



**International Covenant on
Civil and Political Rights**

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**Consideration of reports submitted by States
parties under article 40 of the Covenant**

Sixth periodic report of States parties

Chile*, **

[25 May 2012]

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

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

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I. Introduction

1. The sixth periodic report on the implementation in Chile of the International Covenant on Civil and Political Rights (hereafter referred to as “the Covenant”), prepared in accordance with article 40, outlines the advances made and the specific steps taken by the State of Chile to implement the rights set out in the Covenant. The report covers the period from 14–15 March 2007, the dates when the Human Rights Committee (hereafter referred to as “the Committee”) considered the previous report, to February 2012.

2. This period was marked by two events. Firstly, the earthquake and tsunami that struck Chile on 27 February 2010 — the worst natural disaster to hit the country in the past 60 years, as a result of which 525 people died, 23 went missing and more than 2 million were left homeless¹ — seriously damaged the area of greater Concepción, 5 cities of more than 100,000 inhabitants, 45 cities of more than 5,000 inhabitants, and more than 900 rural and coastal towns and communities, destroying 90 per cent of adobe buildings in the most severely affected regions. A plan to reconstruct 220,000 damaged homes is currently being implemented and should be completed by 2018, which indicates the magnitude of the disaster and of the Government’s efforts.²

3. The second event occurred just a few days later. On 11 March 2010 the President of the Republic, Mr. Sebastián Piñera Echenique, took office, backed by the Coalition for Change and replacing the political coalition that had governed the country from 1990 to 2010.

4. Thus, the progress described in this report took place during a period of change when the country was dealing with the challenges posed by a serious natural disaster.

5. Background information on the country’s political structure and the general normative framework for the protection of human rights can be found in the core document of Chile (HRI/CORE/1/Add.103). An updated version of that document will be made available in the first half of 2012.

6. The report includes replies to the Committee’s previous concluding observations (CCPR/C/CHL/CO/5) together with information on each of the articles of the Covenant. The table below outlines the location of the replies within the document:

<i>Reply to</i>	<i>In information on</i>
Paragraph 5	Article 2
Paragraph 6	Article 2
Paragraph 7	Article 14
Paragraph 8	Article 6
Paragraph 9	Article 6
Paragraph 10	Article 7
Paragraph 11	Article 7

¹ Final list of the dead and missing issued by the Office of the Undersecretary for the Interior on 31 January 2011, available at: http://www.interior.gob.cl/filesapp/listado_fallecidos_desaparecidos_27_Feb.pdf.

² “Chile Unido Reconstruye Mejor” (A United Chile Rebuilds Better) Plan of the Ministry of Housing and Town Planning, available at www.minvu.cl/opensite_20111122105648.aspx.

<i>Reply to</i>	<i>In information on</i>
Paragraph 12	Article 7
Paragraph 13	Article 18
Paragraph 14	Article 22
Paragraph 15	Article 25
Paragraph 16	Article 2
Paragraph 17	Article 3
Paragraph 18	Article 26
Paragraph 19	Article 27

7. With regard to the request made in paragraph 20 of the concluding observations, to the effect that the initial report of Chile and the concluding observations of the Committee be published and widely disseminated by the State party, Chile's commitments with regard to international human rights law are published on the website of the Ministry of Foreign Affairs,³ and this report will be made available to the public from the date it is sent to the secretariat of the Human Rights Committee, as announced to civil society at a briefing on 23 April.

8. With regard to paragraph 21 of the concluding observations and the request for additional information on the implementation of the recommendations made in paragraphs 5 and 19, the State of Chile wishes to emphasize its willingness to cooperate with the Committee, as indicated by its regular submissions of additional information, dated 21 October 2008, 28 May 2008 and 5 October 2011 (CCPR/C/CHL/CO/5/Add.1, Add.2 and Add.3, respectively). In consideration of rule 71, paragraph 5 of the Committee's rules of procedure, we wish to express our concern that the successive repetition of information between periodic reports could interfere with the organization of those reports.

9. With a view to enriching this report, references have been included to the most recent periodic reports submitted to other treaty bodies, such as the fourth periodic report on the implementation of the International Covenant on Economic, Social and Cultural Rights, of August 2011;⁴ the fifth and sixth combined periodic reports on the implementation of the Convention on the Elimination of All Forms of Discrimination against Women, submitted in January 2011;⁵ the initial report on the implementation of the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, of May 2010;⁶ the report on the application of the International Labour Organization (ILO) Indigenous and Tribal Peoples Convention, 1989 (No. 169), submitted in September 2010;⁷ and the fifth periodic report on the implementation of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, considered in May 2009.⁸ With regard to form, this report aims to avoid

³ See www.minrel.gob.cl/prontus_minrel/site/artic/20080902/pags/20080902204316.php.

⁴ Unedited version available at http://www.minrel.gob.cl/prontus_minrel/site/artic/20080902/asocfile/20080902204316/cuarto_informe_desc.pdf.

⁵ CEDAW/C/CHL/5-6.

⁶ CMW/C/CHL/1. The Committee's concluding observations can be found in document CMW/C/CHL/CO/1.

⁷ Available along with the addendum of 10 November 2010 at: <http://www.conadi.gob.cl/index.php/component/content/article?layout=edit&id=253>.

⁸ CAT/C/CHL/5. The concluding observations of the Committee against Torture can be found in document CAT/C/CHL/CO/5.

duplication and keep within the page limit by using annexes to include additional information.

10. Some of the most important public policies introduced during the period include the recent enactment of the Act on Automatic Registration and Voluntary Voting (Act No. 20568, Official Gazette of 31 January 2012) and the Act on Associations and Citizen Participation in Public Affairs (Act No. 20500, Official Gazette of 16 February 2011), which establishes definitions and mechanisms for forming public interest citizen associations and defines the ways in which these associations participate in the management of public affairs.

11. New reforms in education and health care will be carried out in 2012. The ethical family income will be implemented and measures will be taken to deal with the economic crisis by protecting middle-income and vulnerable households. A bill was introduced to establish the Office of the Under-Secretary for Human Rights, which will serve as the public body responsible for coordinating all State efforts in the field of human rights, as these are currently scattered among various Government departments. The Office will be responsible for developing plans, programmes, decisions and actions to promote and protect human rights. All these topics will be addressed further in this report.

II. Implementation of the articles of the Covenant

12. This chapter includes responses to the subjects of concern and recommendations contained in the concluding observations on the fifth periodic report of Chile (March 2007 to February 2012).

Article 1

Right of peoples to self-determination

13. According to the Constitution, the State of Chile is structured as a unitary and democratic republic in which sovereignty resides essentially with the nation. That sovereignty is exercised by the people through regular elections and by the authorities established by the Constitution. In this regard, the most important public policies introduced during the period include the recent promulgation of the Act on Automatic Registration and Voluntary Voting. The Act revitalizes democracy through a historic expansion of the electoral roster, which for the first time in the history of the country will include all citizens with the right to vote.

Article 2

Guarantees for the protection of Covenant rights

14. One of the strategic objectives of the Office of the Minister and Secretary-General of Government (SEGEGOB) and its Community Organizations Department (DOS) is to “promote among public institutions and civil society respect for social diversity, intercultural relations and non-discrimination of any kind”. In order to achieve this objective, an intersectoral panel on diversity and non-discrimination was established and has been meeting regularly since September 2010. The panel is composed of representatives of the following institutions: the National Youth Institute (INJUV), the Aliens Department of the Ministry of the Interior, the Ministry of Education (MINEDUC), the National Service for Minors (SENAME), the National Indigenous Development Corporation (CONADI), the National Service for Persons with Disabilities (SENADIS), the National Service for Women (SERNAM), the National Service for Older Persons

(SENAMA) and the Ministry of Health's National Programme to Prevent and Monitor HIV/AIDS and STDs (sexually transmitted diseases).

15. The panel's activities include holding information and training days to give effect to the rights recognized in the various international human rights instruments ratified by Chile, covering topics such as:

- (a) Act No. 20422 establishing standards on equal opportunities and social inclusion for persons with disabilities,⁹ organized by SENADIS;
- (b) Decent treatment of older persons, organized by SENAMA;
- (c) Domestic violence, organized by SERNAM;
- (d) Immigration and public policy: efforts to integrate the immigrant population in Chile, organized by the Aliens Department of the Ministry of the Interior;
- (e) Harmonious relations at school, in the context of diversity, non-discrimination and intercultural relations, organized by the Cross-Cutting Education Unit of the General Education Division of the Ministry of Education;
- (f) Discrimination against indigenous persons in urban areas, organized by CONADI;
- (g) Care and timely protection for children and adolescents who have been victims of violence, provided through various programmes, campaigns and training sessions, and by the establishment of observatories run by SENAME, dealing with witnesses to serious domestic violence, ill-treatment and sexual abuse, and commercial sexual exploitation of children, including trafficking in children.

Reply to paragraph 5 of the concluding observations

16. Reference is made once again to the additional information provided to the Special Rapporteur for follow-up to concluding observations on the measures taken to ensure that none of the serious human rights violations committed during the period 1973–1990 go unpunished.¹⁰ This information can also be supplemented by the reply sent to the Committee against Torture¹¹ regarding the validity of the Amnesty Decree-Law No. 2191, which stated that two bills designed to prevent the implementation of the Decree-Law are currently being discussed in parliament.¹² The first proposal, of 31 March 2009 (Bulletin No. 6422-07), establishes the interpretative law bringing Chilean criminal law into line with international human rights treaties,¹³ while the second, of 30 April 2009 (Bulletin No. 6491-07), amends article 675 of the Code of Criminal Procedure and establishes a new ground for review in cases of human rights violations.¹⁴ Both legislative initiatives refer to the Inter-American Court of Human Rights judgement in the case of *Almonacid Arellano et al.*

⁹ See Act No. 20422, available at: <http://www.leychile.cl/Navegar?idNorma=1010903>.

¹⁰ Additional information contained in documents CCPR/C/CHL/CO/5/Add.1 and Add.2.

¹¹ CAT/C/CHL/5.

¹² Previously, in March 2009, a bill on the interpretation of article 93 of the Criminal Code was rejected (see annex). The bill had sought to exclude crimes against humanity, genocide and war crimes, covered by the international treaties ratified by Chile, from the discharge of criminal liability through amnesty, pardon or the statute of limitations (Bulletin No. 5918-07).

¹³ Non-urgent bill being reviewed by the Senate Committee on the Constitution, Legislation, Justice and Regulations since 15 June 2011.

¹⁴ Non-urgent bill being reviewed by the Chamber of Deputies Committee on Human Rights, Nationality and Citizenship.

v. *Chile*,¹⁵ as a result of which proceedings were reopened before the ordinary courts and the defendants were not granted amnesty.

Reply to paragraph 6 of the concluding observations

17. Chile established the National Human Rights Institute (INDH) through Act No. 20405 of 10 December 2009, in accordance with the Paris Principles.¹⁶ INDH has made significant contributions to the promotion and protection of human rights, and has thus far published two annual reports on the human rights situation in Chile. It has contributed to the debate on issues relating to national policies and has brought to light various situations that constitute or could result in human rights violations. It has also collaborated with the Presidential Advisory Commission on recognition of the status of political prisoners who disappeared and were executed and the victims of political imprisonment and torture, reporting on the Commission's services and protecting the information collected.

Reply to paragraph 16 of the concluding observations

18. With regard to discrimination based on sexual orientation, the bill establishing measures to combat discrimination (Bulletin No. 3815-07) has made substantial progress through parliament and is currently in its second reading in the Senate (with a third reading still to come). The bill explicitly includes sexual orientation and gender identity among the prohibited grounds for discrimination and provides for legal action to punish such discrimination.

19. The Department of Diversity and Non-Discrimination, attached to the Community Organizations Division of the Office of the Minister and Secretary-General of Government, has been operating since 2006 and is tasked with "developing and promoting initiatives to gradually eliminate the various forms of discrimination and intolerance", including those based on sexual orientation.

