



Foundation 1367  
**CASA  
MEMORIA**  
José Domingo Cañas

**CHILE**  
**ALTERNATIVE REPORT FOR THE REVIEW OF THE  
STATE OF CHILE BEFORE THE COMMITTEE ON MIGRANT WORKERS AT ITS  
32ND SESSION**  
**(March 2020)**

**Corporación Humanas, Centro Regional de Derechos Humanos y Justicia de Género**

**Centro de Estudios de la Mujer - CEM**

**Colectivo Sin Fronteras**

**Corporación Opción**

**Corporación Circulo Emancipador de Mujeres y Niñas con Discapacidad de Chile-  
CIMUNIDIS**

**Fundación Instituto de la Mujer**

**Fundación mil trescientos sesenta y siete, Comisión de Observadores de Derechos  
Humanos, Casa Memoria José Domingo Cañas**

**Movimiento Acción Migrante - MAM**

**Observatorio Contra el Acoso Chile**

## National Context Presentation

This report was prepared in the context of a serious human rights crisis in Chile. On Friday, October 18, 2019, a citizen revolt with a broad social base and national scope began in the country, with multiple events of public connotation, among which, stand out mostly peaceful and massive actions, such as marches, protests, cultural activities and assemblies, as well as a view violent events such as the destruction and burning of metro stations and commercial malls and stores in Santiago and other cities.

The protests began with the repression of the mobilization that high school students had begun in Santiago on Monday, October 14, who massively evade paying for underground public transportation after the announcement of the increase in their fares. In response to these events, the Government announced the application of the State Security Law against those responsible for the damage and decreed a state of constitutional emergency in Santiago and other cities in the country, restricting freedom of assembly and transit, and calling on the military, along with the police, to re-establish public order.

The state of emergency was lifted in October 27, social mobilizations as well as state repression persisted. As of the date of this report, various national and international human rights instances, such as the National Institute of Human Rights (INDH),<sup>1</sup> the Inter-American Commission on Human Rights (IACHR)<sup>2</sup> and the Office of the United Nations High Commissioner for Human Rights (OHCHR),<sup>3</sup> have reported on the critical situation in Chile. Indeed, the Government of Chile has repeatedly committed massive human rights violations in the context of this social crisis, including cases of extrajudicial executions, torture, sexual violence, serious eye injuries and excessive and indiscriminate use of force by state security forces.

Among the violations registered by the National Institute of Human Rights during this period are: arbitrary arrests of persons who were peacefully demonstrating (whether or not the road was occupied); excessive use of force in arrests (including in those arrests observed of persons who were peacefully demonstrating); use of tear gas in the presence of elderly people, children, pregnant women, use of tear gas affecting street vendors, people on the street and elderly people not participating in the demonstrations; firing of gas with guns directly towards the body of demonstrators; firing of pellets to the neck and face of demonstrators; actions of dispersion and repression of demonstrators without any reason, provocation or occupation of the road; lack of gradual use of force, absence of prior warning of the use of force, absence of dialogue; people seriously injured by pepper spray, pellets, grenades, gas carbines, high concentration of gas affecting children and elderly people and other persons not participating in the demonstrations; direction of the jet of the vehicle throwing water directly against the demonstrators; detention of media by police and military who did not carry their institutional identification.

They also report that 9,129 people have been arrested in the context of demonstrations and protests, 87% of whom are adults and 12% children or adolescents. It has recorded 1445 human rights violations (torture, cruel and inhuman treatment) against detainees in police stations, of which 191 are classified as sexual violence. Through its visits to hospitals, the INDH has been able to ascertain that 3649 people have been injured in the social demonstrations: 3380 adults and 269 children and adolescents, making a total of 2063 people injured by

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<sup>1</sup> See <https://bibliotecadigital.indh.cl/bitstream/handle/123456789/1701/Informe%20Final-2019.pdf?sequence=1&Allowed=y>

<sup>2</sup> See <http://www.oas.org/es/cidh/prensa/comunicados/2019/317.asp>

<sup>3</sup> See <https://acnudh.org/chile-informe-describe-multiples-violaciones-de-derechos-humanos-y-llama-a-reformas/>

firearms. The INDH also reports that 405 people have been victims of eye injuries, of which 33 have suffered loss or bursting of eyes.

The institution has filed six complaints for murder (two against the police, three against the army and one against the navy), in addition to 17 complaints for attempted murder (16 against the police and one against the army).

It should be noted that the figures provided by the NHRI correspond only (due to their limited capacity) to the cases that the institution has directly identified.

