legislation harmonizes with the international treaties signed by it so that they can be effectively applied, and initiating legal proceedings in the courts within its sphere of competence, including actions for crimes against humanity, torture, disappearance of persons, etc. The INDH has submitted its annual human rights report twice, for the years 2010 and 2011.[8]

3. Integration of the Convention and the rights it enshrines into national law

42. During the period covered by this report, the Chilean State submitted the following periodic reports to the treaty bodies:

(a) Human Rights Committee: sixth periodic report under the International Covenant on Civil and Political Rights (CCPR/C/CHL/6), submitted on 25 May 2012;

(b) Committee on Economic, Social and Cultural Rights: fourth periodic report under the International Covenant on Economic, Social and Cultural Rights (E/C.12/CHL/4) dated 9 August 2011;

(c) Committee on the Elimination of Discrimination against Women: fifth and sixth combined report under the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW/C/CHL/5-6), submitted on 6 January 2011, and responses to issues prior to reporting, submitted on 23 May 2012. As of the date of submission of the present report, the date set for consideration was 2 October 2012, during the fifty-third session of the Committee;

(d) Committee on the Protection of the Rights of All Migrant Workers and Members of their Families: initial report under the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (CMW/C/CHL/1), submitted on 9 February 2010. This was considered in September 2011;

(e) Committee on the Rights of Persons with Disabilities: initial report under the Convention on the Rights of Persons with Disabilities, submitted on 14 August 2012;

(f) Mention should also be made of the Universal Periodic Review progress report submitted on 27 February 2012 and of the report under ILO Convention No. 169 submitted on 1 September 2010 and the addendum to it dated 10 November 2010.

43. In the current year, the intention is to submit the following specific documents: the fourth periodic report under the Convention on the Rights of the Child on 12 September, and the initial report under the International Convention for the Protection of All Persons from Enforced Disappearance on 23 December.

[8] See: www.indh.cl/ for further details.

4. Government policy towards indigenous peoples and its legal structure

44. The principles inspiring Government policy on indigenous issues are as follows:

(a) Indigenous peoples are an asset, and the hallmark of the Government approach should be its positive focus on appreciating and making known the contribution that indigenous peoples represent;

(b) The traditional approach focusing predominantly on the countryside and land transfer should be supplemented by an all-round appreciation;

(c) Policy should move on from the welfarist outlook and be built around relevant programmes and instruments;

(d) Institutional restructuring is needed for efficient management at the service of people and communities with full indigenous participation;

(e) The Government should promote peace, public order and dialogue.

45. The indigenous policy termed "Dialogue for a Historic Re-encounter" is one of dialogue with the nine indigenous peoples in the country, as listed in paragraph 12, with a view to providing them with opportunities for their own development in a spirit of full respect for their rights, traditions, identity and culture. This approach is grounded in a positive, participatory and comprehensive attitude to indigenous matters, the aim being to seek out and disseminate the wealth that the indigenous peoples represent for our country. On the basis of this new approach, five working areas have been identified:

(a) Culture, identity and education: a vigorous effort to promote indigenous cultures and identities, with the focus on restoring and encouraging use of their native languages. As part of this effort, a Presidential Order was issued on the inclusion of traditional authorities in official ceremonies; the budget for indigenous scholarships was increased by 34.6 per cent from 2010 to 2011 and a further 13 per cent in 2012; the Bilingual Intercultural Education Programme trained 28 intercultural specialists in 2011, while there are currently 43 intercultural kindergartens; the Languages Recovery Programme was launched that same year; also in 2011, CONADI purchased 10 properties designated "sites of cultural significance" for indigenous peoples; and the national strategy of the Ministry of Health emphasized intercultural health, among other measures;

(b) Land: complying with the land transfer procedures prescribed by law, while also providing technical assistance and support for production and habitability. As of 31 December 2011, land purchases for communities totalled 27,407 billion pesos (about US$ 54,814 million). This paid for 54 properties totalling 10,335 hectares, benefiting 44 communities that comprise 1,181 indigenous families in all. The subsidy mechanism for land purchases was also strengthened. During 2011, 4,170 hectares were purchased, benefiting 608 families – an increase of 50 per cent. Land is being bought at the rate of 30 communities a year at reasonable market prices. Meanwhile, land transfers are being accompanied by support for production in the form of agricultural and habitability programmes. Lastly, production partnerships and training programmes are being used to provide families receiving land with more tools;

(c) Institutions: working with indigenous peoples on a new institutional structure, and modifying and extending institutional instruments and programmes with indigenous applications where necessary;

(d) Participation and consultation: establishing and coordinating mechanisms for indigenous peoples' participation, in compliance with ILO Convention No. 169;

(e) All-round development: implementing development plans for indigenous peoples that match their opportunities and needs, with support networks and training.

From 2010 to 2011, the budget of the CONADI Development Fund increased by 56.6 per cent. A rise of 6 per cent was planned for 2012. In the area of forestry development, amendments were made to Supreme Decree No. 701 giving communities the opportunity to decide how to employ their land. In 2011, 26,300 families benefited from the Indigenous Territorial Development Programme (PDTI), which had previously covered 3,000 families. Also in 2011, the Production Development Corporation (CORFO) launched a programme of guarantees for investment in indigenous lands. The Government is also proceeding with the creation of the Indigenous Investment Fund. For the first time in the country, the Millennium Development Goals were measured in the indigenous population. Lastly, 1,268.5 km of indigenous rural roads have been built in the last two years, equivalent to more than three times what was built before.

46. Where legislative progress in this area is concerned, the State ratified ILO Convention No. 169 on 15 September 2008. Since the Convention came into force in September 2009, two reports have been submitted under it, notifying the various discussion forums engaged in with indigenous peoples and other advances made in compliance with the Convention. In addition, Supreme Decree No. 124, provisionally regulating implementation of the right to consultation, was issued in 2009. The indigenous peoples are currently being consulted on a new permanent statute to regulate this consultation process.

47. In addition, 2008 saw the creation of the Indigenous Affairs Coordination Unit, based in the Office of the Minister and Secretary-General of the Presidency and soon to be integrated into the new Ministry of Social Development, and of indigenous affairs units in all ministries.

48. Act No. 20249, known as the "Lafkenche Act", was passed that same year to create a marine and coastal zone for the indigenous peoples, and in 2009 Supreme Decree No. 134 was passed to provide the implementing regulations for the Act. The aim of the Act is for an indigenous community or group of communities to be able to apply for exclusive use of part of the coast on the grounds of existing customary usage, enabling the communities concerned to safeguard the use of such areas, preserve traditions and make use of natural resources.

49. The State has also created a Committee of Ministers for Indigenous Affairs, which meets periodically to discuss development projects of potential relevance and benefit to the indigenous peoples.

50. Where criminal matters are concerned, attention is drawn to paragraphs 85 to 143 below, dealing with article 5 of the Convention.

5. Legal reforms to enhance the legal status of the indigenous peoples

51. A constitutional amendment bill to provide constitutional recognition for the indigenous peoples began its parliamentary passage in 2007 (bulletin No. 5522-07) and is currently at its first stage in the Senate.

52. In 2013, once the indigenous consultation on the permanent regulations for consultation has been completed in accordance with ILO Convention No. 169, consultations will take place on a variety of issues, including constitutional recognition of the country's indigenous peoples.

6. Government policy towards immigrants

Summary of the legal framework and national migration and refugee policy

53. As detailed in the annex, there are a number of laws and decrees regulating the right to remain, length of stay, nationalization and entry as tourists of foreigners in Chile, the

most important being Decree Law No. 1094 of 1975, hereinafter the Aliens Act, which is the backbone of Chilean migration law. Numerous amendments have been made to this law with a view to making it consistent with Chilean foreign policy and with the migration and integration processes the country is involved in.

54. The policy developed by the Government is grounded in deep respect for the human rights of migrants, and accordingly it has set out to generate actions to regularize the migration status of immigrants as an essential part of their integration into Chile as the host country, with special emphasis on the recognition of refugee status. The 2010–2014 programme for government of the Chilean President, Sebastián Piñera, identifies the main challenges for the Aliens and Migration Department as being to devise a modern migration policy to successfully implement the new Migration and Aliens Act, draw up a modernization plan for improving the administration of the Department and regulate the status of refugees once they are in the country by applying Act No. 20430 and its implementing regulations.

55. Notwithstanding the above, it must be recognized that immigrants are in a position where situations of exclusion can arise, particularly in the case of women and children, examples being lack of documentation, the possibility of falling victim to discrimination or crimes associated with the migration process, and poverty. For such cases, the Chilean State has devised a number of initiatives that are carrying forward the integration process, with efforts being targeted on the groups considered most vulnerable, such as immigrant children, adolescents and women. The goal is to provide tools that provide them with access to basic social services by regularizing their migration status.

7. The draft migration bill

56. In order to modernize migration procedures and meet the international commitments accepted by Chile in this area, the Ministry of the Interior has developed a proposal that is currently being analysed by other public-sector agencies and will soon be sent to the National Congress for legislative action.

57. The draft bill incorporates guiding principles for migration procedures covering respect for human rights, non-discrimination, family reunion and equality of employment rights and obligations; modernization of residence categories in line with international standards; modernization of systems for applying migration penalties; amendment of grounds for refusal, revocation and expulsion to bring them into line with the new procedural concepts enshrined in the new Criminal Procedure Code that recently came into force in the country; systematization of grounds for expulsion and rules establishing who is responsible for implementing this measure; establishment of administrative oversight measures; and systematization of the remedies available to challenge the authority's decisions in migration matters.

Act No. 20430 of 2010, establishing provisions for the protection of refugees

58. This new legislation on refugee status was enacted in 2010 with a view to adapting national law to the international commitments accepted by Chile, particularly the provisions of the Convention relating to the Status of Refugees and the Protocol relating to the Status of Refugees; separating refugee legislation from migration legislation; formalizing the existence of institutions responsible for recognizing refugee status; specifically delimiting both refugees' rights and the grounds for cessation and loss of refugee status, rejection of applications and revocation of refugee status once granted; extending the responsibility for integrating both asylum applicants and people granted refugee status to a wider range of State agencies, so that refugees' demands can be responded to in a coordinated fashion; and setting up a commission for the recognition of refugee status.

Article 3

59. The Chilean Government has emphasized a clear policy against discrimination and in favour of equal treatment in a democratic society. It has set out to pursue a more comprehensive approach to this challenge by strengthening and coordinating all public policies that relate to equal opportunities insofar as they are designed to prevent discriminatory actions. A particular focus of attention here are immigrants, a group not previously considered. The approach may be summarized as one of inclusion and equal opportunities, avoiding factors of discrimination and the situations in which this may arise.

60. Paragraph 78 details the Assistance for Vulnerable Migrants agreement, whose goals include providing support in the areas of housing, health care, education, social assistance and employment enterprise training for foreigners requiring it, thereby preventing segregation and marginalization and assisting their integration into and cohesion with Chilean society, while maintaining their identity.

Article 4

61. The Anti-Discrimination Act described in paragraphs 27 ff. incorporated a new aggravating circumstance that increased the penalties for committing the offences defined in Chilean law, consisting in "committing or participating in the crime because of the victim's ideology, political opinion, religion or beliefs; the nation, race or ethnic or social group to which the victim belongs; or the victim's sex, sexual orientation, gender identity, age, filiation or personal appearance, or any disease or disability from which the victim may suffer".

62. Discrimination is also proscribed by article 8 of the Indigenous Act: "Manifest and intentional discrimination against indigenous people because of their origin and culture shall be deemed an offence."

63. Act No. 20507, which came into force in April 2011, criminalizes migrant smuggling and human trafficking and contains provisions aimed at prevention and more effective criminal prosecution. The Act criminalizes human trafficking and migrant smuggling in accordance with the provisions of the United Nations Convention against Transnational Organized Crime.

64. The Act updated the criminal law by introducing the distinction between migrant smuggling and human trafficking, as provided by the Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime (Palermo Protocol). It also made effective cooperation a mitigating circumstance; regulated the use of undercover agents to investigate crimes; permitted temporary residence for foreign victims of the crime of human trafficking; and made provision for the physical and psychological protection of people who had been smuggled or fallen victim to human trafficking. It is sufficient for a person to be a minor for an offence to have been committed under the Act, in accordance with the special protection standards applying to children and adolescents who fall victim to the crimes referred to. According to information from the Chilean Police Detective Force (PDI), there were 10 allegations and 57 investigation orders relating to human trafficking between 2006 and 2010.

65. With regard to bilateral, regional and multilateral migration agreements entered into by the State party, the most noteworthy is the agreement creating a procedure for the verification of minors' exit and entry documents signed by the States parties and associate members of the Southern Common Market (MERCOSUR) within the framework of the MERCOSUR Specialized Forum on Migration, which has been in force in Chile since

September 2006. The agreement is meant to increase protection for minors travelling between the region's countries, to prevent smuggling.

66. Regarding residence permits, Chile has had a mechanism in operation since 2003 to make it easier for Argentine citizens in the country to obtain these. This mechanism allows Argentine citizens to apply for temporary residence for up to two years purely on the basis of their nationality. The initiative derives from the Agreement on Residence for Nationals of MERCOSUR, Bolivia and Chile and the Agreement on Regularization of Internal Migration for Nationals of MERCOSUR, Bolivia and Chile, both signed within the framework of the MERCOSUR Specialized Forum on Migration.

67. In December 2006, a Plan of Action against Trafficking in Persons was signed on the occasion of the Meeting of Ministers of the Interior of MERCOSUR and its Associate States, the intention being to use the tools of international cooperation in the quest for shared solutions to problems of this nature in the member and associate countries of MERCOSUR.

68. The Agreement on Residence for Nationals of MERCOSUR, Bolivia and Chile came into force on 2 October 2009 on the occasion of the Twenty-sixth Meeting of Ministers of the Interior of MERCOSUR and its Associate States, enabling nationals of these countries to obtain a residence permit in any of the others solely by virtue of that nationality.

69. In November 2007, Chile signed the Ibero-American Multilateral Agreement on Social Security on the occasion of the Ibero-American Summit. This will allow migrant workers residing in any of the signatory countries to transfer their pension funds to their country of origin or residence when they retire. The signatory countries were Argentina, the Bolivarian Republic of Venezuela, Brazil, Chile, Costa Rica, El Salvador, Paraguay, Peru, the Plurinational State of Bolivia, Portugal, Spain and Uruguay. On the occasion of the nineteenth Summit of Heads of State and Government, held in Portugal on 30 November and 1 December 2009, Chile deposited the instrument of ratification for the agreement.

70. Chile is a permanent participant in the South American Conference on Migration, a forum for analysing the regional and global migration situation that has allowed common positions to be arrived at over time with regard to the characteristics of migration, and specifically on respect for the human rights of migrants, the relationship between migration and development and migration policies in the region's countries.

