COMPLEMENTARY REPORT TO THE HUMAN RIGHTS COMMITTEE

Chile's seventh report on the implementation of the International Covenant on Civil and Political Rights

The Council of the National Human Rights Institute approved the document on 15 January 2024. Session No 767.

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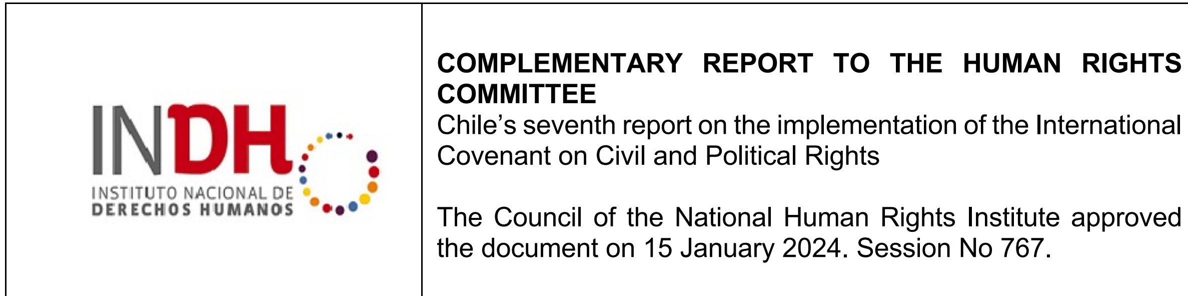

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The National Humans Rights Institute (INDH in its Spanish acronym) is an autonomous State agency created by Law No. 20,405 in 2009. Our mission is to promote and protect the human rights of persons living in Chile. This report follows up on the list of previous questions issued by the Human Rights Committee on 14 August 2019, document CCPR/C/CHL/QPR/7.

I. GENERAL CONSIDERATIONS

The State of Chile has the following institutions working for the protection and promotion of human rights: the National Human Rights Institute, accredited with A status; the National Mechanism for the Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment; the Office of the Ombudsperson for Children; and the Undersecretary for Human Rights.

Law No. 20,968, which criminalizes torture and cruel, inhuman, and degrading treatment, was enacted in 2016. Law No. 21,154, which designates the National Human Rights Institute as the National Mechanism for the Prevention of Torture, was enacted in 2019.

The First National Human Rights Plan was approved in 2017, with the Second National Human Rights Plan approved in 2021. The INDH and other agencies were part -as observers- of the Interministerial Committee on Human Rights that approved both plans.

Law No. 21,030, which regulates the decriminalization of voluntary termination of pregnancy on three grounds, was enacted in 2017. In 2020, Law No. 21,212, which amends the Penal Code, the Criminal Procedure Code, and Law No. 18,216 regarding the criminalization of femicide, was enacted. Law No. 21,565, which establishes a system of protection and reparation for victims of femicide and their families, was enacted in 2023.

Law No. 21,120, which recognizes and protects the right to gender identity, was enacted in 2018 and in 2022, Law No. 20,400 on equal marriage was enacted.

II. SPECIFIC INFORMATION ON THE IMPLEMENTATION OF ARTICLES 1-27 OF THE COVENANT

I. Counter-terrorism measures (arts. 2, 14 and 26)

1. Progress of bills reforming the anti-terrorism law (bulletins 9692-07 and 9669-07): Despite the constant legislative urgency assigned to the bill reforming the anti-terrorism law, little progress has been made in its processing. It has remained in the first constitutional procedure before the Senate since its presentation in November 2014. Nevertheless, Law No. 21,577, which strengthens the prosecution of organized crime offences and establishes specialized techniques for their investigation was enacted on 5 June 2023. It modified the regime of intrusive measures contained in the Criminal Procedure Code, regulating it for anti-terrorist behaviour. This law established more stringent measures than those specified for investigating other crimes, increasing the secrecy of investigation for up to six months. Actors of the criminal system must observe the practical application of this new regulation and ensure that it does not violate Article 14 of the Covenant and other international and internal norms that establish guarantees for investigation and due criminal process.

II. Non-discrimination, equal rights for men and women (arts. 2, 3, 17 and 26)

2. Regarding non-discrimination actions: The 2023 Annual Report of the INDH analyzed the economic, social, and cultural rights of three specially protected groups: women, LGBTIQA+ persons, and persons with disabilities. The chapter analyzed the lawsuits for discrimination that have been filed since Law No. 20,609 came into force. According to data provided by the Directorate of Studies of the Supreme Court, 597 cases related to this law entered the justice system between 2012 and 2022. Of these, 571 were in civil courts and 26 in criminal courts. Two hundred and fifteen were filed in the Courts of Appeals, while 43 were in the Supreme Court. Of the civil cases filed, 134 reached a final sentence in the civil courts. In 98 of these cases (representing a majority of 73.1%), the sentence rejected the lawsuit. Regarding the 26 cases processed in the criminal courts, i.e., related to the criminal aggravating circumstance incorporated by Law No. 20,609, 100% obtained a conviction.

3. Analysis of Law No. 20,609. One characteristic of the anti-discrimination law is related to its reactive and not preventative nature in the face of acts of discrimination. In this sense, civil society organizations and academia have agreed that the absence of an institutional anti-discrimination framework makes it difficult to overcome situations of this nature. A bill presented in 2019 seeks to reform Law No. 20,609 (Bulletin 12748-17); it is currently being processed in the National Congress. The Government decided to present amendments to the bill and indicated that the institutional mandate would be granted to the Undersecretariat of Human Rights, enabling it to carry out prevention work.