Article 3 Gender equality

20. In accordance with its international obligations, Chile has continued its gender mainstreaming efforts across all areas of the State. The need for and importance of addressing gender inequities and gaps through public policies was further established in 2011. With this objective, the following political and administrative instruments were developed and strengthened: (a) the 2011–2020 Plan on Equal Opportunities For Men and Women;¹⁷ (b) the Regional and Municipal Agenda;¹⁸ (c) the reinstated Council of Ministers for Equal Opportunities, chaired by the Minister Director of the National Service for Women (SERNAM) with the aim of obtaining commitments from ministers; and (d) the enhanced Programme to Improve Gender Management,¹⁹ focusing on the results and impact of the policies adopted.

¹⁵ See www.corteidh.or.cr/docs/casos/articulos/seriec_154_esp.pdf.

¹⁶ See Act No. 20405 at www.leychile.cl/Navegar?idNorma=1008867. See also CEDAW/C/CHL/5-6, as well as the fourth periodic report on the implementation of the International Covenant on Economic, Social and Cultural Rights. Website of the National Human Rights Institute: <http://www.indh.cl/>.

¹⁷ Known as PIO.

¹⁸ Known as PRIO (Regional Equal Opportunities Plan) Agendas.

¹⁹ Known as Gender PMG or Gender Equity System.

21. Various legal reforms have been enacted to improve employment conditions for women and promote their entry into the labour market. Act No. 20348 of 19 June 2009 protects the right to equal pay; Act No. 20535 of 11 October 2011 allows parents of children with disabilities to be absent from work; Act No. 20399 of 23 November 2009 extends the right to day-care facilities to fathers who are the legal guardians of their children under 2 years of age; and Act No. 20545 of 17 October 2011 extends the initial 12-week postnatal parental leave by 12 additional weeks, to make a total of 24 weeks (6 months). Working mothers may opt to take these 12 additional weeks as full or half days (equivalent to 18 weeks). The Act also covers various circumstances, including the serious illness of a child less than 1 year old, the transfer of part of the leave to the father, the situation of adoptive parents, premature and multiple pregnancies, and the situation of women seasonal workers, and benefits more than 2.5 million working women. The reform introduced a modern and flexible parental leave scheme that ensures the best possible care for children during their first few months of life, promotes shared responsibility between parents, giving them freedom to decide how best to use the leave benefits; and does away with the stereotype of mother-centred parenting.

22. On the labour front, in order to increase and improve the quality of employment for women, SERNAM has launched the “Women’s Wealth Programme”, which aims to train women in non-traditional — usually male-dominated — fields that are generally better paid, such as mining. To this end, formal agreements have been signed on good labour practices based on gender equity, in an attempt to eliminate discriminatory practices and promote a work-family balance. These include formal agreements with the Chilean Manufacturers Association,²⁰ the Chamber of Commerce and Production, the National Mining Association²¹ and the National Chamber of Commerce, which cover the major areas of production in the country. In addition, female entrepreneurship is being promoted through the establishment of enterprise training centres and funds. Such efforts include: the Women with Family Businesses Programme, which supports women who head family businesses; the Working Women Heads of Household Programme, which has helped 33,000 women to improve their job skills, education level, computer literacy and knowledge of labour rights and obligations in 216 communes, covering 62.4 per cent of the country, thereby preparing them to join the competitive world of work. Over the past year, these efforts have helped to create more than 162,000 quality job opportunities for women, which constitutes the biggest increase in the numbers of women in the labour force in the past decade; women now account for a historic 47.8 per cent of the workforce (New National Employment Survey, National Statistical Institute (INE), 2011).²²

23. There is particular concern about the relationship between family and work for Chilean women, given that family life and the unpaid work it entails remain one of the main obstacles to their integration in the labour market.²³ In the light of this, SERNAM has implemented the Four to Seven Programme, whereby the State provides after-school care for children whose mothers are employed or looking for work. In 2011 the programme was successfully implemented in 47 communes throughout the country, benefiting 4,000 mothers and more than 6,000 children.

²⁰ Known as SOFOFA.

²¹ Known as SONAMI.

²² New National Employment Survey, National Statistical Institute for the last rolling quarter October–December 2011. The share of women in the workforce for that quarter reached the highest level in the country’s history: 47.8 per cent, or 1.2 percentage points higher than in the same quarter in 2010.

²³ The main reason women gave for not working was related to housework and childcare. *Source*: National Social and Economic Survey (CASEN survey) 2009.

24. Along the same lines, in an exercise in civic dialogue in January 2010, the third Plan for Equality between Women and Men 2010–2020 for Chile’s bicentenary was drawn up, and it was implemented with the active participation of civil society, including more than 15,000 women and organizations in all parts of the country. One result of the Plan was the submission of a bill establishing a balanced policy on men and women accessing and holding elected office. The bill is in its first reading in the Chamber of Deputies (Bulletin No. 5553-06).

25. Lastly, the National Service for Minors (SENAME) has introduced the gender perspective in all its programmes for children and young people whose rights have been violated.

Reply to paragraph 17 of the concluding observations

26. Current civil legislation in Chile provides for three matrimonial regimes regulating property relations between spouses and vis-à-vis third parties, namely: the community of property regime, the separation of property regime and the partnership of acquests regime. The latter, which entered into force in 1994 — when such a regime existed by law only in Sweden and Colombia and by agreement in France and Uruguay — grants women full powers to administer property during the marriage. Under this regime, the property of the husband and wife is kept separate, so that each one administers, enjoys and disposes of their own property. However, this freedom is limited in that neither spouse can offer their property as security to a third party without the other’s consent.²⁴ Once the regime ceases to apply, the spouses recoup the value of the acquests, where “acquest” is understood to mean the difference in net value between the original holdings and the final holdings of each spouse. Each spouse has the right to half the resulting surplus and a credit arises in that amount. This means that, at the start of the partnership of acquests regime, the parties or spouses should draw up an inventory of their assets and liabilities for the purpose of calculating the acquests by comparing the initial and final holdings. The credit arising is a credit pure and simple²⁵ and is paid in cash (it gives rise to no specific charge or to community of property).

27. Regarding the community of property regime and women’s power to administer property, current law stipulates that the husband is the sole administrator of the property during the marriage and has control over both the joint property and the woman’s property (whether movable or immovable, and whether acquired before or inherited during the marriage), even without her consent. In the light of this, and in accordance with the observations made by the Human Rights Committee and the Committee on the Elimination of Discrimination against Women, on 5 April 2011 SERNAM launched a bill to amend the community of property regime (Bulletin No. 7567-07),²⁶ with the main goal of giving married women full powers under the regime. The main aspects of the bill are as follows:

(a) It regulates administration of the community of property regime. The husband and wife may freely agree on who will serve as administrator, either when signing the marriage contract before the registrar or later in a public document registered separately from the marriage;

(b) It establishes joint administration as the general rule, unless one of the spouses is explicitly appointed as administrator;

²⁴ Civil Code, art. 1793-3.

²⁵ That is, it is not subject to time limit, condition or other limitation.

²⁶ Bill amending the Civil Code and other laws governing the marital community of property regime.

(c) It maintains limitations on the administrator's power to dispose of certain types of joint property (e.g., sale of real estate) in order to protect the family's interests. In such cases the prior authorization of the spouse who is not the administrator is still required, and that spouse retains the right to institute legal proceedings demanding the full separation of the property in the event of poor administration;

(d) The wife, if she is not the administrator, maintains administration rights over her reserved property (earned through her own remunerated activity). However, in the case of joint administration, neither of the spouses shall have the right to reserved property. If the spouse who is not the administrator takes over the administration of the joint property, his or her reserved property shall become part of the joint property, giving rise to a credit to be paid on dissolution;

(e) The bill establishes temporary special administration of the community of property regime. If the administering spouse is absent or becomes incapacitated (due to illness, accident or other reasons) the non-administering spouse may be granted temporary special administration rights so as to cover the family's expenses. A spouse who obtains such rights through fraud may be liable to repay double the value of the property disposed of.

28. The Government has given very high-priority rating to this bill, which means it takes precedence in readings and votes in parliament, thereby demonstrating the Chilean State's political commitment in this area.

Article 4 **States of emergency**

29. Articles 39 to 45 of the Constitution regulate the proclamation of states of emergency, indicating which rights may be restricted.²⁷ During the reporting period, because of the earthquake and tsunami that occurred on 27 February 2010, a 30-day state of emergency, until 31 March 2010, was proclaimed in the Maule and Bío-Bío regions by Supreme Decrees Nos. 152 and 153 of 28 February 2010. A 20-day state of emergency was also proclaimed in the Libertador General Bernardo O'Higgins region by Supreme Decree No. 173, from 11 to 31 March 2010. The states of emergency restricted the rights and freedoms of movement and association in those territories during those periods. The States parties to the Covenant were duly informed, through the intermediary of the Secretary-General of the United Nations, in accordance with article 4, paragraph 3, of the Covenant.

Article 5 **Limitations on Covenant rights and freedoms**

30. Reference should be made to what is stated in previous reports and in article 19, paragraph 26, of the Constitution, which expressly guarantees that the norms regulating or supplementing the fundamental rights recognized by the Constitution may neither be affected in their essence nor made subject to conditions, taxes or requirements that may prevent their free exercise. This has been upheld by the case law of the Constitutional Court.

²⁷ See also the fourth periodic report on the implementation of the International Covenant on Economic, Social and Cultural Rights (footnote 4).

Article 6

Right to life

31. The following paragraphs contain information on general compliance with this article and measures to establish conditions more conducive to the enjoyment of the right to life. For the rest, reference is made to the previous reports and to what is stated in the fourth periodic report on the implementation of the International Covenant on Economic, Social and Cultural Rights.²⁸

32. Of the legislative developments that took place during the reporting period, two stand out as strengthening protection of the right to life in the domestic legal system:

(a) The adoption of the Rome Statute of the International Criminal Court by Supreme Decree No. 104 (Official Gazette, 1 August 2009), which entered into force for Chile on 1 September 2009; and

(b) The adoption of Act No. 20357 (Official Gazette of 18 July 2009) defining crimes against humanity, genocide and war crimes²⁹ and introducing them into national law.

33. The results of the SERNAM Chile Shelters Programme on domestic violence were boosted by the criminalization of femicide in 2010,³⁰ which helped to bring a hidden crime into the open and to decrease the number of attacks against women by 15 per cent in 2011 compared to the previous year.

Reply to paragraph 8 of the concluding observations

34. In accordance with the State's position, as expressed in previous reports, the domestic legal system protects the life "of the unborn child",³¹ and all forms of abortion are thus expressly prohibited.³²

Reply to paragraph 9 of the concluding observations

35. Reference is made to the additional information provided to the Committee's Special Rapporteur for follow-up to concluding observations, particularly the information contained in our third communication, dated 28 September 2011.³³ Supplementary information is provided below and organized in two parts:

(a) Measures against impunity for "serious human rights violations committed during the dictatorship";

(b) The duty of the State to "make public all the documentation collected by the Truth and Reconciliation Commission and the National Commission on Political Prisoners

²⁸ Ibid.

²⁹ See Act No. 20357 at www.leychile.cl/Navegar?idNorma=1004297.

³⁰ Act No. 20480 or the Femicide Act, published in the Official Gazette on 14 December 2010.

³¹ Article 1, paragraph 2, of the Constitution states that "the law protects the life of the unborn child".

³² (i) Articles 342 ff. of the Criminal Code; (ii) Article 119 of the Health Code was repealed by Act No. 18826 of 15 September 1989, containing a sole article, which prohibits any action intended to cause an abortion; (iii) Article 1 of Act No. 20120 of 22 September 2006 on scientific research on human beings and their genomes, which prohibits human cloning, stipulates that "the aim of this law is to protect the life of human beings from the moment of conception, their physical and psychological integrity, and their genetic identity and diversity, in relation to biomedical scientific research and its clinical applications".

³³ CCPR/C/CHL/CO/5/Add.3.

and Torture that may help identify those responsible for extrajudicial executions, forced disappearances and torture”.

Measures against impunity

36. The Ministry of the Interior and Public Security and the Presidential Advisory Commission to recognize the status of political prisoners who disappeared and were executed and the victims of political imprisonment and torture (“the Advisory Commission”) are jointly conducting the Programme of Follow-up to Act No. 19123.