71. The issue of business people's mobility has been introduced in negotiations over free trade agreements and economic cooperation agreements, mainly in the treaties signed with China, Australia, Peru, Colombia, the United States, Japan and Mexico and in economic cooperation agreements with the European Union and MERCOSUR States.

72. In 1999, the Government of Chile signed a framework resettlement agreement with the United Nations High Commissioner for Refugees (UNHCR) with a view to providing protection to refugees who for reasons of safety cannot remain in their country of asylum. Chile thus seeks to provide resettlement opportunities to people who are particularly vulnerable. Up to December 2009, 16 missions have been carried out to resettle refugees in different countries. People of different nationalities have been resettled; the great majority are of Colombian nationality, although nationals of other countries such as Azerbaijan and Pakistan have also been taken in.

73. In the context of this framework agreement, and in consideration of a request from UNHCR, the Special Programme for the Resettlement of Palestinians in Chile was implemented. Lasting two years, this included the preparation, reception and sociocultural and workforce integration of these refugees in Chile. For humanitarian reasons, the Chilean Government agreed to receive 116 Palestinian refugees who were in the Al Tanf camp on

the border between Iraq and Syria, without prejudice to recognition of their right of return to their country of origin.

74. Regarding the legal basis for migration policy, an important development was the ratification by Chile of the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, in force in the country since 2005. Also in force since that year are the United Nations Convention against Transnational Organized Crime, 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, supplementing the Convention.

75. The national system for dealing with immigration matters comprises a number of Government agencies interacting under the coordination of the Aliens and Migration Department of the Ministry of the Interior. That Government body works with officials from the Division of Internal Government (regional and provincial governors' offices), the National Aliens and International Police Administration and the Ministry of Foreign Affairs to coordinate oversight and application of the provisions relating to aliens and migration that must be complied with by all foreigners resident in the country; proposes amendments to this legislation; formulates and implements policies relating to the international migration of workers and their families; coordinates the efforts of different State agencies to facilitate integration of the immigrant population in Chile, in accordance with the mandate provided by Presidential Order No. 9 on National Migration Policy; deals with other States for information-sharing purposes; and provides information and assistance to different civil society agents involved with migration issues.

76. Presidential Order No. 9 on National Migration Policy, dated 2 September 2008, analyses the evolution of migration in Chile, lays down broad guidelines for Government action, establishes immovable principles on which migration policy is to base this action, incorporates the principles and guidelines of the international agreements and conventions signed by the Chilean State in this area, and identifies the institutional system responsible for implementing policy decisions in practice. The cornerstone of this system is the Migration Policy Council, which carries out multisectoral coordination with a view to putting forward initiatives for regulating immigration in Chile from the standpoint of respect for fundamental rights. These initiatives must take place within the framework of an evolving national migration policy strategy.

77. The policy principles are: residence and freedom of movement; freedom of thought and conscience; access to residence on equal terms that are duly notified; access to justice; integration and social protection of migrants, guaranteeing their right to education, health care and work; respect for the employment rights of migrant workers irrespective of their status as foreigners; Chile defined as a country that is suitably open to migration and looks to receive migrants wishing to reside in the country on a non-discriminatory basis; regularization of migration; reunion; and citizen participation in migration proceedings.

78. On 7 August this year, the Government signed the Assistance for Vulnerable Migrants agreement with three municipalities in the Metropolitan region with the aim of responding to the most urgent needs of the migrant population living in vulnerable circumstances. The agreement entails the transfer of 128 million pesos (about US$ 266,300) from the Ministry of the Interior and Public Security to the three municipalities, which are home to 38 per cent of all vulnerable migrants in the Metropolitan region, and the Jesuit Migrant Service, with these funds to be used to provide support on housing, health care, education, social assistance and employment enterprise training to foreigners requiring it.

79. Regarding human rights training for the uniformed police (Carabineros), the detective force (PDI) and the prison service (Gendarmería), these professional bodies have

a basic training course (which may be followed up by further instruction) that moves from general aspects to a progressive exposition and addresses the particular details of human rights in police work.

80. Carabineros are carrying out human rights training activities aimed at incorporating the ideas of knowledge, respect and guarantees into the training of police personnel. This training is being supported by the INDH. The institution has also set up a Human Rights Department, which aims to respond to the requirements of citizens or the authorities when questions arise about the actions of Carabineros, in order to ensure that police rules and behaviour do not disregard people's essential rights.

81. The Human Rights Brigade of the PDI, in addition to investigating crimes, provides detectives with education through its Department of Human Rights Education and Dissemination.

82. Prison service personnel are governed by Prison Regulations establishing that the operation of prisons is to be carried out subject to the guarantees and within the limits laid down by the Chilean Constitution, international treaties, laws and their implementing regulations, and court rulings. Staff who overstep these limits will be subject to the appropriate penalties. The Regulations also explicitly enshrine the principle of non-discrimination, stipulating that their provisions are to be applied impartially and without any differences of treatment based on birth, race, political opinion, religious belief, social status or any other characteristic. The prison service also has a human rights training manual.

83. There is a particular provision in the Prison Regulations on the population of foreign prisoners, dealing with the situation of convicted foreigners who are the subject of an expulsion order.

84. The Constitution guarantees everyone the freedom to express opinions and transmit information without prior censorship in any manner and through any medium, while remaining responsible for any crimes and abuses committed in the exercise of these freedoms. Article 31 of Act No. 19733 on freedom of opinion and information and the profession of journalism penalizes anyone using any social communication medium to publish or transmit material intended to promote hatred or hostility towards individuals or groups by reason of their race, sex, religion or nationality with a fine of 25 to 100 monthly tax units (UTM), rising to a maximum of 200 UTM in the event of a repeat offence.[9]

Article 5

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

85. As already noted, article 1 of the Chilean Constitution recognizes that everyone in the country is born free and equal in dignity and rights, while article 19, paragraph 2, goes on to guarantee equality before the law and absolutely prohibits any type of arbitrary discrimination. Article 19, paragraph 3, guarantees equal protection before the law for all in the exercise of their rights, which means that everyone, without distinction, is entitled to a legal defence, adding that the law will supply the means for a legal defence and counsel to those who cannot afford it for themselves. Provision is made for the procedural time required for defence counsel to take the needful measures. The Criminal Procedure Code

[9] As of August 2012, one UTM was equivalent to 39,570 chilean pesos, or about US$ 79.14.

states that from the first step in the proceedings until the sentence is fully enforced, any accused may freely designate one or more defence counsel of his or her choice.

86. The Criminal Procedure Code, which regulates the rights and guarantees of defendants, states that the latter are entitled to clear and specific information on the charges against them and the rights granted to them by the Constitution and laws.

87. The right of defendants to be informed of the charges against them in a language that they understand is explicitly recognized; this guarantee also extends to the first court appearance.

88. The Public Defender's Office, as a State body responsible for meeting the requirements of criminal defence in the Chilean criminal justice system, established the country's first specialized defender's office in 2003, the Mapuche Public Defender's Office in the Araucanía region. Both the large share of indigenous people in the population and the particular penal issues relating to them made it obvious that there was a need for systems to facilitate a proper understanding of the customs, language and traditions of the people concerned.

89. The Public Defender's Office recruited intercultural facilitators belonging to indigenous peoples who were thoroughly conversant with everything needed to supplement the work of the public defender when the accused was a member of an indigenous people. These facilitators (one in the Tarapacá region, engaged in July 2003, one in the Araucanía region and a third in the Bío Bío region, the latter two both engaged in 2005) took on functions such as interpretation and coordination between the different bodies responsible for assisting indigenous people, while facilitating dialogue between the organizations responsible for administering justice in order to provide an intercultural view of this.

90. In 2008, the Research Department of the national Public Defender's Office, in view of the forthcoming ratification of ILO Convention No. 169, completed a study on the provision of criminal defence for indigenous people with the title "La defensa de imputados indígenas en la Defensoría Penal Pública". All the public defenders' offices in the country's regions were consulted for the study about the state of specialized indigenous criminal defence.

91. In general, the new model developed by the Research Department of the national Public Defender's Office, which is detailed in annex VIII, lays down the bases of specialized criminal defence for indigenous peoples, criteria of jurisprudence and doctrine for the defence of indigenous cases, protocols for communication between defence counsel and accused, profiles of the different roles (specialized defence counsel, intercultural facilitator, assistant) and a logical framework and indicators for assessing the functioning of the programme, among other aspects.

92. At the same time as the model was being formulated, in 2011 State funding was obtained to recruit seven new intercultural facilitators. In order to apply the programme in all the country's regions, the Research Department:

(a) Held the first Academy on Criminal Defence for Indigenous Defendants. This took place in April 2011 and was attended by 45 professionals from the Public Defender's Office (lawyers, assistants and facilitators). Its purpose was to provide professionals from the Public Defender's Office with initial specialization and certification in the subjects specified by the model for the provision of criminal defence services to indigenous defendants;

(b) Provided training between 20 July and 28 October 2011, both face to face and via video conferencing, to groups of defence lawyers and professionals from all the country's regions in the practical criteria for operating the indigenous defendants' defence model, including the criteria for identifying indigenous defendants and for identifying and

referring indigenous cases, etc., with participants being enjoined to pass on what they had learned;

(c) Signed a cooperation agreement in 2011 with the United Nations Development Programme (UNDP) and the Faculty of Law of the University of Chile on the provision of an e-learning course on the subjects covered by the model with a view to extending the provision of criminal defence services for indigenous defendants to the whole country, the result being that 101 lawyers, 7 facilitators and 9 professionals from the Defence Management Support Unit were certified.

93. In 2012, the programme was strengthened by the national Public Defender, who made the application of specialized criminal defence one element in his individual performance commitment for his three-year term in the position. This year, 2012, is the first in which the model of criminal defence for indigenous defendants is being fully applied throughout the country. One of the first activities this year was the second Academy on Criminal Defence for Indigenous Defendants, which was held in May and concluded with the specialization of 44 new defence lawyers. To date, a total of 188 defence counsel, lawyers and professionals have been specialized, which is enough to provide specialized criminal defence nationwide.

94. The number of defendants belonging to an indigenous people who have been represented by specialized defence counsel this year is 706, i.e., 26.9 per cent, as shown in the table in annex IX.

Amendment of the Antiterrorist Act

95. As detailed in annex X, Act No. 20467 substantially amended the description of the criminal category of terrorism, together with other reforms reducing or doing away with punishments for certain types of conduct. Among other amendments, the presumption of an intention to cause fear was abolished because of the vagueness of this provision. It was amended specifically to protect the principle of the presumption of innocence, so that any accusation of terrorism must now be proved by whoever makes it rather than those charged with such offences having to counter the presumption of terrorist intent, as was the case before the amendment.

96. Act No. 20519 clarified a provision that had been wrongly applied by the courts by establishing that the Antiterrorist Act could not be applied to minors.

97. Where application of the Antiterrorist Act is concerned, it is worth pointing out that, in Chilean criminal proceedings, the application of any criminal sanction whatever to one or more persons can only be carried out by the courts of justice. Accordingly, application of the penalties provided for in the Antiterrorist Act, and thus the categorization of an offence as “terrorist”, is the responsibility of the presiding judge and no other authority.

98. In the case of terrorist offences, criminal proceedings may be brought either by the Public Prosecutor’s Office or by the Ministry of the Interior and Public Security or the regional governors’ offices concerned; nonetheless, it remains the responsibility of the competent courts to determine whether a crime took place or not, whether it was of a terrorist nature and whether the defendant or defendants played any punishable part in it.

99. This is why it is important for the concept of “application” of the Antiterrorist Act to be clarified with precision, since while the Public Prosecutor’s Office or Ministry of the Interior and Public Security, acting as plaintiffs, can invoke the Act and allege that a criminal action is terrorist, it is not up to them to apply it: that is the exclusive preserve of the courts of justice. Accordingly, the mere fact of the Antiterrorist Act being invoked by the Ministry of the Interior and Public Security or by the Public Prosecutor’s Office in cases involving individuals belonging to the Mapuche people does not necessarily mean

(as might be imagined from some accusations made against the State) that these will actually be found guilty of terrorist offences.

100. The State can affirm that the Antiterrorist Act is not applied to members of the Mapuche community over acts of protest or social demands, given that such acts do not constitute offences meeting the requirements laid down in the Antiterrorist Act for them to be considered acts of terrorism by the criminal courts.

101. Evidence for this was provided by the trial of Héctor Llaitul, Ramón Llanquileo, José Huenuche and Jonathan Huillical, members of the so-called Mapuche Autonomous Community (CAM), before the Cañete criminal court. The lower court ruling found the defendants guilty of the common offences of robbery and serious bodily harm, and this was subsequently overturned by the Supreme Court, which recategorized the offences as repeated serious bodily harm and lesser bodily harm. Neither of the two judgements applied Antiterrorist Act penalties, even though the Act had been invoked by the Public Prosecutor's Office.

102. It is worth stressing that there is no targeted State system for repressing and sentencing members of Mapuche communities under the Antiterrorist Act with a view to criminalizing and suppressing their ancestral claims. If there were, whenever the bodies responsible for criminal prosecution initiated proceedings under the Act, the accused would be found guilty. This has not been the case. Democratic institutions and the rule of law have meant that people against whom such proceedings have been brought have received due process and often been acquitted. Again, the decision as to whether to invoke the Act is taken on a case-by-case basis, in accordance with the particular circumstances involved, and is thus not a systematic practice of the Chilean Government.

103. The Chilean State has repeatedly expressed its complete and unremitting determination to enhance protection for human rights and continue to promote a culture of respect and non-discrimination as an essential pillar of a sound, inclusive democracy. In this context, it should be emphasized that the rule of law as recognized and guaranteed by the Chilean Constitution is fully operational throughout the country, as are all the other standards of the democratic legal framework guaranteeing all the country's inhabitants the enjoyment of the same rights and remedies without distinction or discrimination of any kind.

104. However, the Chilean State cannot relinquish its obligation to maintain and protect constitutional democratic values and fundamental freedoms in the face of crimes that seek to seriously disrupt public order and instil fear into the population, as this would mean renouncing the authority established for it in the Constitution (art. 76, subsection 3). Consequently, it is impossible for the State to relinquish its duty of maintaining public order and the security of all the country's inhabitants. This is a duty that does not admit of discrimination of any kind in the decision as to whether or not to act, either on behalf of or against a given group of persons.

105. This being so, it is useful to stress that the obligation incumbent upon Chile to safeguard the rule of law and enforce domestic and international laws requires it, first, to recognize the special status of the indigenous peoples; but also to punish acts that transgress the criminal laws and impair the harmony to which society is entitled, irrespective of who commits them, and to reaffirm the international obligations requiring all States to prevent and condemn any kind of activity, action or conduct that uses terrorist violence as a criminal method; all this in the light of the international consensus condemning this method, whatever the political end being pursued.