4. Regarding school violence against LGBTI children and adolescents: The 2022 Annual Report of the INDH noted a crisis of violence and coexistence in schools throughout the country, mainly linked to the mental health of students between lockdowns and post-pandemic. At that time, the INDH recommended that the Executive strengthen measures to prevent school violence, both in face-to-face and virtual spaces shared by school communities, with particular attention to the violence affecting female and LGTBIQA+ students.

5. On the bill that seeks to strengthen regulations on school coexistence in terms of respect for sexual and gender identity and to punish all forms of discrimination based on these circumstances: The bill, known as the José Matías Bill (bulletin 13893-4), was presented in 2020 aiming to protect LGBTIQA+ students in educational contexts. In 2022, the government placed urgency on this bill; however, the project has stagnated since June 2022 and has received no further pushes from the Executive since July 2023.

6. As for the legal reforms consulted about, Article 373 of the Penal Code remains in force to date, and there is no knowledge of governmental or parliamentary bills to repeal it.

7. Law No. 21,400 on equal marriage entered into force on 10 March 2022. This modified several provisions to establish marriage on equal terms for persons of the same sex, amending -among others- the definition of marriage contained in Article 102 of the Civil Code. This concept was adapted to allow for a contract that may be entered into by two persons without a determination of their gender. Likewise, this law modified norms related to the filiation of persons, allowing two men or two women to be fathers or mothers jointly of a child and allowing married couples to initiate adoption processes. Despite the preceding, the legal marital regime was not contemplated for same-sex couples since this regulation establishes that the husband is the head of said institution, making its application impossible in couples with two husbands (male couples) or where there is no husband (female couples). Notwithstanding the above, the Civil Registry and Identification Service has been denounced for the incorrect application of this law, especially concerning the registration of children of same-sex couples as well as with respect to property regimes.

8. Article 365 of the Penal Code was repealed by Law No. 21,483, which came into force on 24 August 2022.

9. Regarding the Gender Identity Law: Law No. 21,120 establishes that a request by a person over 14 and under 18 years of age to rectify their registered name and sex must be represented before the competent family court by their legal representatives or one of them at the adolescent's choice. However, should neither of the representatives wish to consent to filing the application, there are no objections to applying general rules on judicial representation of children and adolescents. Thus, children and adolescents may request the appointment of a guardian ad litem in court to represent their interests. However, the law still has no specific mechanism for children under the age of 14 to change their name or registered sex.

10. Regarding other administrative measures on gender identity: In 2017, the Superintendence of Education issued a circular for the inclusion of trans students in the school system (circular No. 0768). This was later replaced

by No. 0812 in 2020 (to update it in terms of the recently enacted Law No. 21,120), which guarantees trans children and adolescents the right to gender identity in the educational environment, regardless of their age and whether or not they have changed their registered name and sex under the terms of the gender identity law. This circular ensures all students the use of their social name in non-formal educational instances and the use of toilets and uniforms according to their perceived gender. In addition, it provides for support to the child or adolescent and the entire educational community. However, this regulation is administrative in nature and, therefore, reversible.

11. Regarding the marriage bond and exercising the right to gender identity: Law No. 21,400 modified No. 5 of Article 42 of the Civil Marriage Law. This established the mandatory termination of a marriage between the person exercising their right to rectify their registered name and sex and his or her spouse. It now establishes that the marriage may be terminated by the request of the husband or wife of the person who has exercised such a right.

12. On the bill on the principle of equality between women and men: A bill was submitted to National Congress on 29 May 2018, which aimed to amend the current Constitution to establish the duty of the State to promote equal rights between women and men. The bill is currently in the second constitutional procedure in the Senate, and has seen no progress or received any urgency on the part of the Executive since January 2019.

13. Regarding the bill to reform the marital regime: The bill to reform the marital regime was presented in April 2011 as an initiative of the Executive and is currently in its second constitutional procedure in the Senate, where it has been since March 2013. Despite the government having placed urgency on its passage, the bill has languished since March 2013, when it progressed to its second constitutional procedure.

14. The bill in question deals with the reform of the marital regime by creating a co-administration of the assets by the spouses. These will be administered jointly, leaving the husband in charge of the legal administration; the reserved patrimony of the married woman in the marital regime will be eliminated. Notwithstanding the above, with respect to homes acquired by the woman through a housing subsidy, it is understood that these belong to the woman in marriages of opposite sexes.

15. On the representation of women in the public and private sectors: In the last parliamentary election, the highest number of women in history were elected as Deputies, reaching 55 seats, and representing 35% of the chamber. In the Senate, there are 13 female senators out of 50, which represents 24% of the chamber. At a local level, only 17% of mayors and 33% of councillors are women. Women occupy only 14% of the board of directors of private companies, while this percentage rises to 56 in public companies. However, the majority of these figures are well below the female representation on the electoral roll, where women account for 52%.

16. On parity in the constituent processes: There was parity in the constituent processes of 2022 and 2023; in other words, the elected bodies for drafting the constitutional proposals were composed of the same number of men and women. For these purposes, the seats were elected by a list system with a correction that ensured parity. This meant that both the

Constitutional Convention of 2022 and the Constitutional Council of 2023 were composed of an equal number of men and women, unprecedented in the democratic history of our country. However, this parity reached only these two processes; there are no rules or mechanisms to establish gender parity for the elections of collegiate bodies to be held in 2024 and 2025. That said, there are quotas of a maximum of 60% of candidates of the same gender at the time of list registration.