A widespread citizen unrest with the concentration of wealth and inequality in various aspects of social life is at the root of the social discontent expressed in this crisis. In Chile, 1% of the population concentrates 26% of the wealth<sup>4</sup>. Half of the workers earn less than 510 dollars a month and<sup>5</sup> average pensions are 20% of their salary,<sup>6</sup> even less if they are women. Households spend, on average, 25.7% of their monthly income on debt<sup>7</sup>. In 2018, more than 26,000 people died on health care waiting lists<sup>8</sup>. 2019 was the most critical year of the mega-drought that has affected Chile for a decade now,<sup>9</sup> and which has exposed the crisis caused by the delivery of water rights, particularly to mining and agricultural companies.

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<sup>4</sup> See Economic Commission for Latin America and the Caribbean (ECLAC): Social Panorama of Latin America 2018 LC/PUB.2019/3-P, Santiago, 2019.

<sup>5</sup> See <https://www.elsiglo.cl/2019/01/25/la-terrible-realidad-de-los-sueldos-y-las-pensiones-en-chile/>

<sup>6</sup> See <https://www.elmostrador.cl/destacado/2019/09/10/chile-en-el-ano-2101-que-pasara-con-las-pensiones/>

<sup>7</sup> Central Bank Financial Stability Report, first half 2019. See: <https://www.elmercurio.com/inversiones/noticias/analisis/2019/05/16/hogares-aumentan-a-257-el-porcentaje-de-sus-ingresos-mensuales-que-destinan-a-pagar-deudas.aspx>

<sup>8</sup> See <https://www.biobiochile.cl/noticias/nacional/chile/2019/08/01/26-mil-personas-fallecieron-en-2018-mientras-se-encontraban-en-listas-de-espera-mil-estaban-en-auge.shtml>

<sup>9</sup> See <http://www.cr2.cl/megasequia/>

## **Main issues of concern and recommendations**

### **Legislation and implementation**

1. Chile faces the crucial challenge of adopting a migration law consistent with human rights state obligations and to overcome the national security approach of the current legislation, maintained for over 40 years (Decree-Law No. 1094 of 1975).
2. In 2013, President Piñera presented a bill on the matter (Legislative Bulletin No. 8.970-06), and later, the Government of President Bachelet opted for a new initiative that also failed (Legislative Bulletin No. 11.395-06). In March 2018, during Piñera's second administration the former proposal was revived and is currently being debated in the Senate.
3. Although the project implies progress in several institutional aspects and contains a broader catalogue of duties and rights than the current legislation, there are points of concern regarding the respect and defense of migrants human rights.
4. The administration has restricted the interpretation and assimilated the situation of children of a foreign nationals to cases of children of crew members and tourists. However this does not guarantee that they will not be exposed to statelessness, since article 168 states that the children of tourists will not be Chilean, without clearly specifying the situation of children of foreigners in an irregular migratory situation. The legal proposal did not include the granting of visas to groups of special vulnerability who, while residing in Chilean territory, have no other means of regularization. These visas are still in force and are a valuable instrument for protecting the rights of these groups, especially visas for: children and adolescents, pregnant women, victims of domestic violence and victims of illegal trafficking in persons.
5. The project does not provide for permanent regularization mechanisms within the country, which is inconsistent with the provisions of article 69 of the Convention and the objectives promoted by the Global Compact for safe, orderly and regular migration. Failure to incorporate these mechanisms could lead to situations of permanent irregularity, which seriously compromised respect for and protection of the rights of migrants.
6. The bill does not contemplate the principle of non-refoulement. The Government had indicated that it was not appropriate to incorporate it into the Migration Act, as it would apply only to refugees. However, this principle is contained in various international treaties ratified by Chile and the fact that the principle is protected in Act No. 20,430 on the Protection of Refugees is not a reason not to enshrine it in this bill, as it applies not only to those who seek asylum or refuge, but also to those who are at risk and do not know that they should seek protection, or are unable to do so. The American Convention addresses this principle in article 22.8, without making any distinction based on immigration status, and establishes that those whose lives or personal freedom are at risk on account of their race, nationality, religion, social status or political opinions, as set out in the Pact of San José, to which Chile has acceded, may not be returned or expelled.
7. In addition, the law proposal does not guarantee equal access to state programs, once a 2-year residence requirement has been established to access benefits and allowances involving cash transfers from the State to migrants. This is not appropriate considering that foreigners who pay social security contributions and taxes should be entitled to receive the same benefits and allowances as nationals. Otherwise there would be an arbitrary discrimination and in contravention of article 27 of the Convention. In addition, foreigners contribute with a net amount of more than \$1 billion to the State budget, over and far above the State's expenditure on the migrant population.<sup>10</sup>

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<sup>10</sup> "Migration in Chile. Evidence and Myths of a New Reality." LOM, 2019.