2. The right to personal security and to the protection of the State against any act of violence or attack on persons committed by public officials or by any individual, group or institution

106. Article 19, paragraph 7, of the Chilean Constitution guarantees the right to personal freedom and individual security for all, without any distinction of race or ethnic origin. Consequently, anyone on Chilean territory can enforce these rights, and if deprived of them or disturbed or threatened in their enjoyment can have recourse to the competent authorities and courts, either by an action for constitutional protection or by an action for non-discrimination.

107. Again, as already explained (paras. 88 ff.), the Public Defender's Office has a special defender's service for members of indigenous peoples.

108. It should be pointed out that, according to the information available from the Chilean police, there are no statistical records of violent attacks on people belonging to racial minorities since 2007.

109. To prevent abuses from being committed by the police against anyone, but especially demonstrators belonging to indigenous peoples, and to further the human rights education of the police, while also considering the need to establish a central body to take on the institutional responsibilities associated with this area, in 2011 the Subdirectorate General of Carabineros ordered the creation of a Human Rights Department.

110. One of the Department's functions is to act as a channel for all human rights-related matters involving the actions of Carabineros, and its responsibilities include: maintaining permanent communication and coordination with all public-sector bodies on human rights matters, including particularly the INDH, and with any natural person or legal entity; monitoring cases and procedural situations involving human rights in both the global and inter-American systems, especially when it comes to accusations of arbitrary discrimination, abuse and related matters; analysing and studying cases that arise in the sphere of human rights and generating channels of feedback and dissemination, while also coordinating education efforts in this area in the institution's training establishments; ensuring that the principles informing respect for the essential rights emanating from human nature are integrated into the institution's rules; and coordinating as necessary with the different institutions, both to gather information and to develop protocols and processes in matters that have a bearing on human rights, which it is responsible for deciding on and applying in practice as institutional needs dictate.

111. With regard to accusations of police abuses committed by members of Carabineros against members of the Mapuche people, the Chilean Government is committed to investigating and punishing any actions of this kind that may have been committed.

112. From a medium-term perspective, two bills now going through the National Congress are designed to substantially reform the provisions governing military justice by limiting the jurisdiction and competence of the military courts in accordance with international standards; among other things, this reform will make it possible for the civilian justice system to investigate and punish any abuses or crimes committed by members of the police. Furthermore, Act No. 20502 creating the Ministry of the Interior and Public Security was published in February 2011. Among other measures, this places Carabineros and the PDI under the Ministry of the Interior instead of the Ministry of Defence.

3. Political rights

113. On this subject, the information in the previous report holds good, namely that foreigners in Chile can exercise the right to vote, in the forms and circumstances laid down

by law, when they have been residing in Chile for more than five years and meet the other requirements incumbent upon all Chileans: being aged over 18, and not having been sentenced to a prison term of more than three years. If they have obtained their naturalization papers, they may also stand for public office once they have held these for five years.

114. People belonging to indigenous peoples may exercise their political rights like all other Chileans, subject to the same requirements as laid down by the Constitution and laws (being a Chilean citizen aged over 18 and not having been sentenced to a prison term of more than three years), without any discrimination or exclusion based on ethnic origin.

4. Other civil rights

115. In Chile, the Constitution guarantees all the country's inhabitants, without distinction of nationality, origin, race, ethnicity or ancestry, the right to live and travel wherever they wish within the country and to enter and leave it, subject to the requirements of law.

116. Article 10 of the Constitution makes no arbitrary distinctions when it comes to obtaining Chilean nationality. The children of non-resident foreign parents can always opt for Chilean nationality if they so wish.

117. As noted in the previous report, marriage in Chile is a civil contract that is unrestricted as regards the race, ethnicity or nationality of those contracting it.

118. In consideration of this, and to strengthen both the institution of non-discriminatory marriage and the linguistic integration of the indigenous peoples, the national Civil Registry and Identification Service has introduced bilingual marriages in the Bío Bío and Araucanía regions, recognizing the need for people's native language to form part of these ceremonies. Four bilingual marriages have been held by officials trained in the indigenous language.

119. In the commune of Alto Bío Bío in the Bío Bío region, with its population of Pehuenche origin, there is a Civil Registry official who is trained to carry out marriages in Chedungun, the dialect of that people. Two marriages have already been celebrated in Chedungun this year.

120. In the Araucanía region, two marriages have been held in Mapudungun thanks to a partnership with CONADI, under which five Civil Registry officials in the region were trained, receiving classes in Mapudungun and the Mapuche world view. The officials are thus qualified to carry out bilingual marriages. The Service has also arranged for these officials to carry out bilingual marriages in communes other than those where they work, so that if a request for a marriage of this type is received in another commune of the region, the Regional Head Office for the Araucanía region will take the steps necessary to second the trained official to the area required.

121. Consideration is being given to the option of performing marriages in Rapa Nui for indigenous members of Rapa Nui culture who are resident on the island.

122. On another topic, Presidential Order No. 3 of 4 August 2010 requires agencies of the central State administration to include traditional indigenous authorities in official ceremonies. Recognized authorities include the lonkos of indigenous communities, Huilliche caciques, the Rapa Nui Council of Elders and other traditional or religious authorities of the indigenous peoples recognized in the Indigenous Act.

123. Actions undertaken by the Government in pursuit of indigenous women's development are coordinated by an interdisciplinary committee. In 2011, agreements were signed between the National Service for Women and CONADI and between the Undersecretariat of Social Security of the Ministry of Labour and CONADI with a view to

improving the participation of indigenous women and securing their participation in the labour market.

124. The Intersectoral Committee for Indigenous Women was set up that same year. This is an intersectoral partnership whose purpose is to improve the quality of life of indigenous women in Chile by developing their economic autonomy and to increase the level of participation.

The right to work

125. Paragraph 14 above provides information on the socioeconomic situation of the indigenous population, while paragraphs 20 to 22 provide information on the migrant population.

126. The Constitution prohibits any discrimination not based on personal capacity or suitability, except that the law may require Chilean nationality or age limits for certain cases. On the basis of this provision, the Labour Code provides that at least 85 per cent of workers serving any given employer must be of Chilean nationality, with an exemption for employers that have no more than 25 workers. The following rules are used to calculate this proportion: the total number of people working for the employer within Chile is taken, rather than the numbers in its different subsidiaries separately; specialized technical personnel who cannot be replaced by Chilean staff are excluded; foreigners whose spouse or children are Chilean or whose deceased spouse is Chilean are treated as Chilean; and foreigners resident in the country for over five years are likewise considered Chilean.

127. While it is true that the legislation includes this nationality-based restriction, which can affect migrant workers, on the other hand the powers of any employer are limited by the right of migrant workers not to be discriminated against on the grounds of nationality. The stipulation here is that acts of discrimination are contrary to the principles of employment law, meaning by these any distinctions, exclusions or preferences based on race, colour, sex, age, marital status, union membership, religion, political opinion, nationality, national extraction or social origin which have the purpose of nullifying or impairing equality of opportunity or treatment in a person's employment or occupation. Distinctions, exclusions or preferences based on the qualifications required for a job shall not be deemed discriminatory.

128. Migrant workers who are documented or have official migrant status may only be expelled by a decision of the Ministry of the Interior, formalized in a Supreme Decree, as provided by article 84 of the Decree Law on Aliens. The same legislation provides for the opportunity to lodge a written legal appeal with the Supreme Court seeking the lifting of the measure within 24 hours from the time this measure is notified to the affected party.

129. Expulsion does not constitute a means of depriving legal workers of the rights conferred by their residence authorization and work permit. Presidential Order No. 9 on National Migration Policy of September 2008 asserts that "the State must ensure the harmonious integration into the national community of foreigners who are legally resident in Chile, and to this end must promote equality of treatment in employment, social security, cultural rights and individual freedoms (…)". The State has a duty to guarantee the exercise of the right to work and to take all necessary measures to penalize and if possible put an end to the recruitment of workers in an illegal situation, although such a situation in no way diminishes the employment rights of immigrants vis-à-vis their employer.

The right to housing

130. Foreign nationals may apply for State housing subsidies if they have Chilean residence permits (the applicant or spouse), are of legal age, have not received such a subsidy before and have a housing savings account. Under this system, families that wish to

build or buy a home can receive a non-reimbursable cash subsidy. Low-income and middle-income persons are eligible for this benefit. There are three different programmes for low-income sectors: the Solidarity Housing Fund, for the most vulnerable groups; the Rural Subsidy Programme; and the Household Assets Protection Subsidy, a home-improvement subsidy which is provided to people who already own a dwelling.

The right to health care

131. Foreigners living in Chile without legal migration status have access to free emergency care in public hospitals. With this, the Chilean State is meeting its commitment to providing all migrant workers with access to emergency health care, irrespective of their residence status. This has been spelt out in the instructions issued by the Ministry of Health concerning care for immigrants at social risk and without legal residence status. The resolution concerned makes reference to a number of initiatives agreed upon by the Ministry of Health, the National Health Fund (FONASA) and the Aliens and Migration Department of the Ministry of the Interior to resolve certain health situations that may affect some immigrant population groups in Chile, as follows:

(a) Pregnant women: since 2003, women without legal migration status who become pregnant while residing in Chile have had the right to fast-track regularization of their migration status on this basis so that they can be treated in the public health-care system. Since that year, an average of 300 residence permits a year have been issued via that mechanism, most of them to women of Peruvian nationality. The main concern of the Government has been to have pregnant migrant women registered at the health centres serving their place of residence in order to facilitate proper oversight and monitoring of their pregnancies;

(b) Adolescent children aged under 18: in accordance with the national policy on children, United Nations conventions dealing with children and the present convention, the Ministry of Health has signed an interministerial agreement with the Aliens and Migration Department of the Ministry of the Interior that is reflected in the document issued by the Minister of Health, as discussed. On this basis, all foreign children and adolescents aged under 18, whatever their migration status or that of their parents or legal representatives, can be treated at any public health-care establishment on the same footing as their Chilean counterparts. This entails regularization of their migration status, on the sole condition that they are minors, and the procedure for this must be initiated once they have been treated for the first time in the public health network;

(c) Refugees and applicants for refugee status: refugees in Chile have access to health care on the same footing as Chileans. To make this measure more effective, a special agreement between the Aliens and Migration Department of the Ministry of the Interior and the National Health Fund (FONASA), which has been approved and is in force, also gives applicants for refugee status the right to health care while the migration authorities are deciding on their status. The problem that gave rise to this agreement was the amount of time elapsing between applications for refugee status and their acceptance or rejection.

132. Where the indigenous population is concerned, in addition to all the advances discussed in earlier paragraphs with regard to implementation of ILO Convention No. 169, the economic, social and cultural rights of the indigenous population have been progressively developed.

133. The principles of equity, participation and interculturality are the core policy elements on which the action of the Health and Indigenous Peoples Programme is based. These three core policy elements are integrated into public health services with their own priority areas and structures in the interests of coordination, consistency and integration of practices and activities. This programme is designed to meet the need of members of each

indigenous people for improvements in their health situation by means of strategies to facilitate access to appropriate, timely and high-quality health care while respecting, recognizing and protecting the health-care systems of the indigenous peoples.

134. The programme goals are: to move forward with the participatory construction of a health-care model that is intercultural in its approach; to ensure participation by the indigenous peoples in the planning, implementation, follow-up and evaluation of strategies to improve health and enhance the accessibility, quality and relevance of health-care actions oriented towards the indigenous population; to develop health promotion and family-oriented strategies to ensure that the specific culture and world view of the indigenous peoples is respected and fortified; to introduce an intercultural approach in the establishments of the health service network to guide the way they work with indigenous peoples and the environment they live in; and to apply cultural suitability criteria when investing in and developing medical and architectural models for health-care establishments.

The right to education

135. The Bilingual Intercultural Education Programme is an educational approach whose aim is to appreciate and value the differences that exist between culturally different groups and work for mutual recognition between them, within the framework of the General Education Act, which states that the system must recognize and value individuals in their specific cultural identity and background, taking account of their language, world view and history. The "indigenous language" subject area is applied at Chilean educational establishments wishing to foster interculturality, being implemented gradually from the first year of elementary education. It is optional for students and their families, but educational establishments ending the school year with a complement of students of indigenous origin amounting to 20 per cent or more of the total will be required to offer this subject from the next school year. This has already been compulsory since 2010 for schools where students of indigenous extraction make up 50 per cent or more of the total and will be from 2013 for schools where they make up between 20 and 49 per cent of the total.

136. These syllabuses are designed to be implemented by traditional educators who have qualified as teachers or are working with the support of the class teacher. They can also be implemented by elementary school teachers accredited for the teaching of indigenous language and culture. Traditional educators or teaching sages are people from indigenous communities chosen, sometimes democratically and sometimes by consensus within each community or territory, to provide cultural and linguistic guidance to educational establishments in areas where there is a high concentration of indigenous schoolchildren.

137. Work is currently in progress with 320 schools that have a high concentration of indigenous pupils. They are attended by about 30,000 students. There are also 1,674 schools where indigenous students make up 20 per cent or more of the total. These are attended by 84,000 indigenous pupils. However, schools with a high concentration of indigenous pupils account for just 52 per cent of all indigenous schoolchildren in the country, with the remaining 48 per cent being divided between 5,116 schools, most of them with fewer than five indigenous pupils apiece.

138. In Chile, all children and young people entering a municipal or subsidized private school are entitled to the benefits in the form of scholarships, meals and material and equipment that the Ministry of Education provides. No distinction is made between Chilean and foreign pupils.

139. Notwithstanding the above, the Government is implementing inclusion measures to integrate immigrants, especially more vulnerable women and children. There are bilateral treaties, agreements and protocols with some Latin American countries for recognizing and

validating non-technical elementary and secondary studies. There are also multilateral instruments of the same kind, such as the Framework Cooperation Agreement between the Andrés Bello Agreement and the MERCOSUR Countries, Chile and Bolivia. These instruments are applied in cases where Chileans and foreigners study abroad and need their qualifications recognized or validated in Chile. There is also immediate recognition and validation of elementary and secondary studies carried out abroad by the children of Chileans, and the same holds for the children of foreign officials accredited in Chile.

140. To ensure access to higher education, the Chilean State has a national system of grants and loans. Foreigners with permanent residence can apply to the grants system in accordance with the regulations for higher education grants. Government-guaranteed loans are a State benefit for students of demonstrated academic merit who need financial support to begin or continue with a course of study at one of the accredited institutions of higher education forming part of the Government-Guaranteed Loan System. Foreigners permanently resident in the country are eligible for this on an equal footing.