17. Regarding the impact of Law No. 20,348, which protects the right to equal pay: The 2023 Annual Report of the INDH specified two areas of discrimination against women in terms of salary: general salary discrimination and salary discrimination due to maternity. Regarding the former, this economic discrimination exists when salary differences are not due to differences in human capital or the worker's productivity. In this sense, the gender wage gap is the percentage resulting from subtracting the average women's wage from the average men's wage and dividing the difference by the average men's wage. Using data from CASEN (National Socioeconomic Characterization Survey) for the period between 1990 and 2017, the study *Evolution and Analysis of Gender Wage Discrimination in Chile* [Evolución y análisis de la discriminación salarial por género en Chile] examined the gender gap in workers' hourly wages to determine how much of this gap corresponds to wage discrimination against women. The findings show that the wage gap favours men. In 2017, favouritism towards men reached 49.7%, while 45.2% was related to pure discrimination against women. Employed men had 8.9% fewer years of study than employed women in 2017. Thus, women require more years of education than men to obtain a job, but they receive a lower salary. This is one of the important findings: from 1990 to 2017, employed women, on average, had more years of education than unemployed and employed men. This contradicts the theory that salary reflects schooling and experience, given that women always obtain lower salaries. Regarding wage discrimination due to maternity, it was found that women with children with the same demographic characteristics and educational level as women without children earn 7.7% less because they are mothers.

III. Violence against women (arts. 2, 3, 6, 7 and 26)

18. On reports of gender violence: According to data from INE (Chile's Office for Statistics) (2021), the rate of femicides remained constant between 2010 and 2019, while the rate of frustrated femicides has shown a steady increase in the last decade. For example, in 2019, there were 46 femicides and 109 frustrated femicides; in 2020, there were 43 femicides and 151 frustrated femicides. However, the most significant increase is related to reports of violence filed by women. These reports are received through helplines provided by the *Carabineros* (Chilean Police Force) and the Ministry of Women and Gender Equity. In the case of the National Service for Women and Gender Equity (SernamEG in its Spanish acronym) and its helpline *Fono Ayuda*, 126,645 calls were received at a national level in 2020, an increase of 149%. The highest number was verified in May (16,775), followed by September (14,746). According to the same study, 32.5% (39,647) of the total calls corresponded to requests for help in situations of violence; the others were referred to government institutions (50%). Regarding the calls referring to aggressions, 52% of them were for

serious violence, 38.8% for initiation of violence, and 5% for life-threatening violence.

19. On the other hand, formal complaints –filed with the police or the Public Prosecutor's Office– for violence against women were also affected by the pandemic. The restriction of movement resulted in women reporting fewer complaints in the months of lockdown during 2020 than in previous years. Complaints to the police and the prosecutor's office numbered 65,466 between January and September 2020, which is 9.6% less than in the same period of 2019. The lowest number of complaints was recorded in April, with 5,985. After the lockdown was lifted, these numbers increased to higher rates than the pre-lockdown trend. The Public Prosecutor's Office set up a webpage to receive complaints; however, as the service was unstaffed, many women were unaware of its existence or did not have access to the internet to file complaints. This could lead to the conclusion that the lack of complaints could be attributed to the lockdown measures as well as difficulties in accessing the virtual service.

20. In this line, the INDH has recommended to the Executive and the Judiciary an in-depth review of the response of care services and the courts of justice to violence against women. The aim of this review is to identify the gaps and omissions that allow the repetition of aggressions and femicide and to ensure better coordination in the detection of acts of violence and the protection of victims (Annual Report 2013). It has also recommended to the Executive the development of public campaigns to strengthen zero-tolerance towards violence against women and the commitment of the population to eradicate this violation of women's rights. This issue should be included in the school curriculum, and public officials, mainly from the Judiciary and Public Prosecutor's Office, should be trained (Annual Report 2013 and 2010)

21. Regarding the bill on the right of women to a life free of violence (bulletin 11077-17): This bill has been in the second constitutional procedure since January 2019. Despite the urgency the Executive has repeatedly placed on it, it has had little legislative progress

22. With respect to its content, the definition of violence against women stands out, and has been formulated in accordance with existing human rights standards. However, the wording given to symbolic violence is very broad, which could lead to imprecision regarding a judge's qualification of this behaviour. Obstetric violence should be included among the types of violence to make the text consistent with the general obligation to adopt measures that ensure humane and respectful childbirth. That the bill includes "private and public" among the spheres in which violence against women can be exercised is welcomed, as well as the development of a concept to specify the latter. However, it is noted with concern that in the title referring to the "Duties of State Bodies", the actions included are relativized by using non-imperative verbs, weakening their mandate and therefore their intervention. The same is observed in the titles "Prevention of Violence" and "Protection and Care of Women in the Face of Violence".

23. Regarding the crime of femicide and its reform: On 4 March 2020, Law Nº 21,212 came into force and redefined the concept of femicide in Chile. It extended the concept to any man who murders a woman who is or has been his spouse or cohabitant, with whom he has had a child or with whom he has had a partner relationship of a sentimental or sexual nature, even

without cohabitation. In this sense, the crime that previously only contemplated cases of marriage or cohabitation was expanded. This law also established what will be considered as gender-based femicide, for example, the victim has refused to have a sexual or sentimental relationship with the perpetrator, the victim has engaged in sex work, the crime is committed after having sexually assaulted the victim, the crime is committed because of the victim's sexual orientation, gender identity or gender expression, the crime is committed in a relationship of subordination between the victim and perpetrator, or for any discriminatory motive.

24. Regarding disaggregated information on gender violence: The State does not prepare disaggregated information on different aspects, such as ethnicity and rurality, in relation to violence against women. There is a lack of quantitative and qualitative information on the magnitude and the characteristics of violence faced by these groups of women. The information on femicides and frustrated femicides is disaggregated by regions and districts of the country, and therefore, it would be possible to carry out at least a quantitative analysis that would distinguish between urban and rural realities. However, the state information does not account for other specificities.