Programme of Follow-up to Act No. 19123

37. Also known as the Human Rights Programme (“the Programme”), it was established in 1997 by Supreme Decree No. 1005 of the Ministry of the Interior, through the Office of the Undersecretary for the Interior, with the aim of continuing the work carried out thus far by the National Compensation and Reconciliation Board (CNRR), which ceased operations on 31 December 1996. Its main mission was to take up what had been the role of CNRR in determining the truth behind serious human rights violations that took place in Chile between 11 September 1973 and 10 March 1990, taking action to determine the whereabouts, and the circumstances of the disappearance or death, of disappeared detainees and those whose remains have not yet been found.

38. With the entry into force of the law establishing the National Human Rights Institute (INDH),³⁴ its social, cultural and educational functions were expanded to include legal and judicial functions consisting in the taking of legal action.

39. The Programme is headed by an Executive Secretary, and in January 2012 it was restructured into the following areas: Legal, Social, Management and Budget, and Documentation and Archives. Its responsibilities are (a) to provide social and legal assistance to the families of victims of human rights violations or political violence under article 18 of Act No. 19123, so as to ensure their access to the benefits established by the Act and to give effect to their inalienable right to know the whereabouts of the missing detainees and of the bodies of those executed, and the circumstances of their disappearance or death, as recognized in article 6 of the Act (art. 1, Supreme Decree No. 1005); (b) to conserve and safeguard the documentation and archives produced by CNRR, and by the Ministry of the Interior in the exercise of its functions (art. 1, Supreme Decree No. 1005); and (c) to take all legal action necessary in order to discharge those functions, including lodging complaints in cases of abduction or forced disappearance and of homicide or summary execution (transitional art. 10 of Act No. 20405).

40. For the Programme’s purposes, victims are understood to be those classified as such by the National Commission on Truth and Reconciliation, CNRR, and the Advisory Commission set up pursuant to the law establishing INDH. For the purpose of providing guidance and social services through the Programme, victims also include persons classified as such by the National Commission on Political Prisoners and Torture (also known as the Valech Commission).³⁵ These persons or their families, as appropriate, can access the benefits established under the respective laws on reparation.³⁶

41. As at 31 December 2011, figures on the Programme’s legal work were as follows: (a) it had participated (as complainant or intervener) in 224 out of a total of 233 criminal

³⁴ See Act No. 20405 (footnote 16 above).

³⁵ The Valech Commission was established in 2003 by Supreme Decree No. 1040 of the Ministry of the Interior.

³⁶ See annex for detailed description of the benefits.

proceedings brought before the courts on behalf of victims classified as disappeared detainees, and in 341 out of a total of 1,092 criminal proceedings brought before the courts on behalf of victims classified as executed; (b) complaints: a total of 341 complaints had been filed, including 303 criminal proceedings concerning 475 victims classified as executed and 38 complaints concerning 55 victims classified as disappeared.³⁷

42. In relation to the 1,092 criminal proceedings, the Human Rights Offences Squad of the Investigative Police has helped to determine when the commencement of the offences were, thus facilitating the apportionment of the cases among the various appeal court justices involved in the investigations. In relation to the cases of executed detainees and the 233 cases of disappeared detainees, the Investigative Police has delivered a total of 8,637 court orders between 2010 and the date of this report (2,126 in 2010; 5,138 in 2011; and 1,373 in 2012 to date). All of these have been related to investigations of offences involving human rights violations committed between September 1973 and March 1990.

43. As at 24 January 2011, the Public Prosecution Service had made 726 submissions on behalf of victims of serious human rights violations committed during the same period, for which no legal action had yet been taken and which are now being investigated. Similarly, between 2010 and 2011 the Association of Relatives of Persons Executed for Political Reasons in Chile (AFEP) submitted 1,001 complaints on behalf of victims classified as executed in relation to events that had occurred during the same period.

44. All of the above demonstrates and testifies to the State's continuing commitment to clarify, prosecute and punish human rights violations committed in Chile during the period 1973–1990.³⁸

Presidential Advisory Commission to recognize the status of political prisoners who disappeared and were executed and the victims of political imprisonment and torture

45. This Commission (the “Advisory Commission”) was established in 2010 by Supreme Decree No. 43 of the Ministry of the Interior (Official Gazette of 5 February 2010) in accordance with transitional article 3 of the National Human Rights Institute Act and began operations with a constituting meeting on 17 February 2010. The Advisory Commission is responsible for identifying cases of human rights violations during the period 1973–1990 involving: (a) persons deprived of liberty or tortured for political reasons, when it appears that the State is responsible for acts committed by its officials or persons in its service; (b) victims of forced disappearance or executed political prisoners, when it appears that the State is responsible for acts committed by its officials or persons in its service; and (c) kidnappings and attempts on the lives of persons, committed by individuals for political reasons.

46. The Advisory Commission is thus the successor to the National Commission on Truth and Reconciliation, also known as the Rettig Commission (1990–1991), the National Compensation and Reconciliation Board (1992–1996), and the Commission on Political Prisoners and Torture, also known as the Valech Commission (2003). On 18 August 2011 the Advisory Commission submitted a report to the President recognizing 30 new cases of political prisoners who disappeared or were executed, and registered 9,795 names in the list of political prisoners and victims of torture.

³⁷ See annex, statistical table for the legal work of the Programme.

³⁸ See annex, statistical table.

Publication of documentation collected by the National Commission on Truth and Reconciliation and the National Commission on Political Prisoners and Torture

47. On 8 February 1991, the Rettig Commission submitted its report, the Rettig Report, to the former President of the Republic, Patricio Aylwin Azócar, recognizing 2,296 cases out of a total of 3,550 complaints received. The report is fully accessible to the public.

48. As previously mentioned, the enormous importance and social relevance of the work done by the Rettig Commission led to the establishment of the National Compensation and Reconciliation Board (CNRR; Act No. 19123 of 1992), the main objective of which was to coordinate, carry out and promote the actions necessary to implement the recommendations contained in the Rettig Report. According to article 2, paragraph 3, of the Act, the CNRR was to:

“3. Hold the information gathered by the National Commission on Truth and Reconciliation and the National Compensation and Reconciliation Board and any information that may be gathered in the future, on cases and issues similar to those it has dealt with. It may also request, collect and process all information currently held by public authorities and may request from private entities information relating to human rights violations or political violence referred to in the report of the National Commission on Truth and Reconciliation.

“Absolute confidentiality must be maintained when accessing the information. The courts, however, may access such information during the proceedings before them.”

49. In accordance with these provisions, the information collected by CNRR, including information collected by the Rettig Commission and by CNRR itself in the course of its work, may be required by the courts in the context of criminal investigations, as it is likely to aid in identifying those responsible for extrajudicial executions, forced disappearances and torture.

50. After the publication of the report of the Valech Commission (established in 2003 by Supreme Decree No. 1040 of the Ministry of the Interior), Act No. 19992 of 24 December 2004 was adopted, which established that the documents, testimony, and information provided to the Commission were to be kept confidential for a period of 50 years and entrusted to the Ministry of the Interior, in order to protect the privacy and safety of the persons recognized as victims.³⁹ Subsequently, the Act establishing INDH reassigned custody of the documents, in accordance with the obligation of confidentiality established by Act No. 19992. This confidentiality in no way covers the report of the Valech Commission. All of the foregoing is without prejudice to the victims' right, with respect to the documents, statements and testimony owned by them, to make their story public or take legal action to determine the criminal responsibility of those who committed the crimes.

51. It must be remembered that, like its predecessors, the Valech Commission had no judicial powers. The thousands of statements and pieces of information that made it possible to recognize the victims for the purposes of reparation pensions and social security, education and health benefits could only be accepted on condition of confidentiality, as established in the Act.

³⁹ See Act No. 19992, art. 15: www.leychile.cl/Navegar?idNorma=233930.

Article 7

Prohibition of torture and cruel, inhuman or degrading treatment or punishment

52. On 12 December 2008, Chile ratified the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, which, *inter alia*, requires the State to take effective legislative, administrative, judicial and other measures to prevent such acts throughout its territory, and to establish one or more inspection bodies for the prevention of torture, to be known as the national preventive mechanism. On 28 December 2009 the Subcommittee on Prevention was informed that in Chile the national preventive mechanism would operate under the National Human Rights Institute (INDH). The executive branch is currently studying ways to implement this.

53. In the context of juvenile justice, article 4, paragraph 3, of the implementing regulations of Act No. 20084⁴⁰ on criminal responsibility of adolescents also expressly prohibits torture and cruel, inhuman or degrading treatment.

54. With regard to complaint procedures for persons deprived of their liberty, the information contained in the previous report on the operation of the prison system is supplemented with the following information.

Filing a complaint of ill-treatment

55. Complaints against prison officials for acts that do not comply with the regulations in force can be filed by the party concerned or by third parties.

56. Complaints filed by the party concerned can be lodged (a) with the centre manager, the operations manager and/or the prison director; (b) with a judge, through a lawyer; (c) with the Prison Criminal Defence System, in prisons that have implemented it; (d) by writing to the competent authorities, such as the regional or national director of the Prison Service or the Ministry of Justice; (e) with prosecutors of appeals courts or judges from the appropriate jurisdiction during their biannual prison inspections.

57. Complaints filed by a third party may be lodged (a) with the courts, by relatives or by concerned third parties (not relatives) through applications for protection or *amparo*; (b) with the Public Prosecution Service through its prosecutors; (c) with the Information and Claims Offices at the local, regional or national level; (d) in writing or at a hearing before the competent authorities, such as the regional or national director of the Prison Service or the Ministry of Justice.

58. Members of the Prison Service are required to report any offences they witness or are informed of within 24 hours from the time they become aware of the criminal act, subject to criminal penalties for omission, and without prejudice to the applicable disciplinary measures (articles 175–176 of the Code of Criminal Procedure).

59. Complaints procedures within the juvenile justice system are established in the implementing regulations of Act No. 20084⁴¹ and SENAME Internal Circular No. 25, dated 16 September 2012. Article 7 of the regulations requires all officials working in residential centres to report to the appropriate authorities any situation that could constitute a violation of rights or ill-treatment, including physical and mental abuse and negligent treatment.

⁴⁰ See Act No. 20084 at www.leychile.cl/Navegar?idNorma=244803&buscar=20084.

⁴¹ See the regulations at www.leychile.cl/Navegar?idNorma=260404&idVersion=2007-04-25.

60. The Internal Circular establishes procedures to be followed in the event of possible physical or psychological abuse or offences against children or adolescents in the care of SENAME and emphasizes the duty to report.

Complaints

61. The following classification of complaints corresponds to the proceedings registered in the Prison Service staff database. Acts of ill-treatment are divided into the following categories: assault against prisoners, unlawful coercion and ill-treatment of prisoners.

62. The following table indicates the number of disciplinary proceedings instituted as a result of complaints filed within the Prison System in 2010 and 2011.⁴²

<i>Status and offence</i>	<i>Year</i>		<i>Total</i>
	<i>2010</i>	<i>2011</i>	
Completed	49	32	81
Assault against prisoners	25	18	43
Unlawful coercion	15	6	21
Ill-treatment of prisoners	9	8	17
Pending	41	90	131
Assault against prisoners	24	40	64
Unlawful coercion	13	28	41
Ill-treatment of prisoners	4	22	26
Total	90	122	212

63. The Prison Service has changed the curriculum for trainee guards and cadets to include courses on prison ethics, professional ethics and human rights, with each course lasting six months.

64. The Investigative Police is responsible, inter alia, for carrying out investigation orders issued by the Public Prosecution Service in relation to offences by public officials, including those committed within Prison Service prisons, and medical malpractice – mainly in emergency rooms of public hospitals. From 2010 to the date of this report a total of 163 investigation orders have been issued (55 in 2010, 83 in 2011 and 25 to date in 2012).

Reply to paragraph 10 of the concluding observations

65. The Carabineros (police) have ordered a review of their practices and procedures to ensure that they are in line with international human rights law. To that end, on 10 November 2011, through General Order No. 2038, the Director-General of the Carabineros ordered the establishment of a specialized unit known as the Human Rights Department, which is attached to the Subdirector-General of the Carabineros and composed primarily of lawyers specializing in public law and human rights. Its duties include:

(a) Incorporating human rights into the doctrine, culture and practices of the Carabineros;

⁴² Information as of 31 March 2012 (pending) and 31 December 2010 and 2011, respectively (completed).