141. Nationals of other Latin American countries who do not have a permanent residence permit but whose financial need has been documented can apply for the Juan Gómez Milla Scholarship, on an equal footing with Chilean nationals, if they are enrolled in an institution administered by the Council of Rectors of Public Universities or in accredited private universities. They can also apply for other, supplementary scholarships awarded by the National School Support and Scholarships Board to cover room and board.

142. The elementary and secondary courses of study taken by pupils in technical and vocational schools are credited as described above, but professional, technical and vocational credentials are evaluated by each establishment in order to determine what levels of knowledge and skills they represent. Degrees in technical fields are often recognized by the corresponding State regulatory bodies.

143. A positive indicator of how this order has been applied in practice is that the Customer Service Department of the Ministry of Education has recorded only a tiny number of complaints connected with immigrant students' right to education (no more than 10 in the past three years).

Article 6

144. This article establishes a requirement for States parties to assure to everyone within their jurisdiction effective protection and remedies, through the competent national tribunals, against any acts of racial discrimination, as well as the right to seek just and adequate reparation or satisfaction for any damage suffered.

145. Here, it can be reported that article 20 of the Chilean Constitution establishes the right for the affected party or anyone acting on their behalf to bring an action for constitutional protection with the appropriate Court of Appeal against any arbitrary or illegal act or omission by the State or a private individual that causes deprivation of, interference with or threats to the legitimate exercise of the rights and guarantees established therein, which include equality before the law and equal protection from the law in the exercise of their rights. A constitutional action of this type is a safeguard to re-establish the rule of law and ensure due protection for those affected, without prejudice to any other rights they may assert before the relevant authorities or courts.

146. As the previous report noted, anyone impaired in their rights by the State administration or its agencies or by municipalities in Chile is guaranteed the right to seek redress through the courts prescribed by law, without prejudice to any personal liability of the official causing the impairment.

147. As noted in paragraphs 27 to 32, the right to seek redress for arbitrary discrimination was created with the recent passage of the Anti-Discrimination Act, and proceedings can be brought over any action or omission involving arbitrary discrimination.

Article 7

148. In addition to all that has been said in the present report and the different activities and programmes carried out by the Chilean State to eliminate any form of racial discrimination, special mention should be made of a policy to promote harmony in schools on the basis of mutual respect and solidarity developed by the Ministry of Education, which is meant to inspire the rules for school behaviour that all educational communities should have.

149. It should also be noted that a Cultural Development Plan for the Indigenous Peoples is currently being implemented, with specific lines of action for the Mapuche, Rapa Nui and Colla indigenous peoples being encompassed in its first stage. The goal is to obtain a diagnosis of the cultural situation of these peoples with a view to specifying cultural policies for the years from 2011 to 2016.

150. In addition, academies have been created for indigenous languages so that they can act as linguistic authorities in their respective fields. This has led to better coordination with State institutions dealing exclusively with indigenous issues (CONADI) and indigenous organizations themselves, as represented in the academies for their languages (Rapa Nui, founded in 2005; Aymara, 2008; and Mapuche, 2009).

151. The Civil Registry and Identification Service has undertaken some initiatives relating to the indigenous peoples, such as the preparation of leaflets on inheritance in Mapudungun, Rapa Nui and Aymara and the gradual installation of signage in those languages at its offices.

IV. Follow-up to the concluding observations of the Committee

Paragraph 12 of the concluding observations

152. Regarding the recommendations of paragraphs 12 and 18 of the concluding observations of the Committee, attention is drawn to paragraph 34 and, once again, to paragraphs 27 to 32 of the present report dealing with the recently passed Act No. 20609 establishing measures against discrimination, article 2 of which defines what is meant by arbitrary discrimination, with race or ethnic origin being specifically listed among its “suspicious categories” or “prohibited categories”.

Paragraph 13 of the concluding observations

153. The bill for recognition of the Afro-descendent ethnic group in Chile (bulletin No. 6655-17) began its parliamentary passage with a motion before the Chamber of Deputies on 13 August 2009. Since then it has been with the Commission on Human Rights, Nationality and Citizenship. The bill seeks to secure formal recognition by the Chilean State of the existence of the Afro-descendent ethnic group and promote special measures to preserve, develop and strengthen its identity, institutions and social and cultural traditions. It defines individuals belonging to this ethnic group as people presenting specific racial features characteristic of their origin and/or self-identifying as such. The special measures proposed include, in particular, the following obligations for the State:

including the Afro-descendant variable in national population censuses; integrating teaching of Afro-descendent history and culture into the formal education system; listening to and/or consulting the opinion of Afro-descendants' organizations on plans and programmes affecting them.

154. The Chilean State has also been pursuing a variety of initiatives for the benefit of the Chilean community of Afro-descendants. First mention should go to the seminar entitled "The international year of Afro-descendants", held on 3 November 2011 in the city of Arica. Organized by the Department of Human Rights and the Regional Coordination Division of the Ministry of Foreign Affairs, the seminar was part of the Afro-Descendent Total Art initiative of the National Council for Culture and the Arts, and was participated in by groups of Afro-descendants from Peru and Colombia.

155. The regional government has committed itself to incorporating the Afro-descendent community transversally into its work. One manifestation of this is the creation of the Office of Afro-descendants in the municipality of Arica, in line with the Durban Action Plan and the Santiago Declaration of 2000. The municipality is supporting demands regarding the census and developing partnerships with municipalities in Uruguay and Brazil.

156. Lastly, although the Afro-descendant variable could not be incorporated into the 2012 population census for technical reasons, the National Institute of Statistics (INE) will conduct a characterization study specific to this group in the city of Arica. The survey will be carried out under the auspices of an agreement signed with the Regional Government of Arica and Parinacota and the Alliance of Afro-Descendants' Groupings during the second half of 2012, and will have a budget of 130 million chilean pesos (about US$ 260,000).

Paragraph 14 of the concluding observations

157. In response to paragraph 14 of the concluding observations of the Committee, attention is drawn to the information given in paragraphs 40 and 41 above about the approval of the INDH.

Paragraph 15 of the concluding observations

158. The Committee is informed that the Antiterrorist Act (No. 18314) was substantially amended by the passage of Act No. 20467 of 8 October 2010 and Act No. 20519 of 21 June 2011, detailed in the annex.

159. Terrorism of any kind, irrespective of its origin or national, regional, transnational and/or international character, has been repeatedly condemned in resolutions issued by United Nations bodies.[10] Consequently, there is a need to categorically separate and distinguish punishable behaviour that openly flouts fundamental rights and disrupts the democratic coexistence of other individuals by manipulating victims (fires, attacks and threats) from acts that constitute legitimate demands by communities of any kind, carried

[10] See Security Council resolutions 1267 (1999), 1368 (2001), 1373 (2001), 1377 (2001), 1438 (2002), 1440 (2002), 1450 (2002), 1452 (2002), 1455 (2003), 1456 (2003), 1465 (2003), 1516 (2003), 1526 (2004), 1530 (2004), 1535 (2004), 1540 (2004), 1617 (2005), 1618 (2005), 1624 (2005), 1625 (2005), 1735 (2006), 1787 (2007), 1805 (2008), 1810 (2008), 1822 (2008), 1904 (2009), 1963 (2010), 1988 (2011) and 1989 (2011). All available at: www.un.org/spanish/terrorism/sc-res.shtml.

out within the institutional structure and with respect for the rights and guarantees of every inhabitant of the country.

160. In all cases where the Chilean courts have applied penalties to Mapuche individuals under the Antiterrorist Act, or for actions relating to what has been termed the "Mapuche conflict", the actions of the State apparatus have been based exclusively on the circumstance of acts having been committed by particular organized subjects who have sought thereby to instil fear in others and force decisions upon the authorities. The decision to apply such penalties has been made freely and independently by the courts of justice, correctly applying the relevant constitutional and legal norms, including international standards, and not simply by virtue of defendants being members of the Mapuche community.

161. While continuing to fulfil its duty to maintain public order and respect for the rule of law, the Ministry of the Interior of the Chilean Government, in its character as plaintiff in cases pertaining to the so-called "Mapuche conflict", has reclassified charges as ordinary offences rather than terrorist offences, so that at the present time there is no criminal case being pursued against individuals from the Mapuche ethnic group in which the Ministry is prosecuting a crime as "terrorism".

162. Since the State recognizes and accepts that the events giving rise to the reaction of the State apparatus against individuals from the Mapuche people are acts of violence committed by isolated groups whose methods are not shared by the vast majority of that people, their occurrence has not prevented the State from continuing with its policies in pursuit of the development of this and other indigenous peoples in the country.

Paragraph 16 of the concluding observations

163. The Committee is informed that, in compliance with the obligations of consultation and participation established in ILO Convention No. 169, 22 indigenous consultations have so far been carried out (16 completed and 6 in progress) as part of the implementation of ILO Convention No. 169.[11]

164. Specifically, the Chilean Government can inform the Committee that the Consultation on Indigenous Institutions began on 8 March 2011. Designed to international standards, it deals with three broad areas:

(a) The design of the consultation and participation procedure, including the participation rules of the Environmental Impact Assessment System (SEIA);

(b) The constitutional reform bill recognizing the indigenous peoples;

(c) The creation of an indigenous development agency and the creation of an indigenous peoples' council.

165. It was initially planned out in seven stages:

(a) Publicization and invitation to participate;

(b) Information stage;

(c) Stage of internal dialogue within the communities;

(d) Stage of dialogue and receipt of proposals;

(e) Receipt of observations and proposals;

[11] For further information, see: www.conadi.gov.cl.

(f) Systematization and consideration of proposals;

(g) Notification of results.

- Between March and August 2011, the first two stages were successfully implemented, with 124 workshops being held around the country and attended by a total of 5,582 indigenous individuals and leaders;
- Once the first two stages were complete, the complexity of the process gave rise to some difficulties, among them:
    - Criticisms made at the information workshops about the length of the Consultation;
    - Criticisms from some deputies on the Human Rights Commission and indigenous leaders regarding Ministry of Planning Supreme Decree No. 124, which has been provisionally regulating other consultation processes carried out since September 2009;
    - A draft Senate agreement calling for repeal of Supreme Decree No. 124;
    - Criticisms from some NGOs arguing that no regulations were needed for the procedures laid down by ILO Convention No. 169.

166. Against this background, on 1 September 2011 the Government announced changes to the process, one of them being that priority would be given in 2012 to deciding on the indigenous consultation and participation mechanisms and procedures for developing a permanent instrument, to be agreed on with the indigenous peoples concerned.

167. To achieve the goals set, the following actions were taken:

(a) The Consultation on Indigenous Institutions was halted and indigenous leaders were notified accordingly;

(b) The Consultation was divided into two stages, the first being a consultation on the consultation procedure, the second dealing with the other subject areas, including the constitutional reform;

(c) On 14 September 2011, the National Council of CONADI, composed of elected indigenous leaders and Government representatives, approved the creation of a consultation committee whose purpose would be to put forward a mechanism and road map for a consultation on the consultation procedure.[12]

[12] The committee of the CONADI National Council listened to proposals from representatives of indigenous peoples and worked on both the principles of the process and its design. Some of the main results of these meetings were: (i) a team was formed to advise the committee, most of its members being indigenous leaders; (ii) agreement was reached on the basic principles for an appropriate consultation procedure; (iii) subcommittees were created to assist the committee and the advisory team; (iv) it was agreed that the Environmental Assessment Service (SEA) would continue independently with the consultation on the SEIA regulations; (v) technical assistance was requested from the United Nations Special Rapporteur on the rights of indigenous peoples.
On 23 November 2011, the National Council of CONADI heard the conclusions reached by the committee and resolved to approve an extension of the time limit for its work so that progress could continue to be made on the design of a mechanism to be proposed for the consultation. On Wednesday 21 March 2012, Rafael Tuki, a Rapa Nui councillor and then chairperson of the committee, sent a letter to Minister Lavín setting out his appreciation of the principles that ought to be contained in the new participation and consultation regulations which would replace Supreme Decree 124 in the future. An answer was received on 18 April 2012, allowing the work of the committee to recommence.

168. In parallel with this, a number of meetings were held with other institutions representing the indigenous world, including the grouping that styles itself the Meeting of Traditional Authorities, with whom discussions are currently under way with a view to incorporating them into the design of the consultation process being carried out by the Government, something that should provide a major input into the preparation of the draft procedure to be presented to the Consultation.[13]

169. The Human Rights Commission of the Senate received the Minister for Social Development, Joaquín Lavín, and other officials from the executive on five occasions, the most notable being the session of 7 May 2012, which was held together with representatives of the Meeting of Traditional Authorities. On that occasion, it was agreed that the draft consultation procedure would be submitted as soon as possible so that it could be analysed and commented on by the Commission.

170. In addition, a number of meetings have been held with the Special Rapporteur on the rights of indigenous peoples, executives from ILO and other United Nations institutions in Chile and the Office of the United Nations High Commissioner for Human Rights. The INDH has likewise been kept abreast of the issue with a view to keeping other civil society organizations informed.

171. On another topic, the recommendation to take "the needful measures to create a climate of confidence conducive to dialogue with the indigenous peoples", the Chilean Government requests that the Committee should consider not only the information already given in earlier paragraphs but also the fact that in September 2010 the President of Chile announced a round-table dialogue comprising the Government, churches, civil society organizations from the Araucanía, Bío Bío, Los Ríos and Los Lagos regions and representatives of indigenous organizations. Pursuant to this announcement, a "Dialogue for a Historic Re-encounter" began on 24 September on Ñielol Hill in Temuco, with 65 round-table discussions having now been held, including seven national meetings and regional, provincial and commune-level meetings, participated in by over 3,000 people. On 24 June 2011, the round-table dialogue submitted an initial progress report to the President of Chile, and this is now being worked on with a view to moving forward with each of the proposals.

172. The dialogue that has taken place at the national, regional, provincial and commune level has made it possible not only to begin a process of confidence-building but also to identify the issues that are vitally important for indigenous individuals, communities and associations, whatever commune or region they live in. Most of these concern representativeness and development, as can be seen from the chart in annex XI of this document.

Paragraph 17 of the concluding observations

173. What has been said in relation to articles 2 (paras. 33 to 58) and 5 (paras. 85 to 143) applies here as well. It may be added that one of the pillars of migration management in Chile is the effort to regularize migration, as it is this that opens up an initial stage of access to rights for immigrants and refugees in the country.

[13] It should be stressed that these conversations have been supplementary to the meetings held by the Government with authorities from the legislature, who are working on the basis of the constitutional mandate to conduct a parallel process of discussion on ILO Convention No. 169, standards of consultation and the relevance of this within the framework of their competences and remit.

174. In this context, access to rights and social benefits for immigrants is fully guaranteed, since obtaining residence as a result of the regularization policy allows people to achieve documented status in the country and obtain their identity card, which facilitates the whole process of inclusion in the social protection systems available for the general population in Chile, including health and education policies, measures and plans.