25. Regarding training in the Chilean Police Force: The INDH conducted studies in 2018 and 2022 on human rights training in the police force and identified subjects that deal with violence against women, domestic violence, harmful practices against women and girls, and the rights of victims.

26. Course contents for non-commissioned officers include victims' rights, rendering assistance, eradication of discrimination during care, measures to avoid re-victimization, dimensions of intra-family and domestic violence and crimes against sexual integrity (such as rape, sexual abuse, statutory rape, and incest), prevention of sexual crimes, and trafficking in persons. Despite this, the references do not make it possible to distinguish whether the approach to the subject is from a human rights perspective. Four of the ten courses identified have included human rights instruments in their bibliographies, namely, CEDAW and/or Belem Do Pará.

27. The contents for officers are the same as for non-commissioned officers. In addition, the former study Law No. 20,066, which establishes Domestic Violence with the modifications introduced by Law No. 20,480 and Gender Violence, Law No. 20,005, which typifies and punishes Sexual Harassment, and the special powers granted to the police by Article 83 of Law No. 19,968, which created the Family Courts. Crimes against sexual integrity are taught in more detail in terms of criminal law. There is also a course that deals with sexual harassment among officers. As in the case of non-commissioned officers, it is not possible to assert that these issues are dealt with from a human rights approach. Only one course lists Belem Do Pará in its bibliography.

28. Regarding the training of Investigative Police: The 2019 INDH Report on Police Work and Public Order dedicates a chapter to the in-depth analysis of the approach to human rights present in the training programme. The results show that the inclusion of human rights standards on the prevention and punishment of violence against women was not considered in the Investigative Police training curricula. The following were missing: Combating gender prejudices and stereotypes; Prosecution of gender

violence; Prevention of revictimization; Respect for the victim's privacy; Provisions and application of CEDAW; Application of laws prohibiting discrimination against women; Rights of older women; Rights of Indigenous women; and Rural women and cultural factors of discrimination.

IV. Voluntary interruption of pregnancy and reproductive rights

29. Regarding measures to incorporate incest and risk to the mother's health as grounds in Law No. 21,030: Vital risk to the mother, regardless of the gestational age, is the first ground of this law. With respect to the grounds of incest, no bills are currently being processed that seek to incorporate this new ground into the law.

30. Regarding the implementation of Law No. 21,030, to guarantee prompt and effective access for women to legal termination of pregnancy throughout the country: The INDH is concerned about barriers that hinder the provision of abortion services, such as insufficient training for health teams to provide adequate care to girls and women and the lack of information about the law. Likewise, while conscientious objection is derived from the right to freedom of thought, conscience, and religion, the State must seek to provide access to abortion in a timely and effective manner throughout the national territory, especially in those regions where all health personnel, or the vast majority, exercise that right.

31. Regarding the current legal framework that allows conscientious objection: The Protocol to manifest personal and institutional conscientious objection under the provisions of Article 119 ter of the Health Code of the Ministry of Health, 2018, specifies the current legal framework as well as the obligation of health facilities with respect to conscientious objector and non-objector patients and staff.

32. This protocol establishes the principles of non-discrimination, cases in which it is appropriate or not appropriate to exercise the objection, the procedure to make the objection effective in health facilities, the effects of the manifestation, and finally, the obligations of the objector. The second section details the obligations and procedures in cases of conscientious objection in private health institutions. Finally, it describes three points relating to the rights of women concerning conscientious objectors. First, it establishes the obligation of health institutions to treat women with dignity and respect, and in a timely manner, without delays, in the framework of the grounds outlined in Law No. 21,030. Second, women can request information about conscientious objector or non-objector personnel in the establishment where they are treated under a circumstance indicated in Article 119 of the Health Code. Third, women can be reassigned or referred in a simple and timely manner if whoever is treating them has previously stated their objection.

33. Due to the above, in its 2022 Annual Report, the INDH recommended that the co-legislating powers review and modify the regulations and protocol that authorize conscientious objection for private health institutions in cases of the decriminalization of voluntary interruption of pregnancy on three grounds. This is because it contravenes the Inter-American standard of human rights in this area, specifically with respect to the ability of institutions to exercise conscientious objection.

34. Regarding the adoption of education and awareness-raising measures on sexual and reproductive health, including in educational establishments: The INDH conducted a curricular analysis in 2015. We found some learning objectives have been integrated and concentrated in the subjects Guidance and Biology; however, in both cases their inclusion is mostly indirect. These are found in 1st to 6th-grade Guidance classes of primary school, and in Biology classes in 6th and 7th-grade primary and second year of secondary school.

35. A predominately biomedical orientation with little linkage or analysis associated with the right to sexual and reproductive health was observed. The same objective deals with the biological aspects of human reproduction (from fertilization to childbirth) and family planning. It incorporates elements of prevention and promotion of pregnancy, with no direct indication of the social inconvenience and biological risks of teenage pregnancy. Nor does it approach the impact pregnancy can have on life projects and the exercise of other rights such as education. In addition, there is a problem of curricular progression and consistency, given that the topic of sexually transmitted diseases is only addressed in the curricular bases of 7th grade of primary and not in the 2nd year of secondary school when students are of the age bracket more exposed to these risks.

36. On legal initiatives related to sex education: A bill to establish the compulsory nature of comprehensive sex education in educational establishments was presented in 2019. According to the authors of this bill, it aimed to create "a general regulatory framework on sexual and affective education, understanding it is a human right held by children and adolescents"[1]. The bill was voted against when the idea of legislation was proposed in October 2020, so it was shelved. There are currently no new initiatives on the subject in process.