(b) Conducting academic research, contributing to the education process within the institution and disseminating knowledge about human rights and their relationship to public security and police duties;

(c) Promoting police practices in line with international standards, as well as preventing, monitoring and investigating abuses;

(d) Engaging in a free-flowing dialogue with civil society organizations working in the field of human rights, and cooperating with human rights monitoring bodies, whether judicial or quasi-judicial, Chilean or international, by providing information or specialized consultancy in its areas of competence.

66. In order to meet these objectives, on 18 January 2012 the Carabineros signed a memorandum of understanding with the International Committee of the Red Cross (ICRC) with the general objectives of updating, implementing and promoting the integration of international human rights standards and humanitarian principles relevant to the work of the police force. The workplan agreed on with ICRC includes the specific objectives of training trainers from the police ranks in human rights and humanitarian principles as they apply to police work, and building capacity to technically evaluate the extent to which international human rights standards and humanitarian principles are incorporated into the training system, doctrine and best practices of the Carabineros. The Department is currently conducting such an evaluation.

67. Also, the Carabineros have established a hotline to INDH and have appointed human rights liaison officers in every prefecture of the country.

68. Similarly, the National Office on Human Rights Offences of the Investigative Police maintains strategic alliances with the Human Rights Programme; INDH through an inter-agency cooperation agreement signed in April 2012; and the Forensic Medical Service through its Human Rights Unit, on discoveries of human remains.

69. Lastly, with regard to education, in January 2010 the National Office on Human Rights Offences signed a memorandum of understanding with the Inter-American Institute of Human Rights (IIDH), and consequently has received technical assistance visits and adopted a comprehensive strategy for human rights education and training in the programmes offered by the School for Investigation Police, the Higher Academy for Police Studies and the Professional Training Centre. The Office also maintains academic partnerships with the Human Rights Observatory and the Institute for Social Science Research of the Diego Portales University. Human rights training activities for police officers are conducted in partnership with these bodies, while training on non-discrimination is carried out in partnership with the Movimiento Unificado de Minorías Sexuales (Unified Movement for Sexual Minorities) and the Fundación Iguales (Equals Foundation).

Reply to paragraph 11 of the concluding observations

70. First of all, a distinction should be made between solitary confinement and temporary incommunicado detention or isolation. The former is a disciplinary measure with a maximum duration of 10 days, as established in article 81 in relation to article 78 of the Prison Service Regulations, (“the Regulations”),⁴³ while the latter is a preventive measure established in article 84 of the same regulations, with a maximum duration of 24 hours. Given this distinction, the disciplinary measure of solitary confinement does not constitute

⁴³ Supreme Decree No. 518 of 21 August 1998.

incommunicado detention, and it is implemented by following the procedure outlined in the Regulations:

(a) With regard to accused persons, the prison authority is required to immediately inform the court of any disciplinary action taken against them (article 87, paragraph 2, of the Regulations). With regard to convicted persons, a similar requirement is in place, which provides that “any repetition of a disciplinary action must be communicated to the judge responsible for the place of detention prior to its implementation, and such action may be authorized only through a reasoned decision by that judge” (article 87, paragraph 1, of the Regulations);

(b) Respect for the dignity and rights of prisoners is guaranteed under article 6 of the Regulations, which provides that “no prisoner shall be subjected to torture or cruel, inhuman or degrading treatment, in word or deed, nor shall they be subjected to unnecessarily strict implementation of these Regulations”;

(c) Pursuant to article 81 of the Regulations, this measure shall apply only in the event of serious violations of the prison’s internal rules. In such cases, the prison director is required to certify that the place where the measure will be carried out meets suitable conditions, and a doctor or paramedic shall certify that the prisoner is fit enough;

(d) In addition, pursuant to article 86 of the Regulations, prisoners subjected to this measure should be visited daily by the prison director and by the prison doctor or paramedic.

71. In addition to the procedure set out in the preceding paragraphs, the Prison Service has regularly issued circulars and official letters containing instructions on implementing the measure. For example:

(a) Circular No. 49 of 17 March 2009, from the National Director which repeats instructions on the procedure for the disciplinary measure of solitary confinement, establishing and proposing an adjustment to that measure;

(b) Circular No. 277 of 9 November 2011, from the Deputy Director for Operations, which reiterates the need for communication and, when necessary, authorization by the courts to implement the measure.

Reply to paragraph 12 of the concluding observations

72. With regard to military jurisdiction, Act No. 20477 of 30 December 2010 amending the jurisdiction of military tribunals⁴⁴ excluded civilians and minors from military jurisdiction. It also established that, in cases where both civilians and military personnel jointly commit or participate in illegal acts, the civilians shall be tried by ordinary courts and the military personnel by military tribunals. Lastly, it set a deadline of six months for the transfer to the ordinary courts of all the proceedings initiated or under way in military tribunals at the time the Act entered into force.

Article 8

Prohibition of slavery, trafficking, servitude and forced labour

73. The first study on trafficking in persons conducted by the International Organization for Migration (IOM)⁴⁵ in 2006 indicated that Chile was a country of origin, transit and

⁴⁴ Act No. 20477 available at www.leychile.cl/Navegar?idNorma=1021613.

⁴⁵ First Exploratory Study on Trafficking in Persons, IOM, December 2006.

destination for victims of sexual and labour exploitation. The second IOM study, conducted in 2008,⁴⁶ identified 147 victims in 36 cases, 87.76 per cent of which involved international trafficking while 12.24 per cent involved domestic trafficking. Of the total number of victims, 59.86 per cent were women and 40.14 per cent were men. Chinese was the nationality most widely represented among the victims, followed by Paraguayan, Chilean and Peruvian.⁴⁷

74. In accordance with the State's international obligations,⁴⁸ Chile adopted Act No. 20507 of 8 April 2011 criminalizing the smuggling of migrants and trafficking in persons and establishing norms to prevent and more effectively prosecute those offences.⁴⁹ The Act amended criminal legislation by introducing a distinction between the smuggling of migrants and trafficking in persons, in accordance with the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime (the Palermo Protocol).⁵⁰ It also defined effective cooperation as an extenuating circumstance, regulated the use of undercover agents to investigate offences, granted temporary residence to foreign victims of trafficking in persons, and ensured protection of the physical and psychological integrity of smuggled migrants and victims of trafficking in persons. The Act stipulates that if the victim is a minor, that alone is enough to constitute the offence, in line with the standards on special protection for children and adolescents victims of these offences.

75. According to the records of the Investigative Police, from 2006 to 2010 10 complaints were filed and 57 investigation orders issued relating to trafficking in persons.⁵¹

Article 9

Prohibition of arbitrary arrest or detention

76. Reference is made to what was stated in the previous report in relation to the amendments to the new Code of Criminal Procedure concerning the rights of detainees, the obligation to bring the detainee before a judge without delay, pretrial detention, incommunicado detention, the remedy of *amparo* established in the Constitution and identity checks.

⁴⁶ Second Study on Trafficking in Persons in Chile, IOM, 2008. This study was requested by the temporary president of MERCOSUR at the office of IOM in Geneva to assess the situation in Argentina, Chile and Uruguay.

⁴⁷ Chinese are overrepresented because of two cases of trafficking in persons for purposes of labour exploitation that occurred in the Region V, Valparaíso.

⁴⁸ Chile ratified the United Nations Convention against Transnational Organized Crime on 29 November 2004 (in force since 16 February 2005), which is supplemented by three protocols: (a) the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children (Palermo Protocol); (b) the Protocol against the Smuggling of Migrants by Land, Sea and Air; and (c) the Protocol against the Illicit Manufacturing of and Trafficking in Firearms, Their Parts and Components and Ammunition. For details, see the previous report.

⁴⁹ Act No. 20507 available at: www.leychile.cl/Navegar?idNorma=1024319.

⁵⁰ See articles 411 bis and ter of the Criminal Code in annex II.

⁵¹ See annex for statistical tables.

Article 10

Humane and dignified treatment during deprivation of liberty

77. The Government of Chile has decided to undertake a comprehensive reform of the prison system in order to address difficulties and shortcomings and strengthen efforts to fight crime while fully respecting fundamental rights. The reform plan, in force since May 2011, focuses on the following lines of action: continuous training for and professionalization of the Prison Service; using prison sentences rationally and encouraging alternative sentences; improving the rehabilitation and social reintegration of offenders through a special labour statute encouraging their gainful employment; promoting training and education opportunities in prisons; redesigning the prison system by building four model prisons in the period 2011–2014, including three low-security prisons and a reception and classification centre, thus providing about 8,600 new places through an investment of an estimated \$410 million. With regard to promoting alternatives to prison sentences, a bill stipulating, inter alia, the use of electronic bracelets for low-risk criminals is in its final reading (Bulletin No. 5838-07), and there is also a bill granting remission in return for an undertaking not to reoffend by commuting the sentence to a 5-year probation period under the supervision of the Prison Service (Bulletin No. 7533-07).

78. With regard to the juvenile justice system, ever since the reform on the criminal responsibility of adolescents was enacted in 2007 (Act No. 20084), continual efforts and progress have been made in providing dignified treatment consistent with international obligations. Orientation and assessment centres and behaviour rehabilitation centres are being replaced by temporary detention centres and closed centres run by SENAME – unlike centres for adults, which are still run by the Prison Service. Work with young offenders is centred on their rehabilitation and social integration, and the relevant national guidelines are established in the technical guidance being developed and disseminated by SENAME.

Article 11

Prohibition of imprisonment for debt

79. As stated in previous reports, the national legal system does not include any legal provisions calling for imprisonment for failure to fulfil contractual obligations or allowing for precautionary measures to be taken against the person, except in the case of failure to pay maintenance, in accordance with international law.

Article 12

Freedom of movement

80. The Ministry of the Interior is preparing a bill to replace the current legislation on migration and will submit it to parliament for debate in the second half of 2012. The various sectors of the Government at both the central and regional levels and representatives of human rights organizations and civil society have been involved in the preparation of the bill. Its main objective is to establish public policies to align migration processes with the country's needs, so as to (a) promote economic development by bringing human resources into the country to provide knowledge, technology and labour; (b) promote social development by regularizing the situation of foreigners in the country so that they can integrate into Chilean society, join the labour market and obtain social assistance that meets their needs; (c) contribute to regional development by steering immigration towards priority geographical, economic, scientific or cultural areas that are central to the country's development.

81. The guiding principles of the reform include:

(a) Observance of domestic law. Foreigners in the country shall enjoy the rights and be bound by the obligations enshrined in the Constitution and the laws;

(b) Respect for human rights. Law enforcement authorities must respect the human rights of foreigners in Chile, giving special consideration to the situation of migrant women and children, in order to comply with the country's international obligations. Special attention has been given to the principles contained in the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (ratified by Chile in 2005) and the concluding observations issued by the Committee on Migrant Workers (September 2011) on the initial report of Chile to that body;⁵²

(c) Family reunification. Foreigners resident in Chile will be eligible for family reunification with their spouse and immediate family, with special consideration given to family ties with Chileans;

(d) Non-discrimination. The State guarantees that all foreigners shall enjoy equality in the exercise of the rights set out in the Constitution and laws and in the international treaties that have been ratified by Chile and are currently in force, regardless of their sex, race or ethnic origin, religion or beliefs, abilities, ideology, age or sexual orientation. One of the reform's main objectives is to establish effective equality among all residents of the country, both foreign and Chilean;

(e) Labour rights and obligations. Foreigners resident in Chile enjoy the same labour rights and obligations as Chileans.

Article 13

Situation of foreigners under the Covenant

82. Reference is made to what is stated in the initial report of Chile on the implementation of the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families regarding the grounds for deporting a foreigner from the country and the public authorities competent to make such decisions.

83. Migrant workers who are documented or in a regular situation may be deported only by a decision of the Ministry of the Interior that has been officially issued in the form of a supreme decree, as stated in article 84 of the Decree Law on Foreigners. The same law also provides that a request for a judicial remedy may be lodged in writing before the Supreme Court within 24 hours of the migrant worker's notification of such a decision, with a view to suspending the deportation order.

84. Deportation orders are not used as a means of depriving workers in a regular situation of the rights arising out of their authorization of residence and work permit. Presidential Instruction No. 9 of September 2008 on national migration policy states that: "The State shall ensure the harmonious integration of foreign nationals legally residing in Chile into the national community and to that end shall promote equality of treatment with regard to employment, social security, cultural rights and individual freedoms ...". It is the duty of the State to ensure the exercise of the right to work and to take all necessary measures to punish and, as far as possible, put an end to the recruitment of immigrants in an irregular situation, without infringing immigrants' labour rights with respect to their employers. Further information can be found in the initial report of Chile on the implementation of the International Convention on the Protection of the Rights of All

⁵² See CMW/C/CHL/1.