175. Because of the special vulnerability of immigrants, the Chilean State has produced a number of initiatives to enable this group of people to advance in the integration process, particularly targeting the groups considered to be most vulnerable, such as children and adolescents and women. The inclusion mechanism involves the provision of tools to provide access to basic social services via regularization of people's migration status.

176. In addition to the initiatives detailed in section III of the present report, the following migration-related measures have been taken:

(a) Special Action for the Protection of Mothers: in force since 2003, this facilitates access to health services for foreign women who become pregnant while in Chile, irrespective of migration status. They can also apply for a temporary residence permit;

(b) Special Action on Education Access: this is a measure that facilitates and promotes incorporation of all children of migrants living in Chile into general elementary and secondary education establishments;

(c) Agreement Facilitating Access to Nursery Education: the purpose of this is to facilitate access to nursery education programmes for immigrant and refugee women's children aged under 5, irrespective of these children's migration status;

(d) Agreement Facilitating Access to the Public Health System for Children and Adolescents: under this agreement, all foreign children and adolescents aged under 18 are to be provided with health care at public facilities on an equal footing, irrespective of the migration status of their parents, guardians or legal representatives;

(e) Access to the Network of Protection for Victims of Domestic Violence for immigrant women who are refugees or applicants for refugee status: the purpose of this is to facilitate access for immigrant women refugees and asylum seekers resident in Chile to the Network of Protection for Victims of Domestic Violence operated by the National Service for Women;

(f) Agreement Facilitating Access to the Child Protection Network: the purpose of this is to help ensure that the children of immigrant and/or refugee families whose rights have been infringed or who have broken the law are given timely access to the social protection network for children and adolescents, irrespective of the migration status of such children and adolescents.

177. Where refugee status is concerned, mention should be made of:

(a) Projects for financial collaboration with civil society organizations to support the integration of the refugee population: the Ministry of the Interior and Public Security is signing financial collaboration agreements with civil society organizations to support the integration of refugees in Chile and contribute to the initial subsistence of applicants for refugee status;

(b) the Committee on Vulnerable Cases and Women at Risk: this is a forum for intersectoral and interinstitutional coordination whose purpose is to optimize resources and activate networks so as to further the social integration of refugees and people who have been resettled and to support applicants for refugee status who are particularly vulnerable and/or at particular social risk;

(c) Agreement Facilitating Access to the Public Health System for Applicants for Refugee Status: an agreement whose purpose is to facilitate access to the public health system for applicants for refugee status and family members accompanying them.

178. Besides the above measures, there are other initiatives targeting children and adolescents with immigrant parents that also affect the situation of migrants by providing them with access to the public childcare facilities available in the country, thereby making it easier for them to participate in the labour market.

Paragraph 18 of the concluding observations

179. As noted by the Committee with concern, the Chilean State accepted responsibility for sending a message via legislation about the need to identify racism and discrimination as evils that must be rooted out and punished. Accordingly, attention is drawn to paragraphs 27 to 32, and especially to what has been said about the new aggravating circumstance provided for in the recent Act No. 20609.

Paragraph 19 of the concluding observations

180. The Military Court acquitted First Officer Miguel Patricio Jara Muñoz of the Carabineros Special Police Operations Group (GOPE), who had been sentenced in a court of first instance to a prison term of 5 years and 1 day for the crime of unwarranted violence resulting in death perpetrated against a student, Jaime Mendoza Collío, on the grounds that he acted in self-defence. Carabineros apprised the court of all the information in its possession with a view to determining what criminal responsibility might arise from this event, which was not typical of the normal conduct of Carabineros personnel. See also paragraphs 80 to 83.

Paragraph 20 of the concluding observations

181. In paragraph 20 of its concluding observations, the Committee recommended that the State should redouble its efforts to ensure full participation in public affairs by indigenous people, and particularly women, and that it should take effective measures to ensure that all indigenous peoples participated at every level of the public administration.

182. Without prejudice to what has been said regarding the articles of the Convention, the Government is striving for full participation by indigenous people in public affairs, and as part of this effort the implementation of participatory processes in the State administration, particularly where indigenous issues are concerned, has been a priority in recent years and undoubtedly raises major challenges. Since citizen participation was made a central plank of State modernization, public management instruments have been developed to lay the groundwork for higher levels of transparency and more efficient and effective channels for the provision of information to citizens, and for the incorporation of indigenous organizations' needs and interests into the design of State programmes and policies.

183. Accordingly, as mentioned earlier, forums for wide-ranging dialogue are being developed to enable the indigenous peoples to participate actively and generate consensus on the implementation of indigenous policy initiatives; they should also result in lessons being learnt about which methods and best practices can be successfully institutionalized with the aim of enhancing trust between actors and cooperation on issues of interest to the indigenous peoples and society at large.

184. Participation and cooperation have been explicitly guaranteed under the Indigenous Act, both through the creation of the CONADI National Council (as noted earlier, the eight indigenous councillors were democratically elected on 15 January 2012) and in the form of participation through the consultative bodies provided for by articles 46 and 47, final subsection, of the Indigenous Act. Also created were the so-called indigenous regional committees participated in by indigenous organizations and authorities.

Paragraph 21 of the concluding observations

185. As the Committee is aware, article 12 of the Indigenous Act[14] defines which lands are indigenous and recognizes two forms of ownership or possession, the individual form and the community form.

186. According to CONADI information, the total area of indigenous-owned land is 1,161,074.37 hectares. The area is probably greater if indigenous lands not listed in the Public Land Register kept by CONADI are included. Between 1994 and 2010, a total of 667,457 hectares were acquired, transferred or upgraded for the benefit of indigenous individuals and communities by applying the various mechanisms established in the Indigenous Act for the purpose, as shown in the relevant tables of annex XII.

187. The Chilean State recognizes indigenous ownership and safeguards it by means of the instruments provided for in the Indigenous Act, such as the definition of indigenous lands and the Indigenous Land and Water Fund administered by CONADI. The purpose of the Fund is to extend indigenous land holdings by means of the following mechanisms:

(a) The provision of subsidies for land purchases by indigenous individuals, indigenous communities or part of these, when the land area owned by the applicant is inadequate;

(b) Financing for mechanisms to resolve land issues, and particularly for the enforcement of legal or extrajudicial rulings or settlements involving indigenous lands;

(c) Financing for the constitution, regularization or purchase of water rights and for water capture facilities.

188. In addition, under article 21 of the Indigenous Act, CONADI "may receive public land, holdings, properties, water rights and other goods of this kind from the State for the purposes of settlement, provision of permanent title, colonization and relocation projects and the like for indigenous communities or indigenous people individually considered". This provision has allowed property to be transferred from the Ministry of National Assets to CONADI and then from the latter, free of charge, to indigenous individuals or communities.

189. The Government can also report that the "Dialogue for a Historic Re-encounter" was held on Ñielol Hill in Temuco on 24 September 2010, with participants including representatives of indigenous communities, ministers of State, the governors of four regions, representatives of the Catholic, evangelical and Anglican Churches and civil society representatives.

190. Since that meeting in the south of the country, there has been an ongoing process of dialogue participated in by over 1,883 people in a total of 49 round-table discussions at the regional, provincial and commune levels. The issues discussed at these events have included land, legal aspects, development and education, among others. The main points

[14] See: http://bcn.cl/4tj0 [August 2012].

raised by indigenous representatives in relation to land include a request for regularization of land title, the easing of restrictions on land, and land purchases.[15]

191. Lastly, it can be reported that land has been purchased at a rate of 30 communities a year and purchase price information has been disclosed, making it possible to pay market values.

Paragraph 22 of the concluding observations

192. As reiterated over the course of this document, the Chilean Government is undertaking a Consultation on Indigenous Institutions. One of the issues being consulted on is the procedure for indigenous consultation and participation within the framework of environmental assessment of projects subject to the Environmental Impact Assessment System (SEIA). Substantially, what this proposal entails is the inclusion of a specific indigenous consultation procedure in the rules for public participation in the environmental assessment of so-called "investment projects", in accordance with the principles of ILO Convention No. 169. The Chilean Government is persuaded that this proposal represents a fundamental step towards strengthened indigenous consultation and participation, with parameters that meet international obligations, the aspirations of the indigenous peoples and the sustainable development of the country.

193. As regards recognition of the rights of indigenous peoples over the natural resources in their lands and territories, a succession of sustained and progressive advances have been made since 2008, most particularly: (a) the promulgation in 2008 of Act No. 20249, creating marine and coastal zones for the indigenous peoples, and in 2009 of its implementing regulations, which recognize and protect access to coastal zones by indigenous communities that have been customary users of them; (b) Act No. 20283 on the restoration of native woodland and forestry development, in force since 2009, whereby the Chilean State supports forestry practices and activities aimed at the regeneration, protection and restoration of native woodlands, many of them traditionally used by indigenous peoples, particularly in the south of the country, thus giving preferential treatment to the projects of small proprietors and indigenous communities; (c) a constitutional reform bill presented by the Government on 6 January 2010 declaring that "water is a national good for public use, whatever state it is found in" and that "the competent authority will be empowered to reserve flows of surface or ground water to ensure the availability of this resource". The bill will make it possible to legislate for and manage reserved flows to ensure that the basic water allocations of indigenous communities can be provided for, while also facilitating the administration of justice regarding recognition of indigenous communities' rights in respect of customary water uses as recently ruled by the Supreme Court in the so-called "Chusmiza case".[16]

194. Also in the judicial sphere, on 16 September 2009 the First Chamber of the Temuco Court of Appeal heard an action for constitutional protection brought by Francisca Lincolao Huircapan, a machi from the Mapuche community of Pedro Lincolao, Lof Rawe, commune of Padre Las Casas, against a private individual who was carrying out forestry work near *menokos* (springs) that are a source of medicinal herbs held sacred by the Mapuche people;

[15] See annex XII for further information on policies regarding land purchases for indigenous people.

[16] On 26 October 2009, the Second Chamber of the Supreme Court heard a cassation appeal against the form and substance of a ruling made by the court of Pozo Almonte and confirmed by the Iquique Court of Appeal, which had dismissed the objections of the Chusmiza Usmagama indigenous community to a bottling plant using its ancestral waters; in its ruling, the Supreme Court found for this indigenous community, recognizing its rights over the water on the grounds of customary use.

the Court of Appeal ruling ordered the individual to desist from this forestry work, invoking ILO Convention No. 169.

195. The Government believes that indigenous people can be assured of a share in the earnings received from the development of mining resources by proper application of the provisions contained in the Framework Environmental Act on the offsetting, mitigation or restoration measures to be established as part of the environmental assessment and rating processes, in the light of the particular situation concerned.

Paragraph 23 of the concluding observations

196. In addition to what has been said in previous paragraphs, it may be observed that this subject is regulated in Chile by Act No. 19300, the Framework Environmental Act, and by Supreme Decree No. 95/2001 of the Office of the Minister and Secretary-General of the Presidency, laying down the regulations for the Environmental Impact Assessment System (SEIA). In particular, the SEIA regulations set out the procedures and methods for assessing projects or activities liable to have an environmental impact.

197. Again, following the organizational and substantive changes made to Act No. 19300 following the passage of Act No. 20417, the Environmental Assessment Service (SEA) is working through the Ministry of the Environment to produce a support guide for the assessment of environmental impacts on indigenous peoples in the SEIA (*Guía de apoyo para la evaluación de impactos ambientales sobre pueblos originarios en el SEIA*). The subject is being consulted on with the indigenous peoples as part of the Consultation on Indigenous Institutions already referred to in a number of sections of this document. The articles in the new regulations relating to the indigenous peoples were subjected to an indigenous consultation process, as mentioned earlier. The new regulations were also subjected to a process of general public participation in which the indigenous peoples were also able to participate. Thus, the indigenous peoples participated and collaborated in the preparation of the rules for environmental impact assessments and the content they are required to contain, as detailed in annex XIII.

Paragraph 24 of the concluding observations

198. Attention is drawn to what has been said about articles 2 and 5 of the Convention, while for completeness it should be noted that whereas 35.1 per cent of the indigenous population were below the poverty line in 1996 (as compared to 22.7% of the non-indigenous population), 19.9 per cent were below it in 2009 (as against 14.8% of the non-indigenous population). In other words, poverty fell by 15.2 points in the indigenous population in 13 years, as compared to a reduction of 7.9 points in the non-indigenous population. Furthermore, comparing the 2009 figures to those for 2006 reveals that, although poverty was higher in the latter year for both groups, the increase among the indigenous population was of 0.9 points (from 19% to 19.9%) while among the non-indigenous population it was 1.5 points (from 13.3% to 14.8%).[17]

199. The Millennium Development Goals are also being measured in the indigenous population, these being indicators that reflect quality of life in each country, allowing public policies to be better targeted. The purpose of the study was to ascertain what has been achieved in the indigenous population and the gaps that still divide it from the non-

[17] CASEN survey 2009: www.desarrollosocial.cl or http://celade.cepal.org/redchl/CASEN/casen2009/Index.html.

indigenous population according to the indicators used to measure the Millennium Development Goals.

200. The budget of the CONADI Indigenous Development Fund was 56.6 per cent higher in 2011 than in 2010. The planned rise in the budget from 2011 to 2012 was 6 per cent, and the increase may be still larger, as a programme is being created for instruments financed jointly by public-sector services and private-sector firms.

201. As regards development in communities undergoing resettlement, in December 2010 the National Institute for Agricultural Development (INDAP) entered into an agreement with CONADI worth US$ 8.4 million, one of whose objectives is for recipients of subsidy 20(a) to benefit from an Indigenous Territorial Development Programme (PDTI).

202. Regarding production development, 26,300 families benefited from the INDAP Indigenous Territorial Development Programme (PDTI) in 2011. In previous years this programme had only covered 3,000 families. The PDTI is closely associated with properties transferred by the State and its benefits encompass investment, working capital and technical assistance.

Paragraph 25 of the concluding observations

203. In accordance with article 5, subsection 2, of the Constitution, the exercise of sovereignty is limited by respect for the essential rights emanating from human nature and set forth both in the Constitution itself and in the international human rights treaties ratified by and applicable in Chile. Where precedence is concerned, the Constitutional Court has given international human rights treaties a supralegal status, meaning that when the two bodies of prescriptions are applied in a specific case, treaty provisions will have primacy over Chilean law. Among a set of reforms made to the Constitution in 2005, it was established that: “The provisions of a treaty may only be repealed, amended or suspended in the manner provided for by the treaties themselves or in accordance with the general provisions of international law.” This stipulation is of the highest importance for the domestic enforcement of international human rights law, as it means that an international human rights provision which is binding on the State cannot be set aside or rendered void by a different provision of the State’s national law.

Paragraph 26 of the concluding observations

204. Attention is drawn once again to the comments made regarding the articles of the Convention, and particularly to paragraphs 144 ff.