V. Children with variations of sexual characteristics (intersex)

37. On the prohibition of performing irreversible surgical interventions or other unnecessary medical treatments on newborns and intersex children, both in public and private health centres, until they reach an age when they can give their free, prior and informed consent: On 17 November 2023, the Ministry of Health issued Circular No. 15 instructing health teams to adopt all necessary measures to ensure the best interests of children and adolescents with variations in sexual characteristics are met.

38. This circular establishes three specific instructions. First, it states that the clinical criteria for the care of newborns, children and adolescents with sexual variations must be based on current evidence and with a human rights approach. Second, it prohibits surgeries, procedures, or medical treatments whose sole purpose is to modify the child to meet social and/or aesthetic expectations without the child's consent. Third, performing genetic tests must not be used as an argument for performing unnecessary surgical procedures.

[1] Bulletin 12955-04, Chamber of Deputies, 12 September 2019.

VI. The Right to Life, Prohibition of Torture and other Cruel, Inhumane or Degrading Treatment or Punishment (arts. 6 and 7)

39. On progress in investigations into human rights violations perpetrated during the military dictatorship: In 2023, Chile commemorated the fiftieth anniversary of the coup d'etat that began the dictatorship of Augusto Pinochet. The INDH dedicated a chapter of its Annual Report to the progress of recommendations directed to the State of Chile related to the massive and systematic human rights violations that occurred in the country between 1973 and 1990. In it, the National Office for Coordination of Human Rights Cases was asked for information on the total number of cases, current and concluded, the reason for closing the case and the type of crime, indicating the start and finish date if applicable. In its response, the Office indicated the difficulties in consolidating, in these terms, the information related to cases filed between 1990 and 2014, given that "more statistical records began in 2014 when the National Office for Coordination of Human Rights Cases 73-90 was created. Before that period, there are no complete records available". Based on this, the INDH recommended the Judiciary increase financial and technical resources for its National Office for Coordination of Human Rights Cases to systematize and make more information available regarding all judicial processes and their findings.

40. Notwithstanding this, the data provided by the National Office for Coordination of Human Rights Cases of the Judiciary indicates that only 10.3% of cases have obtained a sentence, 89% of which correspond to cases related to forced disappearance and/or political execution. At the same time, 95% of torture cases are still pending which shows a lack of compliance with recommendations regarding legal assistance to victims of torture. Additionally, it is worrisome that 33 years after the return to democracy, 89.7% of human rights violation cases are still pending. This concern deepens given the difficulties faced in investigating an event that occurred more than three decades ago and taking into account the length of the judicial proceedings. In sum, it is concluded that the State still does not comply with its obligation to initiate ex officio cases of human rights violations other than forced disappearance and political execution. The available data shows the limited speed with which these judicial proceedings are concluded given only 10.3% of the cases have reached a sentence.

41. Regarding the repeal or amendment of Article 103 of the Criminal Code: A bill that sought to establish the legal interpretation of Article 103, expressly stating its inapplicability to cases of crimes against humanity, was presented in 2009 (bulletin 6422-07). This bill is currently in the second constitutional procedure in the Senate; however, there has been no significant progress in its passage since June 2011, and the Executive has not placed any urgency on it since 2015.

42. Regarding the application of Article 103 of the Criminal Code: Article 103 was not applied in cases against humanity until 2006. Between 2006 and 2011 it was used constantly until the ruling in the case of Rudy Cárcamo, an executed political prisoner from Concepción, when the Second Chamber of the Supreme Court began to oscillate in the application of the Article. Since 2020, the Supreme Court has not applied the article in question; however, this is mainly due to conventionality control that ministers of the Second Chamber carry out with respect to the

imprescriptibility of crimes against humanity, so there is nothing to prevent the definition of the Court oscillating again in the future.

43. On the secrecy of the records of the National Commission on Political Prisoners and Torture (bulletin Nº 10883-07): The INDH has recommended in 2014, 2015 and 2016, and again in its 2023 Annual Report, that access to information related to massive and systematic violations of human rights be guaranteed. This would eliminate the secrecy clause of Law No. 19,992 and allow the courts of justice to have access to such records, provided that they do not affect the rights of victims, relatives, and third parties. To date, the secrecy of these records remains in force. Regarding bulletin 10883-07, presented in September 2016, there has been no significant progress since October of that year. The executive has not placed urgency on its passage since January 2018.

44. Regarding the Amnesty Decree Law: The Amnesty Decree Law is still in force in domestic law, even though there has been a bill seeking its annulment since 2006. To date, this bill has not advanced and has been filed in Congress since April 2022.

45. The National Search Plan: In September 2023, the Executive presented the National Search Plan for disappeared detainees of the military dictatorship whose whereabouts are still unknown. This Plan responds to the right of victims to know the whereabouts of the persons disappeared by the dictatorship. This is an obligation for the State according to the International Convention for the Protection of All Persons from Enforced Disappearance, signed and ratified by Chile. The Plan is an administrative search strategy whose objective is to “clarify the circumstances of disappearance and/or death of the victims of forced disappearance”. In other words, to locate, identify, and return the remains of 1,162 (79%) victims, or otherwise to clarify their ultimate fate. This is regardless of judicial proceedings in progress, or that may be initiated in the future, meaning the Plan must coordinate this area to exchange information.

46. The design of the Plan considers the guiding principles for the search of missing persons. The Human Rights Programme Unit of the Undersecretariat for Human Rights of the Ministry of Justice and Human Rights is the executing body and coordinates the actions of entities collaborating with the Plan. It is expected that the Executive will present, as one of its first tasks, a schedule of stages and actions including the identification of human remains that are still held in the Forensic Medical Service.