Migrant Workers and Members of Their Families and the corresponding replies to the list of issues prior to reporting.⁵³

85. Notwithstanding the above, the bill on pardons (Bulletin No. 7533-07) provides for the possibility of commuting prison sentences against foreigners on the grounds that they are outside their country of origin.

Article 14

Procedural guarantees

Reply to paragraph 7 of the concluding observations

86. On 8 October 2010, Act No. 20467 amending the Counter-Terrorism Act (Act No. 18314)⁵⁴ was adopted, addressing the following subjects.

Narrowing the concept of terrorist offence

87. The amendments include:

- (a) Restricting the definition of a terrorist offence;
- (b) Abolishing the presumption of an intention to terrorize the population when the act is committed by any of the means listed;
- (c) Punishing arson attacks on woodlands, cornfields, pastures, hills and planted fields under ordinary legislation;
- (d) Removing the reference to factors permitting a variation of the sentence, whereby the judge could increase the penalty depending on how the offence was carried out or the probability of reoffending.

Procedural changes

88. The main points to highlight are the following:

- (a) The penalty is decreased if the accused effectively cooperates in clarifying the facts or identifying those responsible;
- (b) The right to question witnesses whose identity is protected is established;
- (c) It is established that adolescent criminal law shall be applied for juvenile defendants.

Article 15

Non-retroactivity and principles of criminal law

89. As stated in previous reports, the principles of non-retroactivity of criminal law and of the most favourable law are constitutionally guaranteed in Chile.

⁵³ See CMW/C/CHL/Q/1/Add.1.

⁵⁴ See Act No. 20467 at www.leychile.cl/Navegar?idNorma=1017644.

Article 16

Recognition as a person before the law

90. Reference is made to the statements made in previous reports on the provisions in both the Constitution and the laws ensuring and regulating the exercise and enjoyment of the rights under this article.

Article 17

Right to privacy

91. Reference is made to the statements made in previous reports on the provisions in both the Constitution and the Criminal Code ensuring and regulating the exercise and enjoyment of the rights under this article.

Article 18

Freedom of thought, conscience and religion

92. The Regulation on Religious Assistance in the establishments of the Armed Forces and the public security forces (Supreme Decree No. 155 of 2007)⁵⁵ entered into force on 26 May 2008, updating the implementation of the Religions Act (Act No. 19638 on the legal status of churches and religious organizations, of 14 October 1999).⁵⁶ The Regulation established the right to religious assistance and the procedures by which the various religious bodies may provide it within the institutions of the Armed Forces and the public security forces. It also stated that the Commanders-in-Chief of the Armed Forces and the public security forces were responsible for adopting the necessary resolutions and internal orders to enable them to do their work in a manner consistent with the purposes of each institution.

93. Information on the implementation of the regulation in each institution is given below.

Chilean Army

94. Since the promulgation of the Religions Act in 1999, the Chilean Army has issued a series of instructions (manuals, orders, commands, circulars and working regulations) on the freedom of conscience and the free practice of all religions within the institution. These instructions have been strengthened by the entry into force of the regulation referred to in the preceding paragraph. They include the following:

(a) On 16 September 2008, regulations were issued at the institutional level on religious assistance within the Army, regulating the appointment of the National Chaplain, establishing the Evangelical Protestant Office of Religious Affairs, and setting out a procedure to include voluntary pastors in the Army.⁵⁷ Religious Assistance in the Army (Catholic) was established by law in 1911 on the basis of an agreement signed between the Holy See and the State of Chile on 3 May 1910;⁵⁸

⁵⁵ See Supreme Decree No. 155 at: www.leychile.cl/Navegar?idNorma=1017644.

⁵⁶ See Act No. 19638 at: www.leychile.cl/Navegar?idNorma=145268.

⁵⁷ Command Order CJE CAAE (R) No. 1848/15.

⁵⁸ Act No. 2463 of 19 February 1911 establishing the administrative organization of the Military Diocese.

(b) On 22 September 2008, the accreditation and services of priests, pastors and ministers were regulated by a basic information issuance;⁵⁹

(c) On 25 March 2011, the need for compliance throughout the Army with the provisions on religious aspects was reiterated in a circular;⁶⁰

(d) On 5 August 2011, guidelines were established on the accreditation of priests, pastors and ministers,⁶¹ and provisions were issued on the operation of the Office of Religious Affairs, National Evangelical Protestant Chaplaincy, 2010–2011;⁶²

(e) On 12 September 2011 a circular was issued reiterating the need for compliance with the provisions on safeguarding religious volunteer work, promoting religious assistance for all personnel, reinforcing the work of Catholic chaplains and voluntary (evangelical protestant) pastors, and authorizing personnel to attend Christian meetings.⁶³

95. The Religious Assistance Service was established on a permanent basis to provide guidance, under a single heading, for the spiritual, religious and administrative needs of personnel and their families. The following provisions on its operation have been issued:

(a) On 2 June 2010 the Army Directorate of Finance made arrangements within the accounting system for the Evangelical Protestant Office of Religious Affairs to levy 0.5 per cent of the pay of personnel who wished to make a voluntary contribution.⁶⁴ The Manual on the National Evangelical Protestant Chaplaincy and the Manual on Procedures for Investments and Expenses Related to Voluntary Contributions are currently under study and review. Both manuals will strengthen the procedures for and administration of voluntary contributions that Army personnel will soon be making to the National Chaplaincy and the Office of Religious Affairs of the Army;⁶⁵

(b) On 3 March 2011, the Order on the Organization and Operation of the Evangelical Protestant Office of Religious Affairs, which comprises a National Chaplain and 24 accredited voluntary pastors, was issued and disseminated;⁶⁶

(c) On 28 April 2011, the Order on the Organization and Operation of Religious Assistance in the Army (Catholic), which comprises a Head of Service and 38 chaplains throughout the institution (including deacons), was issued and disseminated;⁶⁷

(d) On 1 June 2011, the Order on the Organization and Operation of the Department of Religious Affairs at Assistance Headquarters, was issued and disseminated;⁶⁸

(e) On 13 July 2011, the Personnel Officer (or the assistant of the respective unit) was designated as a focal point to supplement the activities of accredited chaplains and pastors.⁶⁹

⁵⁹ CAAE JEF. ASIST. (R) No. 1848/10.

⁶⁰ COB JEF. ASIST. OAR (P) No. 1848/120.

⁶¹ CGP I (P) No. 1848/322.

⁶² CAAE 1SF. ASIST. OAR (P) No. 1848/61.

⁶³ CGP COB (P) No. 1848/364.

⁶⁴ DIFE SD. A.F. CONT. (R) No. 10.100/385.

⁶⁵ See annex for information on the allocation of institutional resources and the 0.5 per cent voluntary contribution to Religious Assistance in the Army (Catholic).

⁶⁶ CAAE JEF ASIST. OAR (R) No. 3192/13. See annex for details of the structure.

⁶⁷ COB JEF ASIST SER. (R) No. 3192/2. See annex for details of the structure.

⁶⁸ COB JEF ASIST DAR (R) No. 3192/924.

⁶⁹ COB JEF. ASIST. DAR (P) No. 1848/244.

96. As for the physical spaces available for religious worship within the Army, the Catholic religious assistance has 34 chapels and the Evangelical Protestant religious assistance 4.⁷⁰

97. The following table indicates the religious affiliation of Army personnel:⁷¹

<i>Affiliation</i>	<i>Number</i>	<i>Percentage</i>
Roman Catholic	21 485	83.03
Evangelical Protestant	3 453	13.34
Agnostic	243	0.94
Atheist	196	0.76
Other religious options	243	0.94
Did not answer, or on mission	256	0.99
Total	25 876	100

Chilean Navy

98. Following the entry into force of the Regulation on Religious Assistance, the Navy issued a directive dated 5 September 2008 on procedures concerning religious and spiritual assistance for its personnel,⁷² which in essence (a) expressly guarantees respect for the religious beliefs of all Navy personnel, regardless of their sex, rank or age; (b) establishes procedures and rules governing such assistance, in particular on the provision by the Navy of the facilities and coordination needed to ensure the proper exercise of its members' right to receive religious and spiritual support on request; (c) establishes a procedure for accrediting the various religious denominations within the Navy.

99. The Navy provides physical spaces within its military academies and hospitals where the various religious denominations may offer support.

100. The following table indicates the religious affiliation of Navy personnel:⁷³

<i>Affiliation</i>	<i>Number</i>	<i>Percentage</i>
Catholic	16 560	71.95
Evangelical	2 759	11.99
Mormon	115	0.50
Adventist	177	0.77
Jehovah's Witness	1	0.00
Agnostic	60	0.26
Anglican	17	0.07
Lutheran	28	0.12

⁷⁰ See annex for details of the location of the chapels.

⁷¹ Data based on 2011 statistics from the registry office on officers, permanent staff and civilian staff of all categories in the Army.

⁷² Directive C.J.A. ORD. No. 1848/4426, VRS.

⁷³ Data based on statistics for officers, ratings, civilian staff, professionals governed by Act No. 15.076 and professional troops, reserve officials, reserve officers and ratings, contracted personnel, civilian instructors, military instructors, ministry employees, self-employed civilians, short-term labourers and day labourers.

<i>Affiliation</i>	<i>Number</i>	<i>Percentage</i>
Orthodox	6	0.03
Jewish	1	0.00
Muslim	1	0.00
Pentecostal	38	0.17
Baptist	9	0.04
Hindu	1	0.00
Buddhist	1	0.00
None	39	0.17
Other	87	0.38
No data	3 115	13.53
Total	23 015	100

Chilean Air Force

101. Religious and spiritual support within the Air Force is provided by the Religious Assistance of the Roman Catholic Faith (Catholic Chaplaincy) and the Evangelical Protestant Chaplaincy, which together account for 93 per cent of Air Force personnel who practise a religion. Steps taken in this area include (a) appointing a National Evangelical Protestant Chaplain and hiring two deacons to provide pastoral care and perform administrative tasks; (b) granting authorization at the institutional level for students in military academies and citizens performing their military service in the Air Force to hold meetings for prayer, counselling and worship; (c) including the two chaplains (Catholic and Evangelical) in civilian military ceremonies.

102. The physical spaces provided by the Air Force for religious worship include 13 Catholic facilities⁷⁴ and 3 Evangelical facilities.⁷⁵

103. The following table indicates the religious affiliation of Air Force personnel:

<i>Affiliation</i>	<i>Number</i>	<i>Percentage</i>
Roman Catholic	7 294	81.7
Evangelical	991	11
Other	264	3
Non-practising	384	4.3
Total	8 933	100

Reply to paragraph 13 of the concluding observations

104. With regard to conscientious objection to military service, as stated in the previous report, Act No. 20045 of 2005 modernizing compulsory military service⁷⁶ introduced exemptions and exclusions from this constitutional duty. Firstly, ministers of religion

⁷⁴ Six churches, six chapels and one oratory in the various Air Force garrisons.

⁷⁵ The following are distributed among the various garrisons in the metropolitan region: the Office of the National Chaplain, the Oratory of the Second Air Brigade (Pudahuel), and the Oratory of the "El Bosque" Airbase.

⁷⁶ See Act No. 20045 (footnote 16 above).

belonging to churches, faiths and religious institutions with public law status were exempt by virtue of their vocation. From 2007 to 2011, a total of 691 young persons were exempted on this ground.

105. Secondly, direct descendants, as defined in the Act, of the victims of violations of human rights or political violence were also exempted. From 2007 to 2011, a total of 1,132 young persons were exempted on this ground.⁷⁷

106. Current legislation does not provide for exemption from military service — a constitutional duty for every Chilean who has reached 18 years of age — on the ground of conscientious objection as such. However, the Act established voluntary recruitment as the primary method of filling gaps in the ranks. Conscription is still used, but only secondarily, where there are not enough volunteers to fill the gaps, and then on a lottery system. From 2007 to 2011 gaps in the ranks were filled only with volunteers, as shown in the following table.