Paragraphs 27 to 35 of the concluding observations

205. With regard to the observations and recommendations in paragraphs 27 to 35 of the concluding observations, attention is drawn to the entire contents of the present report, and particularly paragraphs 1 to 7 and the annexes.

Annexes

[Spanish only]

I. Actividades realizadas por la DOS en materia de prevención de la discriminación

A. Año 2010

Fecha	*Actividad*	*Temas*
19 de octubre	Taller Funcionarios/as Públicos	Convención Internacional de los Derechos de las Personas con Discapacidad. (SENADIS)
		Contexto y Visión de la legislación sobre Violencia Intrafamiliar (SERNAM)
26 de octubre	Taller Funcionarios/as Públicos	Acciones de acogida a la población Migrante (EXTRANJERÍA)
		Diagnóstico y percepciones de la Juventud Chilena (Encuesta nacional de la Juventud) (INJUV)
28 de octubre	Taller Funcionarios/as Públicos	Discriminación y VIH-SIDA (CONASIDA)
		Convenio 169, aspectos centrales (CONADI)
4 de noviembre	Taller Funcionarios/as Públicos	Envejecimiento de la población en Chile: Prevención de la Discriminación Arbitraria contra las personas mayores. (SENAMA)
		Convención Internacional sobre los derechos de los niños (SENAME)
11 de noviembre	Taller Funcionarios/as Públicos	Convenio 169, aspectos centrales (CONADI)
		Prevención de embarazo y paternidad adolescente y Nuevos lineamientos para abordar la Convivencia Escolar (MINEDUC)
25 de noviembre	Taller Funcionarios/as Públicos	Discriminación y VIH-SIDA (CONASIDA)
		Convenio 169, aspectos centrales (CONADI)
		Convención Internacional sobre los Derechos de los Niños (SENAME)
2 de noviembre	Taller Universitarios/as	Igualdad de oportunidades y difusión de los derechos de las personas con discapacidad (SENADIS)
		Diagnóstico y percepciones de la Juventud Chilena (Encuesta nacional de la Juventud) (INJUV)
9 de noviembre	Taller Universitarios/as	Diagnóstico y percepciones de la Juventud Chilena (Encuesta nacional de la Juventud) (INJUV)
		Discriminación y VIH-SIDA (CONASIDA)

Fecha	*Actividad*	*Temas*
23 de noviembre	Taller Universitarios/as	Discriminación y VIH-SIDA (CONASIDA)
		Violencia en las parejas jóvenes (SERNAM)
30 de noviembre	Taller Universitarios/as	Envejecimiento de la población en Chile: Prevención de la Discriminación Arbitraria contra las personas mayores. (SENAMA)
		Acciones de acogida a la población migrante (EXTRANJERÍA)
5 de noviembre	Taller Sociedad Civil/ agrupaciones indígenas.	Igualdad de oportunidades entre hombres y mujeres, Buenas Prácticas Laborales (SERNAM)
		Convenio 169, aspectos centrales (CONADI)
		Envejecimiento de la población en Chile: Prevención de la Discriminación Arbitraria contra las personas mayores. (SENAMA)
8 de noviembre	Taller Sociedad Civil/ agrupaciones indígenas.	Convenio 169, aspectos centrales (CONADI)
		Envejecimiento de la población en Chile: Prevención de la Discriminación Arbitraria contra las personas mayores. (SENAMA)
22 de noviembre	Taller	Convenio 169, aspectos centrales (CONADI)
	Sociedad Civil/ agrupaciones indígenas.	Igualdad de oportunidades entre hombres y mujeres, Buenas Prácticas Laborales (SERNAM)
16 de noviembre	Seminario	Introducción a las Buenas Prácticas sobre Diversidad y no Discriminación Arbitraria (DOS)
	1. Hacia una cultura de la Tolerancia y la no violencia	Prevención de embarazo y paternidad adolescente y Nuevos lineamientos para abordar la Convivencia Escolar (MINEDUC)
	2. Tolerancia, una base para la igualdad de oportunidades	Igualdad de oportunidades entre hombres y mujeres, Buenas Prácticas Laborales (SERNAM)
	3. Desafíos de nuestra sociedad para construir una cultura de la Tolerancia.	Envejecimiento de la población en Chile: Prevención de la Discriminación Arbitraria contra las personas mayores. (SENAMA)
		Igualdad de Oportunidades y Difusión de los derechos de las personas con discapacidad (SENADIS)
		Discriminación y VIH-SIDA (CONASIDA)
3 de noviembre	Jornada Consejos Escolares Recoleta	Introducción a las Buenas Prácticas sobre Diversidad y no Discriminación Arbitraria (DOS)
		Prevención de embarazo y paternidad adolescente y Nuevos lineamientos para abordar la Convivencia Escolar (MINEDUC)

Fecha	*Actividad*	*Temas*
		Acciones de acogida a la población migrante (EXTRANJERÍA)
29 de noviembre	Jornada Consejos Escolares Huechuraba	Introducción a las Buenas Prácticas sobre Diversidad y no Discriminación Arbitraria (DOS)
		Prevención de embarazo y paternidad adolescente y Nuevos lineamientos para abordar la Convivencia Escolar (MINEDUC)
		Discriminación y VIH-SIDA (CONASIDA)

B. Año 2011

Región	*Fecha*	*Temas*
RM	7 de abril	Buen trato para las personas mayores (SENAMA).
		Ley 20.422, Establece normas sobre igualdad de oportunidades e inclusión social de personas con discapacidad (SENADIS).
RM	14 de abril	Encuesta Nacional “Mi opinión cuenta” (SENAME).
		Violencia Intrafamiliar (SERNAM).
RM	28 de abril	Inmigración y Políticas públicas: Acciones de integración de la población inmigrante residente en chile (EXTRANJERÍA).
		Principales Resultados 6ta Encuesta Nacional de la Juventud, Discriminación y Juventud (INJUV).
X	23 de mayo	Violencia Intrafamiliar (SERNAM).
		Ley 20.422, Establece normas sobre igualdad de oportunidades e inclusión social de personas con discapacidad (SENADIS).
VII	02 de junio	Política de convivencia escolar: dimensión formativa y resguardo de derechos (MINEDUC).
		Ley 20.422, Establece normas sobre igualdad de oportunidades e inclusión social de personas con discapacidad (SENADIS).
VI	17 de junio	Ley 20.422, Establece normas sobre igualdad de oportunidades e inclusión social de personas con discapacidad (SENADIS).
		Buen trato para las personas mayores (SENAMA).
V	15 de julio	Buen trato para las personas mayores (SENAMA).
		Inmigración y Políticas públicas: Acciones de integración de la población inmigrante residente en chile (EXTRANJERÍA).
IV	26 de Julio	Inmigración y Políticas públicas: Acciones de integración de la población inmigrante residente en chile (EXTRANJERÍA).
		Discriminación arbitraria a la población indígena urbana (CONADI).

Región	*Fecha*	*Temas*
RM	14 de septiembre	Estigma y Discriminación como un obstáculo a la prevención del SIDA y a la calidad de vida de las personas que viven con VIH (CONASIDA).
		Encuesta Nacional: Mi Opinión Cuenta (SENAME).
RM	22 de septiembre	Violencia Intrafamiliar (SERNAM).
		Buen trato para las personas mayores (SENAMA).
RM	29 de septiembre	Principales Resultados 6ta Encuesta Nacional de la Juventud, Discriminación y Juventud (INJUV).
		Estigma y Discriminación como un obstáculo a la prevención del SIDA y a la calidad de vida de las personas que viven con VIH (CONASIDA).

II. Estudio sobre oferta pública en materia de diversidad y no discriminación

¿Con qué frecuencia trabaja su institución con los pueblos indígenas?

Categoría	*Nunca*	*Rara vez/A veces/Con frecuencia*	*Siempre*	*No sabe/No responde*
Aymaras	49,5	19,5	5,1	25,9
Alacalufes	56,4	8,7	1,8	33,1
Atacameños	54,3	12,4	2,4	30,9
Collas	54,9	13,0	2,0	30,1
Diaguitas	53,1	13,6	2,0	31,3
Mapuche	28,7	44,4	10,9	16,0
Quechua	54,3	11,0	2,8	31,9
Rapa Nui	56,6	9,3	2,0	32,1
Yagán	56,4	8,9	2,0	32,7

¿Con qué frecuencia trabaja su institución con migrantes?

Categoría	*Nunca*	*Rara vez/A veces/Con frecuencia*	*Siempre*	*No sabe/No responde*
Argentinos	38,2	37,9	5,3	18,6
Bolivianos	43,4	31,1	5,7	19,8
Colombianos	42,8	31,3	5,5	20,4
Ecuatorianos	44,4	29,8	4,6	21,2
Peruanos	38,0	37,9	6,1	18,0

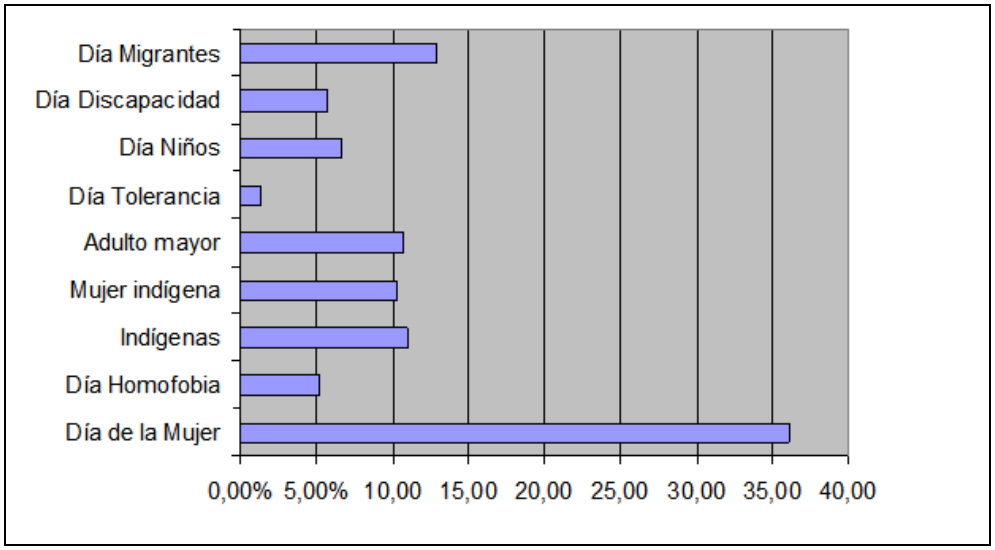
¿Con qué frecuencia trabaja su institución con grupos étnicos o tribales?

Categoría	*Nunca*	*Rara vez/A veces/Con frecuencia*	*Siempre*	*No sabe/No responde*
Afrodescendientes	67,3	13,1	1,0	18,6
Gitanos	66,7	12,3	1,0	19,2

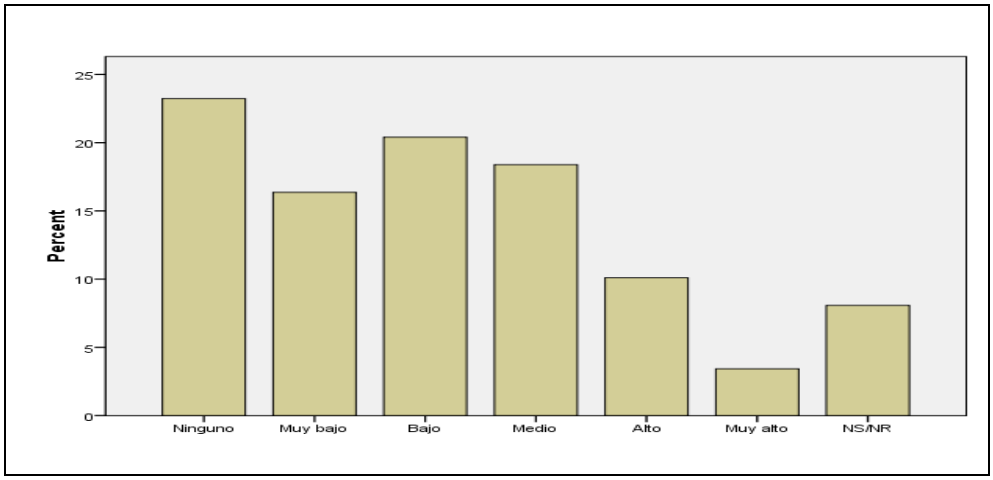
¿A qué nivel se han implementado las acciones dirigidas a los grupos vulnerables a la discriminación?

Tipo de implementación	*Si (%)*	*NS/NR*
Política Pública	42,4	11,1
Plan	16,6	14,9
Programa	46,1	10,7
Proyecto	35,2	11,5
Actividad	**43,0**	**11,1**

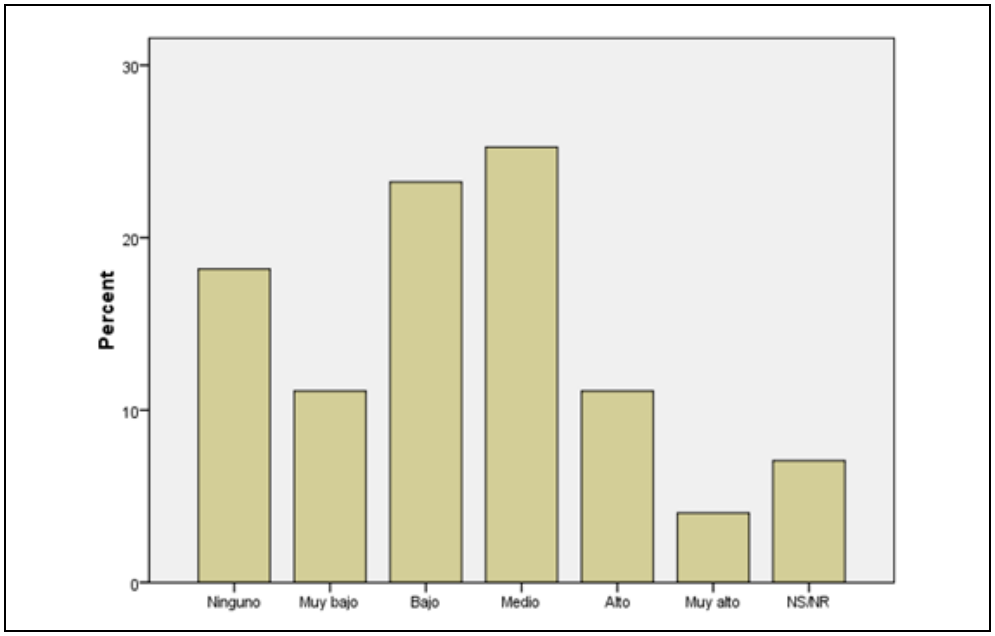
¿Se conmemora alguna de las siguientes fechas relacionas con los derechos de los grupos vulnerables?