47. On other human rights violations during the dictatorship that have not been investigated: In recent years, groups of people who were victims of forced displacement during the 1973-1990 period in the Los Ríos and Metropolitana Regions have been gaining visibility. In the former, they are workers of the *Corporación Forestal Maderera Panguipulli* (Forestry Commission Panguipulli Logging Company), and the latter, residents from the Villa San Luis in Las Condes. Most of these organizations are made up of those who were children or adolescents at the time of the forced displacements. They have promoted the historical recognition of their status as victims of this crime against humanity. To date, there are no historical truth documents regarding this situation in the country.

48. On human rights training for law enforcement officers: The INDH conducted a study of the Carabineros (Police Force) curricula in 2018. We found that of the 236 courses that are part of initial or ongoing training, only ten correspond to specific human rights subjects (4%) and 79 (36%) have some cross-cutting with the subject. The study analyzed the courses in the light of 36 indicators elaborated from human rights sources, grouped into nine general topics: 1) human rights in general, 2) prevention of torture, 3) forced disappearance, 4) human rights violations in national history, 5) sexual and gender-based violence, 6) rights of children and adolescents, 7) women's rights, 8) rights of ethnic and national groups and, 9) rights of persons with disabilities.

49. The emphasis of the training fell on the first topic, with 23 courses for non-commissioned officers and 61 for officers. In other words, 94% of the courses with human rights content are related to the definition of human rights, their characteristics, and the fulfilment of their duties and functions in general. The topic with the second highest content presence was prevention of torture, with 67 courses. The courses address principles of the use of force (52% of the total number of courses identified with human rights content), codes of conduct (12%), and provisions of the Convention against Torture (7%). There is no direct mention of the Istanbul Protocol.

50. Finally, it is important to note the enactment of Law No. 20,911, which creates the citizenship training plan for educational establishments recognized by the State, including the Armed Forces and Public Order training schools. The Plan's objective expressly includes promoting students' knowledge, understanding, and commitment to the human rights recognized in the Political Constitution of the Republic and in the international treaties signed and ratified by Chile, with special emphasis on the rights of the child.

51. Regarding the bill that regulates the use of force: The Executive submitted to National Congress a bill that establishes general rules on the use of force for the personnel of public order and the armed forces (bulletin 15805-07) on 10 April 2023. This bill is in its first constitutional procedure before the Chamber of Deputies, and the government has placed urgency upon its passage since then. This bill seeks to implement in domestic legislation the rights and principles enshrined in the American Convention on Human Rights and the International Covenant on Civil and Political Rights. In addition, it aims to update and raise the standards of the Public Order and Security Forces and the Armed Forces that carry out civilian police duties in accordance with these international standards. Thus, the bill regulates the following principles: legality, proportionality, necessity, responsibility or accountability, and rationality. It also establishes special duties for the police, regulates the degrees of resistance or aggression in relation to the stages in the use of force, and establishes rules for police training and education.

52. The INDH recognizes the progress of the initiative to regulate the use of force by law. This responds to reiterated recommendations aimed at basing the power of the police to use force in national legislation. This is in line with international standards on the subject aimed at regulating the actions of law enforcement officers in the line of duty, the commitments made in the Alex Lemun v/s Chile case, and the recommendations made by the IACHR to Chile after its on-site visit in 2020. Even with the above,

the INDH has offered a series of recommendations to adjust the bill to international standards fully. These include improving the precision of definitions such as performance of duty or less-lethal weapons; evaluating the relevance of having certain definitions in the bill, such as self-defence; adapting the wording of the principle of proportionality; clarifying the relationship between the force used and the seriousness of the crime or resistance in accordance with international standards. In addition, it should include the precautionary principle within the principles relating to the use of force; expand the scope of the duty of responsibility and incorporate international standards on accountability; evaluate the wording of the principle of reasonableness; incorporate the principle of non-discrimination; refer to Article 150 A of the Criminal Code; adapt the wording of the duty to minimize damage and injury and evaluate the inclusion of an expression similar to that of collateral damage; and evaluate the relevance of regulating by law matters that the bill derives at an infra-legal level.

53. On statistical data regarding complaints received for cases of torture and ill-treatment by agents of law enforcement and security forces: Between October 2019 and March 2020, a series of protests and demonstrations took place in Chile, the most massive known since the return of democracy in 1990. In this context, there were a series of human rights violations by the armed forces and law enforcement: the National Institute of Human Rights filed a total of 3,153 complaints against agents of the state for various crimes. Of the complaints monitored and filed by the INDH, our records show that in 116 different cases at least one defendant has been formally charged, representing 3.7%. In these 116 cases, there are a total of 202 defendants in the process of being formalized. Regarding the status of the cases, 2,506 are active, 577 of which have been concluded (18.3%). Of this latter figure, 505 correspond to cases concluded due to a decision by the Public Prosecutor’s office not to prosecute. As of 18 October 2023, there were final and enforceable convictions in 33 of these cases (1%).

54. On data on complaints of excessive use of force on children and adolescents: According to information from the Public Prosecutor’s Office, 2,269 complaints of acts constituting human rights violations of children and adolescents were received between 18 October 2019 and March 2020. Regarding the crimes reported and their legal classification carried out by the Public Prosecutor’s Office, the majority, 74%, corresponds to the crime of unlawful coercion committed by public employees. The crime with the second highest incidence is the abuse of private individuals (known as unjust harassment), registering 17%. Finally, the crime of torture has an incidence of 3%. In a preliminary analysis of the procedural state of the cases of human rights violations against children and adolescents as of 13 September 2022, 76% (1,461) of the total cases are completed. Of these, 66% have been terminated through a non-judicial solution. Only 1% have finished with a judicial solution, with two cases reaching a final sentence. Only 1.2% of the total number of cases have brought formal charges against an agent of the state to whom the crime is attributed.