<i>Year</i>	<i>Conscription pool</i>	<i>Young volunteers</i>	<i>Vacancies</i>
2007	146 593	26 820	14 118
2008	146 058	28 910	13 180
2009	142 022	26 901	12 260
2010	138 707	23 211	12 550
2011	136 650	20 431	11 268

Article 19

Freedom of opinion and expression

107. Act No. 20500 of 16 February 2011 on Associations and Civic Participation in Public Affairs is the legal instrument institutionalizing civic involvement in Chile. This section will outline its scope in relation to the freedom of opinion and civic participation. Matters relating to freedom of association will be addressed in the section on article 22 of the Covenant.

108. The Office of the Minister and Secretary-General of Government is designing and promoting a policy on responsible civic participation, the main objectives of which are (a) to strengthen civil society, promoting a culture of co-responsibility; (b) to improve the efficiency and effectiveness of public policies by involving citizens; (c) to improve and strengthen information channels and public opinion forums, encouraging State bodies to provide a high-quality and timely response; and (d) to promote citizen oversight of the work of public bodies.

109. Government agencies are thus directly responsible for implementing mechanisms offering spaces and channels for public participation and expression of views, in order to improve the public management of access to the media.

Article 20

Prohibition of incitement to discrimination, violence and war

110. Reference is made to the previous report.

⁷⁷ See annex for table with disaggregated data.

Article 21

Right to peaceful assembly

111. As noted in previous reports, the Constitution safeguards the right of all persons to assemble peacefully, without prior authorization and without arms, for political, religious, social or any other purposes, with the sole exception of meetings held for the purposes of violence or terrorism, and with the condition that meetings or demonstrations held in streets, squares and other public places must be governed by the general police regulations.⁷⁸

112. During the student demonstrations of 2011, the National Human Rights Institute (INDH) continuously monitored police actions in coordination with the Carabineros, observing their operations and if necessary, reporting, actions that were not in line with best police practice. This led to the establishment of the police Human Rights Department mentioned previously.⁷⁹

Article 22

Right of association

113. Act No. 20500 on Associations and Civic Participation in Public Affairs⁸⁰ has strengthened the framework for the exercise of the right of association with regard to civic participation and public affairs. Its most important aspects include the following:

(a) It recognizes the right of persons to associate freely for lawful purposes and the duty of the State to promote and support such initiatives;

(b) It defines concepts such as “public interest organizations” and “voluntary organizations”, indicating their characteristics and management requirements;

(c) It provides that the Civil Registry and Identity Service should maintain a national registry of non-profit legal entities (operational as of 16 February 2012) containing information on the establishment, modification, dissolution or termination of such associations, and on the bodies that manage or administer them;

(d) It establishes the Fund to Strengthen Public Interest Organizations, which is intended to finance national and regional projects and programmes involving such organizations. The Fund will be managed by a national council that will, inter alia, adopt a general framework and administrative requirements and decide which projects and programmes should be financed by the Fund;

(e) It amends the Organic Act establishing the Framework of the State Administration, stipulating the following specific obligations:

(i) Each State administration must establish how persons and organizations may participate in areas within its field of competence;

(ii) These modalities should be kept up-to-date and published electronically or by other means;

⁷⁸ See also the information provided concerning article 4 of the Covenant with regard to states and situations of emergency under which the right to peaceful assembly may be suspended or restricted.

⁷⁹ See the section of the report dealing with article 7 of the Covenant and responding to paragraph 10 of the concluding observations.

⁸⁰ See Act No. 20500 at www.leychile.cl/Navegar?idNorma=1023143.

(iii) State administrations must give a public account of the management of their actions, plans, policies, programmes and budgets;

(iv) They must announce matters of public interest on which they wish to obtain the public's opinion by means of consultations, and consultations must be informed, pluralistic and representative;

(v) The views collected must be evaluated and considered by the administration;

(vi) They must establish advisory civil society councils made up of a diverse, representative and pluralistic sample of members of non-profit associations working in the relevant area of competence;

(f) The Organic Act on Municipalities, is amended to establish the ways and subject areas in which citizen groups can participate in management at the communal level, for example with regard to urban planning or the mayor's annual report.

114. In all other respects, as stated in the previous report, article 19 paragraph 15, of the Constitution guarantees the right of association and the right to freely form, join, remain in or withdraw from organizations, and to do so without prior authorization, provided that the purposes of or reasons for the association are lawful. Organizations such as trade unions, professional associations and community and sports organizations regulated by law are subject to a registration system under which they must meet certain requirements that the authorities cannot define in advance but rather evaluate once the organization has obtained legal status.

Reply to paragraph 14 of the concluding observations

Right to form trade unions

115. The right to form and join trade unions, recognized by the Constitution under the conditions specified by law, will be always voluntary. Similarly, article 212 of the Labour Code recognizes the right of workers in the private sector and in State-owned enterprises to form, without prior authorization, any trade union organizations they consider appropriate, with the sole condition that those associations must comply with the law and their own statutes. As explained in previous reports, there is no prohibition against civil servants forming trade union associations.

116. As for the Armed Forces and the public security forces, article 217 of the Labour Code stipulates that "officials of State-owned enterprises attached to the Ministry of Defence or connected to the Government through that Ministry may form trade union organizations in accordance with the provisions of this Code, without prejudice to the rules on collective bargaining". Article 304 of the same Code stipulates that "collective bargaining may take place in private sector companies and in those where the State contributes, participates or is represented. There shall be no collective bargaining in State-owned enterprises attached to the Ministry of National Defence or connected to the Government through that Ministry, or in enterprises where it is prohibited under special legislation."

117. Chile long ago ratified the relevant International Labour Organization (ILO) conventions: the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87) and the Right to Organise and Collective Bargaining Convention, 1949 (No. 98) (both ratified in February 1999); and the Workers' Representatives Convention, 1971 (No. 135) (ratified on 13 September 1999). Those conventions have been consistently implemented, and the following bills are currently being discussed in parliament:

(a) Constitutional amendment guaranteeing the right to collective bargaining for civil servants and providing for an automatic annual adjustment of their base pay (Bulletin No. 6218-13 of 20 November 2008);

(b) Constitutional amendment guaranteeing the right to collective bargaining and abolishing the prohibition on strikes in the public administration (Bulletin No. 7581-07 of 7 April 2011). This bill is in its first reading.

Priority programmes

118. One of the priority issues in the area of labour that the President stressed in his speech of 21 May 2010 was respect for workers' rights, encouraging a participatory and constructive relationship with trade unions and workers. The following programmes have been implemented in this regard:

(a) The Trade Union College: offers high-quality training for leaders and workers, thereby strengthening and building national and sectoral leadership, promoting a new approach to labour relations, and improving negotiating and consensus-building skills among the various stakeholders in the labour sector;

(b) Round-table discussions: organized by the Round-Table Unit in the Office of the Under-Secretary for Labour, these are intended to create strong ties between employers, Government authorities and the various trade union organizations, with a view to their responsible participation in Government reform processes. From 2010 to 2011 a total of 48 round-table discussions were held;

(c) Modernization of the Labour Directorate: in order to optimize relations between workers and employers, a modernization plan was launched in 2010 with the main objective of reducing waiting times by creating a web platform for services such as (i) fast-track claims, whereby complaints can be filed by Internet, reducing the time it takes for the inspector to intervene with the employer to resolve the conflict; and (ii) online procedures that enable the employer to perform various tasks, such as certifying compliance with labour and pension obligations, certifying employment and pension records, notice of termination of contract, proof of employment, requests for special work schedules and the registration of joint committees.

Article 23 Protection of the family

119. With regard to protection of the family as a natural and fundamental element of society, the following laws should be mentioned: Act No. 20524 of 13 July 2011, which increased the minimum monthly income and family and maternal benefits and allowances; Act No. 20530 of 13 October 2011, which established the new Ministry of Social Development; and Act No. 20379 of 12 September 2009, which established the Intersectoral Social Protection System and granted institutional status to the *Chile Crece Contigo* ("Chile grows with you") comprehensive child protection subsystem. These measures strengthen the socially oriented institutional framework by, inter alia, establishing results-based evaluations and cost-effectiveness analyses. In addition, measures are being taken to provide better living conditions for families and persons living in extreme poverty, including psychosocial support and benefits such as personalized assistance from a qualified specialist to help beneficiaries of the *Chile Solidario* ("solidarity in Chile") programme⁸¹ develop the personal and family skills necessary to achieve a minimum

⁸¹ A social protection system for families living in extreme poverty, established by Act No. 19949 of

standard of living. This includes an intervention strategy to keep beneficiaries effectively in touch with social networks and make sure they have access to the available benefits.

120. On 13 October 2011 a bill on ethical family income was submitted to Congress. The bill establishes the subsystem for social promotion and protection known as “Security and Opportunities” (Bulletin No. 7992-06), which is aimed at vulnerable individuals and families living in poverty. This initiative is intended to provide socioeconomic security through cash benefits, thereby enabling beneficiaries to improve their conditions and quality of life while preserving their dignity. It also involves implementing measures (opportunities) with a view to lifting the beneficiaries out of poverty. These are divided into two categories: (a) fulfilment of “tasks”, such as participating in guided processes to integrate them in the labour market, and meeting “minimum conditions” for obtaining cash benefits; and (b) through their own efforts, attaining “goals” designed to produce sustainable behavioural changes that will help them rise out of poverty. The bill is currently in its second reading in the Senate.

121. In the area of strengthening of the family and protection of mothers, in 2011 the National Service for Women (SERNAM) ran the “Women and Motherhood: Committed to Life” programme for mothers in difficult situations linked to their maternity, from the time of pregnancy. The programme aims to provide them with detailed information, expert guidance, support, monitoring, related referral services and face-to-face psychosocial care, and is divided into the following two lines of action:

(a) Support for pregnant teenage girls and teenage mothers to help them develop a life plan balancing motherhood with formal education, work and family life, so as to improve the quality of life for themselves, their children and their families;

(b) Maternity support as such, which covers:

(i) Unwanted or unplanned pregnancy, and pregnancy in situations of conflict;

(ii) Mourning the death of a child from any cause, natural or inflicted;

(iii) Adoption;

(iv) Prenatal and post-partum depression;

(v) Teenage pregnancy;

(vi) Bonding, breastfeeding and early learning for newborns;

(vii) Taking postnatal parental leave;

(viii) Family law issues such as maintenance, the personal care of children (guardianship) and direct and regular contacts (visiting).

Article 24

Protection of children

122. With regard to the right of every child to the protective measures they need as a minor, from the family, society and the State, Act No. 20379 of 12 September 2009 established the Intersectoral Social Protection System and granted institutional status to the *Chile Crece Contigo* (“Chile grows with you”) comprehensive child protection subsystem.⁸² This subsystem guarantees special benefits, established by law, for children in vulnerable

2004 and amended in 2011 to improve the register of social information established by the Act.

⁸² See Act No. 20379 at <http://www.leychile.cl/Navegar?idNorma=1006044>.

situations. Pursuant to article 9 of the Act, its aim is to support the development of children who receive care within the public health system, from the first prenatal check-up to their entry into the school system at the pre-kindergarten level or equivalent. The subsystem includes a programme to support biological and psychosocial development through personalized development monitoring and coaching for children who meet certain criteria, and guarantees them certain benefits (art. 12).

123. As for specific policies, in accordance with Act No. 20.032,⁸³ the National Service for Minors (SENAME) carries out programmes for rights promotion, protection and specialized rights restoration programmes with a gender and special needs perspective, and focusing on interculturality and quality. These programmes are conducted throughout the country in conjunction with accredited collaborating bodies. In 2011, services were provided for 162,574 children and adolescents victims of ill-treatment, psychological and/or sexual abuse, child labour, including commercial sexual exploitation, non-liability, living on the street, abandonment or serious neglect by parents.

124. SENAME has also implemented additional institutional and intersectoral strategies, such as the New Life Programme, partnerships with international bodies and studies.

125. With regard to legal reforms aimed at protecting children and adolescents whose rights have been violated, Act No. 20526⁸⁴ was enacted on 13 August 2011 to punish sexual harassment of minors, virtual child pornography and possession of child pornography, and Act No. 20536⁸⁵ was enacted on 17 September 2011 to punish school violence.