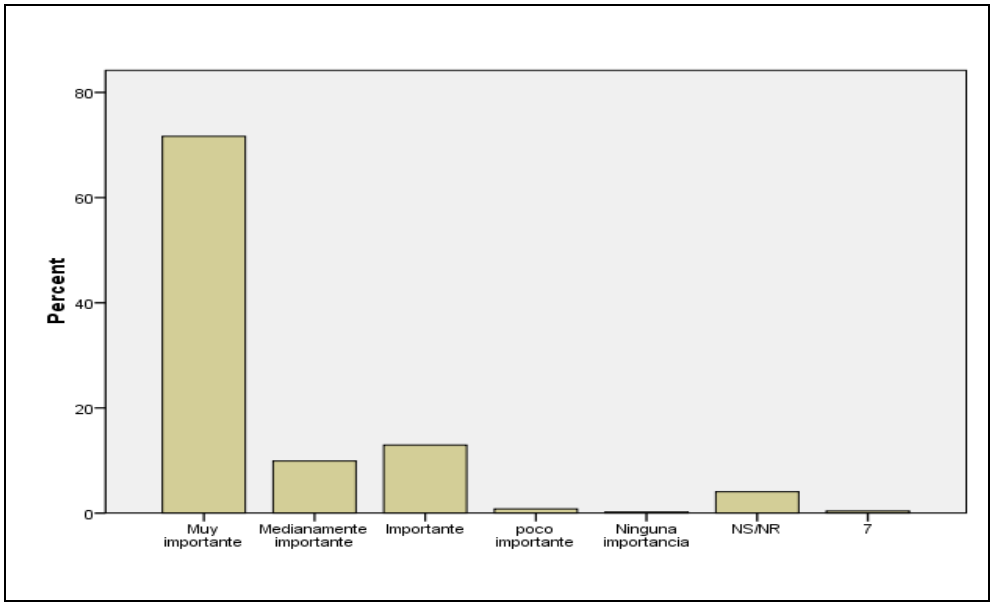
¿Grado de conocimiento de la Convención Internacional sobre la protección de los derechos de los trabajadores migratorios y de sus familiares?



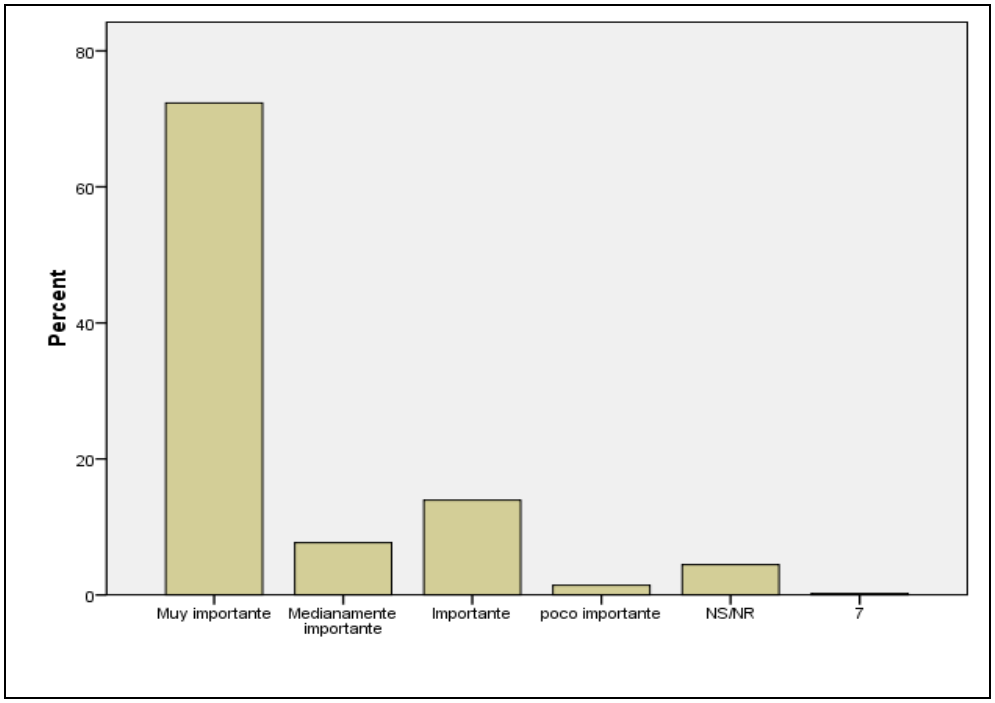
¿Grado de conocimiento de la Convención relativa a la Lucha contra las Discriminaciones en la Esfera de la Enseñanza?



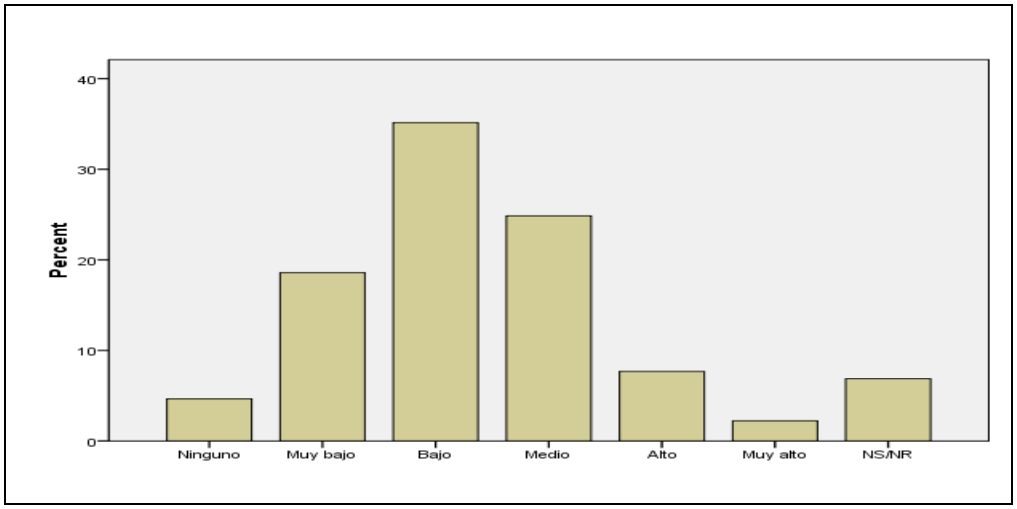
¿Qué grado de importancia le asigna a promoción de buenas prácticas de respeto a la diversidad?



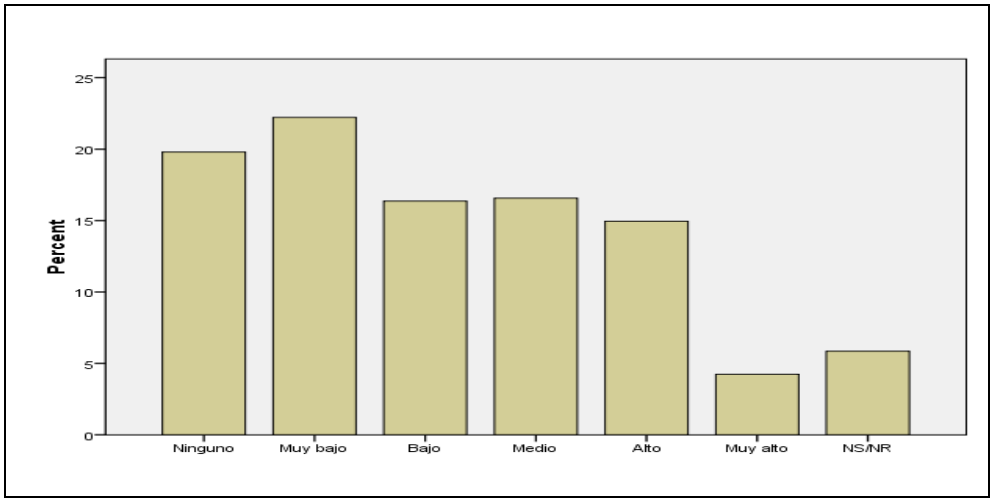
¿Qué grado de importancia le asigna a un Plan de Acción para Prevenir las Discriminaciones?



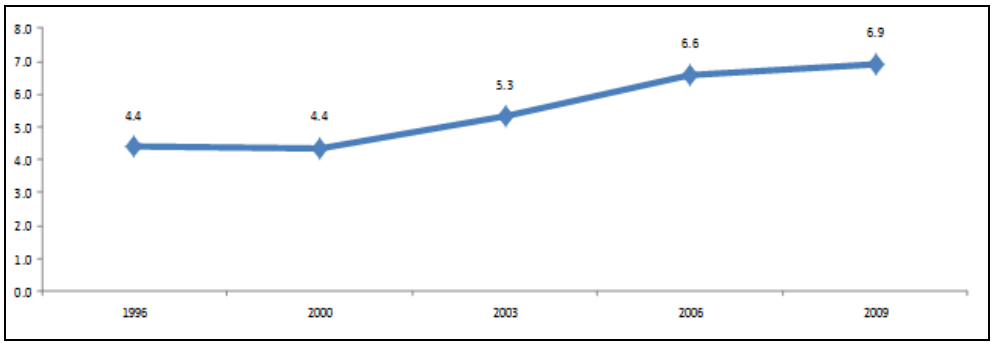
¿Qué grado de avances hay en materia de políticas públicas hacia migrantes y refugiados?



¿Qué grado de avances hay en materia de políticas públicas hacia los pueblos indígenas?



III. Población indígena nacional 1996–2009 (porcentaje)



IV Tierras inscritas en el Registro Público de Tierras de CONADI

Registro superficie (hectáreas)

Registro	*Superficie (Ha)*
Registro sur (Punta Arenas)	815,42
Registro centro sur (Temuco)	863 619,41
Registro Norte (Arica)	296 639,54
Total	**1 161 074,37**

Fuente: Registro público de Tierras de CONADI, 2010

V. Tierras adquiridas, traspasadas y/o saneadas, años 1994 a 2010

	Art. 20 b)	*Art. 20 a)*	*Concesión de Uso Gratuito*	*Traspaso Predios Fiscales*	*Saneamiento Propiedad Indígena*	***Total***
Total período 1994–2010 (hectáreas)	95.814	27.240	2.286	306.735	235.382	**667.475**
Familias (Nº)	8.413	3.285				**11.698**
Comunidades (Nº)	271	171				**442**
Subsidios Individuales		1.466	1.012	4.013	1.108	**7.599**

Fuente: CONADI

VI. Resumen ejecución art. 20 letra b), año 2011, por región

Región	*Número de predios*	*Inversión*	*Superficie*	*Comunidades*	*Nº familias*
Bío Bío	9	587 594 041	249,8	8	26
La Araucanía	43	25 412 513 946	9 596,3	34	1 113
Los Ríos	2	1 407 000 000	488,5	2	42
Total	**54**	**7 407 107 987**	**10 335**	**44**	**1 181**

* *Incluye:* 22 comunidades 115/ 9 sitios culturales / 3 caso lonkos /1 comunidad 308/ 12 otras.

VII. Resumen ejecución art. 20 letra b), año 2011, por unidad operativa

Unidad Operativa	*Devengado $*	*Superficie*	*Familias*
SDNT	$6 780 485 892	2 567,00	367
DR Osorno	$771 116 311	322,11	41
DR Cañete	$1 836 337 363	736,84	87
Of. Punta Arenas	$1 038 131 525	79,48	50
DR Valdivia	$1 203 694 271	465,39	63
Total	**$11 629 765 362**	**4 170,82**	**608**

VIII. Modelo desarrollado por el Departamento de Estudios de la Defensoría Nacional

El Modelo se divide en tres partes:

Parte I: Fundamentos de la defensa penal de imputados indígenas:

a) Definición de especializada para imputados indígenas, elementos;

b) Experiencia en América Latina;

c) Principios jurídicos y normas internacionales aplicables;

d) Derechos humanos y principios fundamentales;

e) Jurisprudencia comentada en materia de defensa penal de indígenas;

f) Enfoque cultural para una defensa jurídica especializada;

g) Género en pueblos indígenas y consideraciones de género en la estrategia de defensa para indígenas y en la teoría del caso;

h) Costumbre indígena y sistema penal;

i) Marco legal internacional y nacional de reconocimiento a la costumbre indígena y su reconocimiento en materia penal;

j) Subsunción del elemento cultural en categorías dogmáticas;

k) Consideraciones especiales sobre delitos cometidos en contexto de demandas territoriales;

l) Proceso penal para indígenas.

Parte II: Sociedad y cultura mapuche y defensa penal especializada:

a) Contexto socio-político y histórico y jurídico de la región de la Araucanía;

b) El conflicto mapuche;

c) Población mapuche de la Araucanía (migración, localización, educación, etc.);

d) Identidad mapuche, cosmovisión indígena;

e) Principios y valores de la cultura mapuche que inciden en la defensa penal;

f) Historia y relaciones culturales de la organización social, organización social y estructura familiar mapuche;

g) Elementos culturales para una defensa especializada;

h) Análisis de la oficina de defensa penal mapuche;

i) Definiciones del modelo de defensa penal indígena aplicables en el modelo general de defensa mapuche

Parte III: Modelo general de defensa penal indígena (Marco lógico):

a) Definiciones estratégicas defensoría penal pública: Misión institucional, objetivos estratégicos DPP;

b) Matriz de definiciones estratégicas para la defensa penal especializada de imputados de pueblos originarios;

c) Alternativas de organización y de estructura;

d) Procesos (identificación de imputados indígenas y de causas, derivación o asignación de causa, atención del imputado de causa indígena, registro de las causas indígenas, evaluación y control de gestión);

e) Flujo general de trabajo;

f) Perfiles de cargo (defensor especializado, facilitador intercultural, asistente del defensor especializado);

g) Estándares de defensa aplicados a la defensa penal especializada para indígenas;

h) Contenidos mínimos para la especialización del defensor y facilitador de imputados indígenas y causas indígenas.