55. Regarding variables and statistics collected by the State: The INDH has reiterated to the State on various occasions its duty to collect detailed information on the number of complaints, investigations, prosecutions, convictions, and sentences imposed in cases of excessive use of force and police brutality. The same applies to the need to establish and implement

in practice a unified system for recording acts of police violence, torture, and ill-treatment. Along the same lines, it has recommended that both the Public Prosecutor's Office and the Judiciary incorporate the following variables: "sex of victim", "ethnicity of victim", and "police institution" in the registry of complaints and procedures related to crimes of torture, abuse of individuals, and detention, displacement, or illegal arrest. In addition, it has urged the State to collect details and disaggregated data on complaints, investigations, prosecutions, and convictions of human rights violations and abuses perpetrated by border authorities or private actors in order to understand the causes and to sanction and prevent such practices.

VII. Treatment of persons deprived of their liberty (art. 10)

56. Regarding the accommodation capacity of places where people are deprived of liberty: The INDH has been carrying out reports on prison conditions since 2013. According to the latest report from 2019, Chile's prison system registers an occupancy level of 106.4%. In detail, of the 82 prisons included in the report, 45 have an occupancy rate above 100%. Furthermore, 19 prisons have over 140% occupancy, therefore classifying as critically overcrowded. Among these, the most critical cases, where occupancy percentages are extremely high, are found in the Antofagasta Region (CDP [remand centre] Taltal with 265.6%), Atacama (CCP [custodial prison] Copiapó with 220.7%), Metropolitana (CDP [remand centre] Santiago Sur with 203.8%) and Valparaíso (CDP [remand centre] Petorca with 200%)

57. Regarding the number of persons in pre-trial detention and their proportion with respect to the total number of persons deprived of liberty: According to the prison statistics page of Chile's Prison Service, as of 30 November 2023, the total number of persons deprived of liberty in Chile amounted to 52,268 persons. Of these, 19,439 were accused; in other words, detainees without a conviction awaiting trial. This represents 37% of those persons deprived of liberty in the country at the cut-off date.

58. Regarding habitability conditions in prisons: The latest INDH study of prison conditions (2019) found various shortcomings related to the structure and conditions of habitability. These ultimately determine life inside the prisons. Most penitentiary establishments analyzed presented one or more problems in this area. Observation and analysis showed issues in the permanent access to drinking water, complete and adequate sanitary services both during lock-up and unlocked hours, the availability of hot water and heating (especially in areas requiring them due to climatic conditions), and the maintenance of hygiene and cleanliness in both common areas and the cells.

59. Likewise, in its 2022 Annual Report, the INDH identified a lack of facilities to exercise the right to religious freedom. It was noted that worship spaces are required for the exercise of the right to religious freedom and spiritual accompaniment. This is especially relevant for Indigenous Peoples, who should be provided with spaces for their celebrations and spiritual rites. The same is true in the case of children and adolescents in prisons, who, according to the data included in the chapter, have an important sense of belonging to religious spaces during their adolescence; therefore, they should not be marginalized from them because they are deprived of liberty.

60. Regarding measures adopted to improve conditions of freedom: Bulletin 11073-07, known as the “Sayén Law", has been in process since 2017. It establishes an amendment to the Criminal Procedure Code regarding the appropriateness of pre-trial detention and suspension of execution of sentence, with respect to pregnant women or women who have children under three years old. The INDH has positively evaluated this bill. We have recommended evaluating extending this rule of suspension to the person who is a child’s primary caregiver, as well as the possibility of replacing the custodial sentence with a non-custodial sentence and/or incorporating a modality of alternative execution of the sentence. Notwithstanding the preceding, this bill has not made significant process in its passage since it was presented in 2017.

61. Regarding the use of isolation cells as a disciplinary measure: In the last study of prison conditions (2019), the INDH observed in the field the persistence of cells with various uses such as isolation, punishment, or others. These cells are far from being eliminated or having their use absolutely restricted. In this matter, the challenge of specifically exploring facilities and people under isolation or punishment was posed to effectively investigate the progress towards the progressive elimination of these spaces, per international human rights standards on penitentiary matters.

VIII. Trafficking of persons (art. 8)

62. Regarding trafficking in persons and people smuggling: In 2023, the INDH analyzed human mobility on the northern border of Chile, especially with regard to the migration crisis affecting the regions of Arica y Parinacota, Tarapacá, and Antofagasta. There has been an increase in irregular entries into the country, and as a result, migration has become more precarious, creating a context of vulnerability that favours crimes related to the smuggling of migrants and trafficking in persons. At all border crossings visited, the main problems are the existence of trafficking in persons, migrant smuggling, and other violent crimes related to the trafficking in drugs or other goods. Since the enactment of Law No. 20,507, which criminalized trafficking in persons in 2011, 63 cases, comprising a total of 347 victims, have been formalized for the crime of trafficking of persons between 2011 and 31 December 2022, according to data from the Intersectional Roundtable on Trafficking in Persons of the Ministry of Interior and Public Security for 2022.

IX. Right to a fair trial and judicial independence (art. 14)

63. Regarding standards in military justice: The use of military criminal justice in cases of human rights violations is prohibited in Chile. In this regard, the State of Chile has modified the Military Justice Code on several occasions as a result of recommendations made by national and treaty bodies. On this point, it is worth noting the significant decision of the IACHR Court in the case of Palamara Iribarne vs. Chile (2005), which indicated that the State must adapt the domestic legal system to international standards on military criminal jurisdiction. Thus, if military criminal jurisdiction is deemed necessary, it should be limited to the knowledge of crimes committed by serving members of the military. In addition, the State must ensure due process in military criminal jurisdiction and judicial protection regarding the action of military authorities.