Article 25

Political rights

Reply to paragraph 15 of the concluding observations

126. The Committee's concern that "the [binominal] electoral system in use in Chile can hamper the effective parliamentary representation of all individuals" is groundless, as indicated by the results of the last parliamentary election, held in 2009, in which representatives of eight political parties were elected to the Chamber of Deputies, including some with a very low percentage of the vote, such as the Regionalist Independent Party, with 4 per cent of the vote, the Radical Social Democrat Party, with 3.8 per cent, the Communist Party, with 2.02 per cent, and two independent candidates. Only four political parties failed to win parliamentary representation, and they earned a mere 2.2 per cent of the vote combined. In several of the most widely recognized democracies, such as the United States of America, the United Kingdom, Canada, Australia and France, which use a first-past-the-post system, or in Germany, where a 5 per cent minimum vote is required to win seats, which are allocated proportionately, such a broad and varied representation of political forces as in Chile would not have been possible.

127. However, both the Government and the opposition have indicated their willingness to review the electoral system, with a view to improving or even replacing it.

⁸³ Establishes a support system for children and adolescents through the National Service for Minors network. See Act No. 20032 at www.leychile.cl/Navegar?idNorma=240374&buscar=20032.

⁸⁴ See Act No. 20.526 at <http://www.leychile.cl/Navegar?idNorma=1028636&buscar=20526>.

⁸⁵ See Act No. 20.536 at <http://www.leychile.cl/Navegar?idNorma=1030087&buscar=20536>.

Article 26

Equality before the law and non-discrimination

128. As noted in the previous report, the Constitution expressly guarantees equal treatment and non-discrimination, article 1, paragraph 1, stipulating that “people are born free and equal in dignity and rights”. This is strengthened by the constitutional guarantees set out in article 19, particularly in paragraph 2, which states that “in Chile there are no privileged persons or groups”, and “neither the law nor any authority may establish arbitrary differences”. Article 19, paragraph 16 (2), also states, with regard to the exercise and protection of the freedom to work, that “any discrimination that is not based on personal skills or ability is prohibited”.

129. With regard to labour matters, article 2 of the Labour Code reinforces these constitutional provisions, especially paragraphs 3, 4, 5 and 6, which establish that “acts of discrimination are contrary to the principles of labour law”. Such acts are defined as “any distinction, exclusion or preference based on race, colour, sex, age, civil status, union membership, religion, political opinion, nationality, or national or social origin whose object is to eliminate or modify equality of opportunity or treatment in employment or occupation”. That said, distinctions based on the qualifications required for a post shall not be considered to be discrimination. On the other hand, offers of work made by an employer listing any of these conditions as a requirement to apply shall be deemed discriminatory.

Reply to paragraph 18 of the concluding observations

130. The international treaties, legal reforms, bills and public policies aimed at eradicating employment discrimination against women are listed below. Also included are initiatives to benefit persons with disabilities, older persons and native peoples.⁸⁶

International treaties

131. The following ILO conventions on equality and non-discrimination have long been in force in Chile: (a) the Discrimination (Employment and Occupation) Convention, 1958 (No. 111), ratified by Chile on 20 September 1970; (b) the Equal Remuneration Convention, 1951 (No. 100), also ratified on 20 September 1970; and (c) the Workers with Family Responsibilities Convention, 1981 (No. 156), ratified on 14 October 1994.

Legal reforms

132. The legal reforms enacted during the reporting period and aimed especially at achieving greater equality before the law and eradicating discrimination against these vulnerable groups include the following:

(a) Act No. 20087 of 3 January 2006, replacing the labour procedure established in book V of the Labour Code,⁸⁷ amended labour law by introducing a procedure to protect fundamental rights, which include equality and non-discrimination as set out in article 2 of the Labour Code;⁸⁸

⁸⁶ See also footnote 4 of the fourth periodic report on the implementation of the International Covenant on Economic, Social and Cultural Rights, and footnote 5 of the fifth and sixth periodic reports on the implementation of the Convention on the Elimination of All Forms of Discrimination against Women.

⁸⁷ See Act No. 20.087 at <http://www.leychile.cl/Navegar?idNorma=245804>.

⁸⁸ See paragraph 6 of the labour protection procedure (annex).

(b) Act No. 20166 of 12 February 2007, establishing the right of working mothers to breastfeed their children even when no childcare facilities are available,⁸⁹ states that working women shall be entitled to at least one hour per day to feed children under the age of 2, and that this applies to all working women who have children of that age, even if they do not have the right to childcare facilities;

(c) Act No. 20255 of 17 March 2008 on pension reform⁹⁰ raises women's pensions by granting a bonus for each live birth or adoption of a child. This benefit is granted to all women who meet the legal requirements and retired after 1 July 2009 under the solidarity pension system or Decree Law No. 3500, or who become eligible for a survivor's pension;

(d) Act No. 20348 of 19 June 2009 protecting the right to equal pay⁹¹ guarantees the principle of equal pay for men and women who perform the same work. The Act included in the Administrative Statute the obligation that "contracted workers must be assigned a grade according to the importance of the job they perform and their skills, qualifications and aptitude for the job, and they shall thus be entitled to the salary and other remunerations corresponding to that grade, without any discrimination that could undermine the principle of equal treatment for men and women". The Act also amended article 62 bis of the Labour Code by including the phrase "the same work" instead of "work of equal value", so as to reinforce the egalitarian language;

(e) Act No. 20545 of 17 October 2011 amending the regulations on maternity protection and incorporating postnatal parental leave⁹² extends parental leave by 12 weeks (or 18 weeks if taken as half days), allows part of the leave to be transferred to the father (6 or 12 weeks, depending on the type chosen), and extends the benefit to self-employed women and to women without a current employment contract, under certain conditions. The benefit was also extended to persons who take on the care of a child, with a view to adoption and if the child is less than 6 months of age, the parent shall be granted in advance the right to leave and a subsidy for 12 weeks;

(f) Act No. 20545 also introduced changes to the regulations on leave days for male workers at the time of their child's birth, allowing fathers more flexibility in deciding when to use their leave days, on the basis that circumstances may arise that could require their continuous presence, for example a medical problem with the baby. Leave is also granted to fathers in the process of adopting a child, and shall be counted from the date of notification of the relevant court ruling. This right is inalienable;

(g) With regard to disability, Act No. 20183 of 8 June 2007, amending Constitutional Act No. 18700 on Popular Votes and Vote Counts, guaranteed persons with disabilities the right to vote by guaranteeing their right to assistance when voting.⁹³ In addition, Act No. 20422 of 10 February 2010 guaranteed the right to equal opportunities for persons with disabilities;

(h) As for older persons, Act No. 20427 of 18 March 2010, amending Act No. 20066 on domestic violence and other laws to include ill-treatment of older persons in national legislation,⁹⁴ classified older persons as a group requiring protection, establishing as risk situations eviction from the building where they live, being restricted to secondary

⁸⁹ See Act No. 20166 at www.leychile.cl/Navegar?idNorma=258270.

⁹⁰ See Act No. 20255 at www.leychile.cl/Navegar?idNorma=269892.

⁹¹ See Act No. 20438 at www.leychile.cl/Navegar?idNorma=1003601.

⁹² See Act No. 20545 at www.leychile.cl/Navegar?idNorma=1030936.

⁹³ See Act No. 20183 at www.leychile.cl/Navegar?idNorma=261508.

⁹⁴ See Act No. 20427 at www.leychile.cl/Navegar?idNorma=1011723.

areas, or having restrictions or limitations on their movements in the building. The Act also ordered that “in the case of older persons who have been abandoned, the court may order that they be placed in one of the homes or institutions recognized by the competent authority ...”, where abandonment is understood to mean “... the neglect of an older person in need of care”;

(i) Act No. 20480 of 18 December 2010, amending the Criminal Code and the Domestic Violence Act (Act No. 20.066), established the offence of femicide, increased the penalties for this offence and amended the laws on parricide;⁹⁵

(j) Act No. 20249 of 18 February 2008, establishing the indigenous peoples’ marine and coastal zone,⁹⁶ aims to protect the customary use of these areas, so as to preserve coastal communities’ traditions and their use of natural resources.

Legal initiatives

133. The following are currently being considered by Congress:

(a) Bill establishing the ethical family income, and the subsidy for engaging self-employed women and dependent working women subject to the Labour Code (Bulletin No. 7992-06);

(b) Bill establishing the Agricultural Labour Statute, which recognizes the significant participation of women in the agricultural sector and incorporates inclusive language by referring to both male and female workers;

(c) Bills amending the Civil Code and supplementary laws on the joint or community property regime or the partnership of acquests regime, establishing equal rights and duties for both the husband and wife (Bulletin No. 1707-18 and No. 7567-07);⁹⁷

(d) Bill establishing the special remote labour contract (Bulletin No. 7199-13), regulating the provision of services from home or from another agreed-upon place and aimed mainly at the employment of persons with disabilities;

(e) Bill on leave of absence for mothers of disabled children (Bulletin No. 6725-13), aimed at promoting rehabilitation, development and improved social integration;

(f) As to combating discrimination, especially on the grounds of sexual orientation and gender identity, there are two bills, one that “establishes measures against discrimination”, which is currently in its third reading in the Chamber of Deputies (Bulletin No. 3815-07); and another that “creates the life partner agreement”, which is in its first reading in the Senate (Bulletin No. 7873-07).

Promotion of equality and non-discrimination

134. In October and November 2010 a nationwide study was conducted on diversity and non-discrimination in public services, with the aim of identifying relevant Government policies, programmes and projects, the vulnerable groups served by public institutions at the national level, and civil servants’ perceptions.

135. With regard to education initiatives to combat discrimination, Act No. 20501 of 26 February 2011 on “quality and equity in education”⁹⁸ ensures the right of education specialists to work in a tolerant environment with mutual respect for their physical,

⁹⁵ See Act No. 20480 at www.leychile.cl/Navegar?idNorma=1021343.

⁹⁶ See Act No. 20249 at www.leychile.cl/Navegar?idNorma=269291.

⁹⁷ Further details are available in the section on article 3 of the Covenant.

⁹⁸ See Act No. 20501 at www.leychile.cl/Navegar?idLey=20501&tipoVersion=0.

psychological and moral integrity and free from humiliating or degrading treatment or psychological abuse.

136. The following events were held in 2011: a seminar on sexual diversity and discrimination in Chile, a round-table discussion on sexual diversity with organizations from the gay, lesbian, transsexual and transgender community and a conference on the progress of the anti-discrimination bill. There were also yearly educational workshops on diversity and non-discrimination for civil servants and members of educational and university communities; seminars and round-table discussions; contests rewarding best practice; the International Day for Tolerance (16 November); dissemination of the anti-discrimination bill, international human rights treaties ratified by Chile, and the dates promoting non-discrimination and diversity (such as International Women's Day, the International Day against Homophobia and Transphobia, the International Day of Older Persons, the International Day of Persons with Disabilities, and International Migrants Day).

Health and non-discrimination

137. The National Programme to Prevent and Control HIV/AIDS and Sexually Transmitted Diseases (STDs), implements the Health Care Programme for persons with a gender/sex conflict and on sexual diversity, which seeks to improve public health care for this group, including specialized outpatient care and surgical intervention where needed. A circular was issued with instructions on providing care to transgender persons and on strengthening the strategy to welcome sexually diverse persons in health-care establishments, and a guide to clinical treatment for persons with a gender/sex conflict was produced.