IX. Imputados indígenas representados por un defensor especializado

Imputados indígenas representados por defensor especializado, rimer trimestre 2012

Defensoría	*No Especializado*		*Especializado*		***Total***	
	N°	*%*	*N°*	*%*	***N°***	***%***
Tarapacá	106	61,3	67	38,7	**173**	**100,0**
Antofagasta	106	74,1	37	25,9	**143**	**100,0**
Atacama	2	100,0	0	0,0	**2**	**100,0**
Coquimbo	8	100,0	0	0,0	**8**	**100,0**
Valparaíso	125	65,4	66	34,6	**191**	**100,0**
Lib. Gral. Bdo. O'higgins	17	100,0	0	0,0	**17**	**100,0**
Del Maule	15	88,2	2	11,8	**17**	**100,0**
Del Bío Bío	72	44,7	89	55,3	**161**	**100,0**
De La Araucanía	263	41,9	364	58,1	**627**	**100,0**
De Los Lagos	157	92,9	12	7,1	**169**	**100,0**
Aysén	3	18,8	13	81,3	**16**	**100,0**
Magallanes	2	28,6	5	71,4	**7**	**100,0**
Metropolitana Norte	540	99,1	5	0,9	**545**	**100,0**
Metropolitana Sur	406	99,3	3	0,7	**409**	**100,0**
Los Ríos	58	69,9	25	30,1	**83**	**100,0**
Arica y Parinacota	43	70,5	18	29,5	**61**	**100,0**
Total	**1 923**	**73,1**	**706**	**26,9**	**2 629**	**100,0**

X. Modificaciones a la Ley antiterrorista

Las principales modificaciones son las siguientes:

a) Se restringe el tipo del delito terrorista

Previo a la modificación, el artículo 1° de la Ley Antiterrorista contemplaba dos circunstancias alternativas bajo las cuales una conducta podía ser calificada como "terrorista": (i) por una parte, si el hecho era cometido con la finalidad de producir en la población o en una parte de ella el temor justificado de ser víctima de delitos de la misma especie; y (ii) por otra parte, si el delito era cometido para arrancar resoluciones de la autoridad o imponerle exigencias.

Asimismo, se presumía la finalidad de producir temor en la población cuando el hecho era cometido por alguno de los medios enumerados en el inciso segundo del artículo 1°, entre ellos, "artificios explosivos o incendiarios".

En virtud de la modificación, el artículo 1° fue reemplazado por el siguiente: "Constituirán delitos terroristas los enumerados en el artículo 2º, cuando el hecho se cometa con la finalidad de producir en la población o en una parte de ella el temor justificado de ser víctima de delitos de la misma especie, sea por la naturaleza y efectos de los medios

empleados, sea por la evidencia de que obedece a un plan premeditado de atentar contra una categoría o grupo determinado de personas, sea porque se cometa para arrancar o inhibir resoluciones de la autoridad o imponerle exigencias".

La modificación al artículo 1° de la Ley Antiterrorista implica: (i) que la finalidad de producir temor justificado en la población o en una parte de ella, de ser víctima de delitos de la misma especie (el denominado "dolo terrorista"), es requisito imperativo para que una conducta pueda ser considerada como "terrorista", y (ii) que la finalidad de producir temor no se presumirá a partir del hecho de utilizar determinado medio.

En consecuencia, corresponderá al Ministerio Público o al querellante probar, en el marco del juicio oral, y más allá de cualquier duda razonable, la existencia del elemento subjetivo que permite calificar penalmente una conducta como "terrorista", lo que corrige posibles conflictos con el principio de presunción de inocencia. Asimismo, y según lo dispuesto en el artículo 340 del Código Procesal Penal, dicha prueba debe llevar a un convencimiento del tribunal oral que se sustente más allá de toda duda razonable, para que proceda la condena. Cabe señalar que la necesidad de probar el denominado "dolo terrorista" más allá de toda duda razonable era igualmente aplicable con anterioridad a la modificación de la Ley Antiterrorista.

b) Eliminación de conductas típicas.

Adicionalmente, se eliminaron algunos delitos susceptibles de ser calificados como "terroristas":

(i) dentro de las hipótesis de homicidio terrorista, se eliminó el parricidio; y

(ii) dentro de los delitos de lesiones terroristas, se eliminaron las lesiones menos graves. Asimismo, se modificó la penalidad asociada a los delitos de incendio de bosques, mieses, pastos, montes, cerro o plantíos, de modo que estos delitos sólo pueden recibir la penalidad que les corresponde de acuerdo a la legislación penal común, pero no en su grado mínimo.

c) Eliminación de circunstancia modificatoria de determinación de la pena.

Se eliminó la circunstancia establecida en el artículo 3° bis de la Ley Antiterrorista, que permitía al tribunal determinar la pena según la forma innecesariamente cruel de la ejecución del delito y la mayor o menor probabilidad de la comisión de nuevos delitos semejantes, de acuerdo a los antecedentes y personalidad del procesado. Esto eliminó un factor adicional que se tenía en consideración al momento de aplicar la pena en concreto por el tribunal oral.

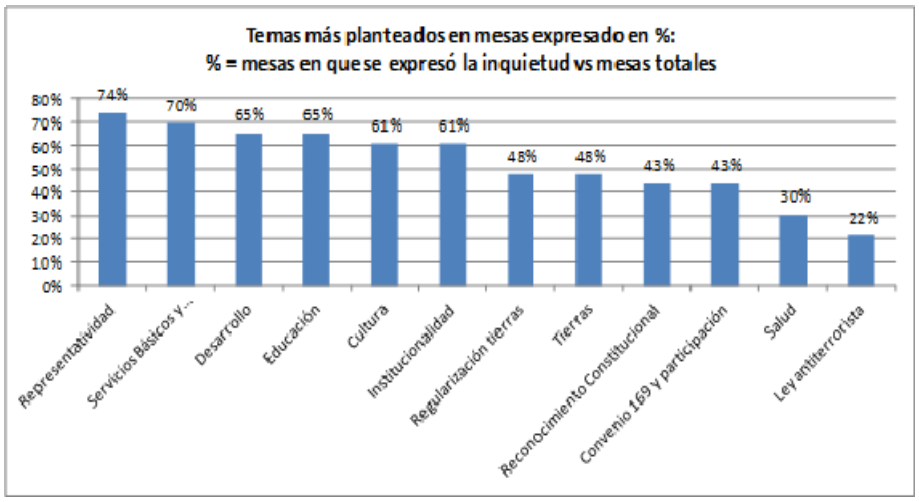
d) No Aplicación a Menores de Edad

La Ley Nº 20.519 ratificó la adecuación de la Ley Antiterrorista con los principios del derecho penal especial de adolescentes, la Convención Sobre los derechos del Niño y las normas contenidas en los Tratados Internacionales ratificados por Chile sobre Infancia que se encuentran vigentes.

La norma incorporó los siguientes incisos segundo y tercero al artículo 1º de la Ley Nº 18.314: "La presente ley no se aplicará a las conductas ejecutadas por personas menores de 18 años. / La exclusión contenida en el inciso anterior no será aplicable a los mayores de edad que sean autores, cómplices o encubridores del mismo hecho punible. En dicho caso, la determinación de la pena se realizará en relación al delito cometido de conformidad a esta ley".

XI. Temas de interés indígena, según Mesas de Diálogo

La recurrencia de los temas tratados tanto a nivel comunal, provincial y regional que se detalla a continuación coincide con las preocupaciones fundamentales que ha tratado la mesa nacional:



XII. Política de compra de tierras para indígenas

El Gobierno reactivó los mecanismos de entrega de tierras a indígenas bajo condiciones transparentes y objetivas. Un elemento central de este nuevo enfoque es que ahora cada entrega de tierras irá siempre acompañada de un convenio de apoyo productivo y asistencia técnica.

Al 31 de diciembre de 2011 la ejecución de compra de tierras vía articulo 20 letra b) de la Ley Indígena alcanzó a 27.407 millones de pesos (aproximadamente 54.814.000 dólares). Esto equivale a la compra de 54 predios y 10.335 hectáreas con las que fueron beneficiadas 44 comunidades, que representan a 1.181 familias.

Asimismo, el Gobierno decidió potenciar fuertemente el mecanismo de subsidio para la adquisición de tierras para indígenas y comunidades porque lo considera un mecanismo justo y transparente. En esta línea durante el 2011 el Gobierno compró 4.170 hectáreas, equivalentes a 11.626 millones de pesos (23.252.000 dólares aproximadamente) beneficiando a 608 familias, lo que equivale a un 50% más que en años anteriores.

Además, se realizó el 13 concurso de tierras, cuyo monto total supera los 30 millones de dólares, cifra que equivale a la asignada el año 2011, la que es más de un 50% mayor a la de los concursos realizados durante años anteriores. Este subsidio para compra de tierras contemplado en la Ley Indígena establece mecanismos transparentes y objetivos para su entrega, asignándose en base a un sistema de puntajes establecidos en la ley, lo que permite a los postulantes conocer de antemano las reglas que se aplican.

XIII. Cambios reglamentarios propuestos por el Servicio de Evaluación Ambiental y que han sido sometidos a consulta indígena

El 26 de enero del año 2010, entró en vigencia en Chile la Ley Nº 20417 que modifica la Ley Nº 19.300 sobre Bases Generales del Medio Ambiente. Esta Ley dio origen

a tres organismos distintos: Ministerio del Medio Ambiente: cuyo objetivo es proponer las políticas y normativas ambientales; Servicio de Evaluación Ambiental (SEA): a cargo de administrar el SEIA; y, Superintendencia de Medio Ambiente: organismo con potestad fiscalizadora y sancionatoria en materia ambiental.

Asimismo, en una disposición transitoria de la ley, se dispuso que el Gobierno envíe al Congreso Nacional para su discusión, un proyecto de ley que creara un Tribunal Ambiental con jurisdicción especial en materias medio ambientales y que sirva de contrapeso a los poderes de fiscalización de la Superintendencia del Medio Ambiente. Dicho proyecto se encuentra actualmente en discusión en el Congreso.

Considerando estas modificaciones legales y la creación del SEA, se hizo necesario modificar el actual Reglamento del Sistema de Evaluación de Impacto Ambiental, incorporando los nuevos requerimientos y ajustes que la ley antes mencionada efectuó en este instrumento de gestión ambiental.

En razón de lo anterior, el SEA ha realizado un trabajo que permite plasmar reglamentariamente algunos aspectos referidos a los pueblos indígenas en el Sistema de Evaluación de Impacto Ambiental que, por de pronto, la institucionalidad ambiental ha venido ejecutando en el curso de estos años y, a su turno, los tribunales de la República así lo han reconocido. Los referidos aspectos se encuentran asociados a la evaluación de impactos ambientales de los proyectos, destacando aquéllos que se puedan generar sobre los pueblos indígenas, así como la elaboración y ejecución de procesos de participación ciudadana que consideren de manera adecuada a los pueblos indígenas, etc. Todo ello se traduce en incorporar nuevos artículos al Reglamento del SEIA.

Además, a objeto de uniformar los criterios, requisitos, condiciones, antecedentes, trámites, exigencias técnicas, procedimientos y facilitar el cumplimiento de dicha normativa, se han elaborado dos propuestas de guías referidas al procedimiento de participación ciudadana y al apoyo para la evaluación de efectos significativos sobre pueblos originarios en el SEIA.

XIV. Medidas específicas para el desarrollo indígena

El año 2011 la Corporación de Fomento (CORFO) lanzó el programa de garantías para inversión en tierras indígenas, el cual tiene como objetivo fomentar las alianzas entre comunidades indígenas y empresas privadas para el desarrollo de modelos de negocios que beneficien a los pueblos indígenas. Actualmente existen 1.000 hectáreas en producción de lupino en la región de La Araucanía bajo este concepto, y otras 5.000 hectáreas estas en proceso de alianzas productivas.

En referencia a la conectividad, en los dos últimos años se han construido en La Araucanía 1.268,5 kilómetros. de caminos rurales indígenas, incrementándose el promedio de años anteriores de 188 kilómetros. por año. A nivel nacional el Ministerio de Obras Públicas considera para el año 2012 un aumento del 45% del programa de caminos vecinales indígenas.

En materia de habitabilidad el año 2011 se implementó el sistema de abastos de agua. Esto corresponde a la construcción de pozos de agua o un sistema de recolección y desinfección de agua que permite abastecer en forma individual cuando no hay acceso al agua potable rural.

La Comisión Nacional de Riego organizó un concurso de proyectos de riego para el desarrollo de áreas indígena y creó un subsidio para la regularización de los derechos de agua de los postulantes. Se flexibilizó el criterio de derechos de agua regularizados sino que se permite la figura en trámite en la Dirección General de Aguas.

Estos proyectos que comenzaron a ejecutarse durante el año 2011 contemplan soluciones de abastecimiento de agua para 66 comunidades indígenas en la región de La Araucanía, por un monto que beneficiará a 2.000 familias.

En materia de habitabilidad se duplicaron los recursos para el equipamiento predial, para los beneficiarios del subsidio de compra 20 a) de CONADI.

La Subsecretaría de Desarrollo Regional potenció el programa de energización rural el cual cubre en gran parte a las comunidades indígenas pues beneficia a población que habita el territorio de forma dispersa y desconcentrada.

A partir del 2011 se amplía la glosa 09 para todo el país, lo que permite inversión en tierras indígenas tanto para desarrollo productivo como habitabilidad. Además, para agilizar los proyectos se cambió la forma de evolución por proyectos integrales y que son evaluados por la Dirección de Presupuesto.

Ahora bien, las medidas destinadas al mundo rural en los últimos años se han complementado con una preocupación especial por la población indígena urbana, de forma que en el presupuesto 2011 se han destinado más recursos de los distintos fondos de CONADI a concursos dirigidos a la población indígena urbana y entre el 2010 y 2011 se triplicó el presupuesto para la Dirección Regional de CONADI en Santiago. Este aumento se ha mantenido para el año 2012.

Por otra parte, el 2011 se realizó un aumento significativo en la entrega de becas indígenas, principalmente para los alumnos de educación superior, registrándose un incremento de 1974 a 3.057 alumnos becados. Las becas para alumnos de básica aumentaron de 5.965 a 7003; y en educación media de 5.175 se aumentó a 5.897 becas. En efecto, entre el 2010 y 2011 se aumentó en un 34,6% el presupuesto para el Programa de Becas Indígenas. Entre el 2011 y 2012 el presupuesto de becas indígenas de JUNAEB se incrementó en un 13%.

En cuanto a residencias indígenas, el año 2011 se mantuvo la cobertura y el monto del año 2010, otorgándose un total de 700 becas a nivel nacional por un monto mensual de 184 dólares. En hogares indígenas el presupuesto del año 2011 consideró el funcionamiento de trece hogares a nivel nacional: Bío Bío: 5; La Araucanía: 5; Los Ríos: 1 y Metropolitana: 2, lo que permitió beneficiar a 412 estudiantes.

Entre el 2010 y 2011 se aumentó en un 19,7% el presupuesto para el Fondo de Cultura y Educación. Entre el 2011 y 2012 este presupuesto se incrementó en un 2,8%.

El Ministerio de Educación a través de su programa de educación intercultural bilingüe continuó promoviendo la conservación de la cultura y las lenguas, e incrementó su presupuesto en un 2,8% entre el 2011 y 2012.

Actualmente existen 43 jardines infantiles – enseñanza preescolar – interculturales a nivel nacional, con un total de 1.266 matrículas.

Finalmente, el Ministerio de Salud en su estrategia nacional de salud puso énfasis en salud intercultural, promoviendo la conservación e incorporación de la medicina ancestral.