X. Treatment of foreign nationals, including refugees and asylum-seekers (arts. 12, 13 and 14)

64. On the repeal of Decree Law 1094 on Foreign Nationals and Migration 1975: The New Migration and Foreign Nationals Act, Law No. 21,325 came into force on 12 February 2022. This new legislation replaced the old regulations dating from 1975. Among other measures, it 1) provided for an extraordinary process of migratory regularization; 2) created a new institution called the National Migration Service; 3) introduced the obligation of informing the reasons for entering Chile and the need to request visas at consulates before arrival; and 4) facilitated administrative expulsions, eliminating the need to file criminal complaints for entry through unauthorized border crossings. The government also published its first National Policy on Migration and Foreign Nationals in compliance with the provisions of the new legislation. This policy focuses on two main areas: 1) domestic management through the new National Migration Service (SERMIG in its Spanish acronym) and 2) border control; this has ten thematic work axes, 28 measures of immediate application and a series of legal reform projects to implement its objectives.

65. Other concerns regarding migration: Despite the approval in Congress in 2021 of the new migration law, the INDH is concerned about other bills that openly contravene international human rights standards that have advanced through Congress in 2023; for example, the one that criminalizes irregular entry into the country. The Institute is also concerned about the low staffing and resources of the police units dedicated to combating trafficking in persons as observed during an observation visit to the northern border regions. In this sense, the INDH reminded the Executive that it must develop and implement a public policy with sufficient resources to combat trafficking in persons. Such a policy should address, among other things, access to health care, residence permits and education for trafficking victims. It should also continuously and systematically monitor and evaluate the implementation of the new legislation through data collection and analysis, and research on internal and cross-border trafficking.

XI. Measures for the protection of children (arts. 7 and 24)

66. Regarding children born in Chile to non-resident foreigners: The INDH has urged the State to recognize, as Chilean nationals, children born in Chile to foreign nationals in an irregular migratory situation in accordance with the provisions of international human rights instruments ratified and in force in Chile and the national legislation itself. Likewise, in 2016, the INDH recommended to the Ministry of Interior and Public Security that through the Civil Registry and Identification Office and the Department of Migration and Foreign Nationals, Chilean nationality is granted to all persons who are entitled to it. Finally, in 2021, the INDH urged the State to formulate public policies that guarantee, in accordance with the provisions of international human rights law, foreigners' access to social benefits, with particular attention to the principle of non-discrimination, and in the case of migrant children and adolescents, without distinction regarding the nationality or legal status of their responsible adults.

67. In 2015, the State of Chile began a reform of its institutional framework for children to comply with its international obligations. Thus, it created the system's governing body, namely the Undersecretariat for Children (2016);

the Office of the Ombudsperson for Children (2017), a national human rights institution specialized in the matter; a specialized protection service (2021) to respond to issues of violation of children's rights; and finally, in 2022, it enacted the law that creates the system of guarantees and protection of the rights of children and adolescents (bulletin 10315-18), which provides the legal framework. Despite the above, no effective measures have been implemented to prevent the violation of the rights of children under state guardianship. Nor are there models to prevent all forms of violence against them in a post-pandemic context that has seen aggravated situations in school and family environments; to date, the State lacks mechanisms to address this complex issue in its entirety.

XII. **Rights of Indigenous Peoples (art. 27)**

68. On the constitutional recognition of Indigenous Peoples and their rights: This is still pending on the part of the State of Chile. Recognition of Indigenous People was contemplated in both projects on a new Constitution; however, both were rejected by the citizens in their respective ratification plebiscites. Therefore, despite different bills on the matter in Congress, no progress has been reported on this recommendation.

69. Regarding bulletins 10526-06 and 10687-06: The bill that creates the National Council and the Indigenous Peoples Council (bulletin 10526-06) has been in the second constitutional procedure in the Senate since June 2017; the Executive has not placed urgency on its passage since January 2020. On the other hand, the bill that creates the Ministry of Indigenous Peoples (bulletin 10687-06) has been in the second constitutional procedure in the Senate since October 2017; it has not had urgency placed on its passage from the Executive since July 2022.

70. Regarding Supreme Decree No. 66: The INDH has previously indicated that it is concerned about the different criteria used by State bodies to determine when the right to prior consultation of Indigenous Peoples is applicable or not, which may affect the effective implementation of the ILO Convention No. 169. In this regard, the INDH has repeatedly recommended to all branches of government to ensure the effective implementation of ILO Convention No. 169 in accordance with the standards established in the instrument.

71. On the right to ownership and possession of lands traditionally occupied by Indigenous Peoples: The INDH dedicated a chapter of its 2014 Annual Report to the rights of Indigenous Peoples regarding the access and guarantee of the right to ownership and possession of lands of traditional occupation. It established that, although there is consensus to respond to the indigenous demand for restitution and/or reparation measures with respect to such lands, the same level of agreement does not exist on its scope. In this regard, it identified that the current regulatory frameworks and the institutions responsible for addressing mechanisms to respond to this demand have shown signs of ineffectiveness, exhaustion, and even accusations of irregularities. Along these lines, the INDH recommended that the State design and implement a comprehensive land policy with adequate resources to recognize, protect, and effectively guarantee the rights to ownership and possession of lands traditionally occupied by Indigenous Peoples in accordance with international human rights law.