Work and non-discrimination

138. The following should be highlighted among the policies and programmes implemented by the Ministry of Labour through its various departments:

(a) The Government's commitment to equal opportunities, as stated in the presidential speech entitled "Assessment of the Government's First 100 Days", delivered on 16 June 2010, on "encouraging women's full access to the public sphere and the world of work under equal conditions";

(b) The *Chile Solidario* ("solidarity in Chile") Programme to Develop Women's Job Skills, which funds training opportunities allowing women to begin working, either as an employee or on their own account;

(c) The Programme for Working Women Heads of Households, implemented through technical training organizations that offer women apprenticeship training courses to learn a trade (employed or self-employed), and through the payment of allowances to cover transport, childcare and accident insurance;

(d) The National Service for Women (SERNAM) Plan for Equality between Men and Women 2011–2020, intended to guide State policy on equality of opportunities between men and women;

(e) The Agenda for Gender Equity 2010–2014, which serves as a working tool for the various ministries and services;

(f) The establishment of the Committee on Women, Work and Maternity on 29 April 2010, by the President and the Minister Director of SERNAM, with the aim of boosting women's integration into the labour market;

(g) The creation of a task force to amend the regulations and improve contracts and working hours for women domestic workers, with the participation of the most representative groups in the country;

(h) Version 2 of the employment information system (SIL 2.0), which will make it possible to monitor the most important figures and indicators pertaining to the labour market, disaggregated by sex, age group and disability, inter alia. The system also makes it possible to observe and track changes in the minimum and average wage;

(i) The establishment of the Work and Society unit in the Office of the Under-Secretary for Labour to deal with labour policies for persons with disabilities, inter alia, and advise on the rights set out in article 43 of Act No. 20422;

(j) The establishment on 15 September 2011 of the Intersectoral Panel on Training and Employment for Women, which is intended to serve as a body to coordinate and plan actions to benefit women, creating links between the National Training and Employment Service (SENCE) and other public and private bodies, and receiving feedback allowing it to more closely target the services offered;

(k) The 2011 Trades Programme, the goal of which is to help unemployed persons acquire job skills, with a view to improving their employability and their integration in the labour market.

Case law

139. The most important relevant case law is as follows:

(a) Labour-case law emanating from proceedings for protection against labour discrimination tried by the labour courts in cases of discrimination on grounds of race⁹⁹ or nationality,¹⁰⁰ or involving withdrawal of a client portfolio;¹⁰¹

(b) Administrative opinions handed down by the Labour Directorate concerning pay discrimination¹⁰² or discrimination on grounds of sex.¹⁰³

Article 27

Rights of minorities

140. Firstly, the Government is making efforts to guarantee the right of minorities to have their own cultural life, to profess and practise their own religion, and to use their own language. With regard to culture, identity and education, reference is made to the fourth periodic report on the implementation of the International Covenant on Economic, Social and Cultural Rights, which highlights the following actions and programmes:

(a) Presidential Instruction No. 3 of 4 August 2010, ordering regional and provincial governments to include the traditional authorities of indigenous communities in all official ceremonies;

⁹⁹ RIT: T-403-2010, Labour Court No. 2, Santiago, 19/03/2011; see annex for extract.

¹⁰⁰ RIT: T-64-2010, Labour Court No. 1, Santiago, 08/06/2010; see annex for extract.

¹⁰¹ RIT: T-22-2011, Labour Court No. 2, Santiago, 03/05/2011; RIT T-16-2010, Labour Court of Talca, 25/02/2011; see annex for extract.

¹⁰² Opinion No. 3030-045, 12/07/2010; see annex for extract.

¹⁰³ Opinion No. 374-005, 22/01/2005; see annex for extract.

(b) The creation of the Prize for the Promotion of Indigenous Cultures in recognition of individuals who distinguish themselves in the study and promotion of these cultures;

(c) The following improvements to the indigenous scholarship programme:

(i) The number of indigenous scholarships awarded in 2011 increased significantly compared with 2010, chiefly in higher education, rising from 1,974 to 3,057. Scholarships for basic education students increased from 5,965 to 7,003, and those for secondary education students increased from 5,175 to 5,897;

(ii) The budget increased by 34.6 per cent (amounting to an additional Ch\$ 3,767,745,000) from 2010 to 2011, and by 13 per cent from 2011 to 2012;

(iii) The coverage of housing grants for indigenous students in 2011 was the same as in the previous year, with a total of 700 awarded throughout the country for Ch\$ 92,000 a month;

(iv) On the basis of the 2011 budget, 13 dormitories for indigenous students were in operation throughout the country, benefiting 412 students;¹⁰⁴

(d) The following improvements made to the Culture and Education Fund:

(i) The budget increased by 19.7 per cent (an additional Ch\$ 180,811,000) from 2010 to 2011, and by 2.8 per cent from 2011 to 2012;

(ii) In March 2011, two intercultural high schools, Indómito de Purén and Araucanía de Villarrica, began operating as bicentennial high schools;

(iii) The intercultural bilingual education programme run by the Ministry of Education continues to promote the preservation of culture and languages and increased its budget by 2.8 per cent from 2011 to 2012. In addition, 28 new technical assistants were trained in intercultural bilingual education in 2011;

(iv) There are now 43 intercultural kindergartens in Chile, with a total of 1,266 children enrolled;

(e) Increase in the number of sites of cultural significance. In 2011 the National Indigenous Development Corporation (CONADI) bought 10 designated “sites of cultural significance” (under article 20 (b) of Act No. 19253) for indigenous communities, as part of the process to preserve their culture and ancient traditions (compared to 5 sites purchased from 1993 to 2010);

(f) Urban indigenous fair. On 20 and 21 December 2011 the first urban indigenous fair was held in Santiago with the participation of more than 50 exhibitors from various indigenous peoples in the country;

(g) Promotion of intercultural health. In its national strategy, the Ministry of Health emphasized the importance of intercultural health, promoting the preservation and inclusion of ancestral medicine, and increased its budget by 2.2 per cent from 2011 to 2012.

Implementation of ILO Convention No. 169

141. The major advances achieved in the implementation of Convention No. 169, particularly by means of special legislation such as the Indigenous Peoples Act and the Act on the Indigenous Peoples’ Marine and Coastal Zone, include:

¹⁰⁴ The dormitories are distributed in the regions of: Bío-bío (5); Araucanía (5); Los Ríos (1); and Santiago Metropolitan (2).

- (a) Establishing a definition of indigenous peoples, including the principle of self-identification;
- (b) Recognizing indigenous custom as a source of law;
- (c) Strengthening recognition of the relationship between indigenous persons and the land, and protection of the land;
- (d) Incorporating traditional indigenous medicine;
- (e) Offering bilingual intercultural education programmes and indigenous scholarships;
- (f) Implementing development programmes for indigenous peoples (such as the Origins Programme and the CONADI Indigenous Development Fund);
- (g) Conserving and recovering the cultures of native peoples.

142. The year that ILO Convention No. 169 entered into force for Chile, the Government submitted on 1 September 2010 its initial report and annexes on the application of the Convention, dated 16 November 2010.

143. The ILO Committee of Experts, in its annual report of February 2011, gave Chile a satisfactory rating, stating that it “notes the detailed first report and the comprehensive appendices supplied by the Government, which show the special attention the Government pays to the application of the Convention”.¹⁰⁵ On 1 September 2011 the Government duly submitted its replies to the Committee’s request for information and comments.

144. CONADI has established a “Convention No. 169 Unit”, the main objectives of which are to foster opportunities for dialogue and understanding between indigenous peoples and the rest of society, and to train indigenous leaders in matters involving the Convention and their rights. Pursuant to the obligations relating to consultation and participation (arts. 6 and 7), the Consultation on Indigenous Institutions was launched on 8 March 2011. The Consultation, initially planned to include seven stages, was designed to address three major subject areas: (a) the establishment of a consultation and participation procedure, including the rules on participation in the Environmental Impact Assessment System; (b) the draft constitutional amendment recognizing indigenous peoples; and (c) the establishment of an indigenous development agency and a council of indigenous peoples.

145. After the first two stages had been completed, the process was suspended in order to make improvements to address the difficulties caused by the complex nature of the task, and the setting up of mechanisms and procedures for indigenous consultation and participation was announced as the goal for 2011. Once that was achieved, Decree No. 124 — which for now regulates the consultation process — would be replaced by an instrument to be agreed with the native peoples in accordance with Convention standards. Within this framework, in April 2012 a five-stage process of “indigenous pre-consultation” was launched to gather comments, suggestions and proposals from indigenous peoples’ organizations and leaders, in order to develop a draft regulation to replace the Decree.

146. That said, it should be noted that the consultation process begun under the previous Government (with a total of 6 consultations) has gained in impetus and importance under the current Government, and from March 2010 to the date of this report a total of 17 consultations have been held, including the following:

- (a) Consultation on changes to the border between the towns of Freire and Padre las Casas;

¹⁰⁵ See footnote 7 above.

- (b) Consultation on design of a bilingual curriculum for the second year of basic education;
- (c) Consultation on amendments to Decree Law No. 701;
- (d) Consultation on projects associated with heritage trails in Cape Horn;
- (e) Consultation on the 2012 census;
- (f) Consultation on the Easter Island Cultural Centre. A further eight consultations are getting under way.

147. Lastly, in 2011 a special budget (Ch\$ 314 million) for indigenous consultation was allocated for the first time in the history of CONADI. For 2012, Ch\$ 684 million has been allocated, which is equivalent to a 200 per cent increase.

Persons of African descent

148. Another important area is the series of initiatives to benefit the Chilean community of African descent. Firstly, a seminar on the International Year for People of African Descent was held on 3 November 2011 in the city of Arica. The event, organized by the Directorate General of Human Rights and the Directorate of Regional Coordination of the Ministry of Foreign Affairs, was part of the “*Arte Total Afrodescendiente*” (Total Art by Artists of African Descent) initiative organized by the Council for Culture and the Arts with the participation of groups of African descent from Peru and Colombia. The regional government has made a commitment to mainstream the community of African descent in its work.

149. Another example of this process is the establishment of the Office for Persons of African Descent in the municipality of Arica, in accordance with the Durban Programme of Action and the Santiago Declaration of 2000. The municipality is supporting the requests to include the category “of African descent” in the 2012 census and the requests regarding movement across international borders, developing partnerships with municipalities in Uruguay and Brazil.

150. Also, a cooperation agreement was signed between the regional government, the National Institute of Statistics and the Alliance of Organizations for Persons of African Descent, whereby a budget of Ch\$ 130 million was allocated for a historical survey of the community of African descent in Arica and Parinacota to enable public policies to be developed for that community.

Reply to paragraph 19 of the concluding observations

151. Reference is made to the additional information¹⁰⁶ provided to the Special Rapporteur for follow-up to concluding observations on the measures taken to ensure respect for and recognition of the rights of indigenous communities over their lands, including land demarcation and compensation measures; the practical implementation of consultation and participation procedures for indigenous communities; and the amendment of the Counter-Terrorism Act (Act No. 18314) to bring it in line with article 27 of the Covenant.

152. With regard to the land rights of indigenous communities, the latest information is that the Government has revived the mechanisms for handing over land to indigenous peoples in a transparent and objective fashion, on the basis of a points system established by law, so that applicants are aware of the applicable rules in advance. An essential element

¹⁰⁶ Additional information provided by Chile in documents CCPR/C/CHL/CO/5/Add.1–3.

of the new approach is the inclusion of an agreement on providing production support and technical assistance in conjunction with each handover.

153. As at 31 December 2011, the value of the land purchased under article 20 (b) of the Indigenous Peoples Act stood at Ch\$ 27,407,000,000 (representing a 100 per cent execution rate). This equates to the purchase of 54 plots and 10,335 hectares of land, benefiting 44 communities and 1,181 families in the regions of Bío Bío, Araucanía and Los Ríos.¹⁰⁷

154. In addition, the Government decided to strengthen the mechanism for subsidizing the purchase of land for indigenous persons and communities. Thus, in 2011 it purchased a total of 4,170 hectares, equivalent to Ch\$ 11,626,000,000, for 608 families, which is 50 per cent more than in previous years.¹⁰⁸

155. The same year saw the launch of the thirteenth call for applications for land grants, and these are now being assessed.¹⁰⁹ The budget was Ch\$ 15 billion, which is 50 per cent more than the budget for this process in previous years.

156. The land purchase procedures that as at 11 March 2010 were in the advanced stages of negotiation are now undergoing a case-by-case review to facilitate their completion, provided they meet the requirements established by law. Purchase prices have been made more transparent, ensuring that fair prices are applied, and making it possible to apply the market value of the land, which in 2011 averaged Ch\$ 2.6 million.

157. In 2008, the Recognition – a social compact for multiculturalism programme was launched, which consisted of a three-year plan (from 2008 to 2010) for purchasing land for 115 communities that met certain requirements. The current Government has fulfilled this commitment in the case of 82 of the 115 communities. For the remaining 33, the programme is expected to be implemented through the budget for 2012 and 2013. Lastly, the State of Chile is currently buying land at a rate of 30 communities per year, a figure well above the average for previous years.

¹⁰⁷ See annex for summary table.

¹⁰⁸ *Ibid.*

¹⁰⁹ *Ibid.*