## Recommendations:

- Integrate the international responsibilities of the Convention relating to the Status of Stateless Persons (1954) and the Convention on the Reduction of Statelessness (1961) into the domestic legal system, especially in the Migration and Aliens Bill currently under consideration, making explicit the recognition of nationality to children of migrants regardless of their migration status. In addition, implement measures to prevent and punish situations of statelessness.
- Exclude from the draft law the obligation of two years of residence for access to state programs and social security, guaranteeing equality of foreigners and nationals in access to state programs and social security.
- Include in the bill special visas for vulnerable groups such as children and adolescents, pregnant women, women victims of violence (both in their country of origin and in Chile), victims of trafficking and smuggling of persons, older adults, persons with disabilities (and their personal assistant) or serious illnesses.
- Include in the bill respect for the principle of non-refoulement and regularization mechanisms.
- Ensure that when migrant women victims of violence are detected at the border or in the rest of the national territory, they will be referred and attended to by the relevant institutions.

## PART II: Non-discrimination in the recognition of rights

8. In September 2017, former President Michelle Bachelet sent a bill to Congress that defines the crime of incitement to violence (Bulletin 11424-17), in response to the growing hate speeches in public opinion, in which stereotypes based on religious beliefs, national origin, gender, sexual option or identity and skin colour predominate. The increase of this discriminatory treatment that amounts to situations of physical and verbal aggression are directed towards migrants, mainly of Haitian origin. This bill has already been generally approved by the Chamber of Deputies in January 2020 and should continue its legislative debate.

9. However, shortly after the introduction of this bill reform, Joane Florvil, a Haitian migrant woman, died and experienced a series of arbitrariness. This was the most notorious case of death under the responsibility of public institutions, including Carabineros de Chile. Two years after her death, a family member of Joane declared "Joane's case represents all the injustices that the State can commit against a person, especially when she is a woman, a migrant and of african descent. Unfortunately, in all the institutions where I was, the OPD of Lo Prado, Carabineros de Chile, the former Posta Central (hospital), in all of them aberrations were committed with her just because she was a migrant, a woman and a black woman"<sup>11</sup>.

10. The difficulty of public officials to understand Joanes language and the absence of protocols to address this barrier precipitated the action of officials. Although a Subcommittee on Migration Affairs had been set up in Santiago following that unfortunate event, it was the only governmental institution that took part of responsibility.

11. The Casen 2017 survey reports on the discriminatory treatment that families report receiving outside their homes. While 12.7 per cent of nationals say they have had such experiences, for the foreign population this rate rises to 32.2 per cent.

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<sup>11</sup> <https://radio.uchile.cl/2019/09/30/a-dos-anos-de-la-muerte-de-joane-florvil-cuando-el-racismo-se-vuelve-institucional/> . September 30, 2019.

12. On 4 April 2019, Alberto Picuasi, an Ecuadorian indigenous migrant who was working as a street vendor in Santiago, died after being run over on a downtown avenue while fleeing a car chase by the Carabineros, when he tried to avoid a police checking. A local newspaper described "according to witnesses in various videos broadcast on social networks, the shopkeeper was hit by a mobile police station, which contrasts with the official version, which holds a Transantiago bus responsible for it."<sup>12</sup>

13. In May 2019, two Haitian women died in the context of failed hospital care. They were Monise Joseph (31) who died waiting for care in the emergency room of the Barros Luco Hospital in San Miguel and Rebeka Pierre (38) for whom medical negligence at the Felix Bulnes Hospital is being investigated<sup>13</sup>. Of these cases, neither the results of the investigations nor the determination of responsibilities are known yet.

14. During 2019, there has been an increase in the actions of neo-Nazi organizations that reproduce a discourse of hate towards migrants. Part of their actions have been to call for the development of "anti-migrant marches", which have had a high public profile because of the calls that the organizers made for the use of violence. Within the framework of the increase in these speeches and demonstrations that incite violence and hate, the actions and speeches of public government authorities have not contained or condemned the actions of these groups, nor have the harmful effects of these speeches and actions been problematized.

15. 12.3% of the femicides that occurred in Chile between 2017 and February 2019 were perpetrated against migrant women (Chilean Network against Violence against Women), which is disproportionate regarding the number of migrant women living in Chile (3.3%). Therefore, a migrant woman's risk of experiencing gender violence and/or femicide would be more than three times higher. Despite this, the draft law on migration and foreigners currently under legislative discussion does not include special visas for these vulnerable groups (pregnant women, victims of domestic violence), nor does the bill guarantee that migrant women can access any policy or program on gender violence, regardless of their migration status.

16. In addition, there are concerns about discrimination by agents of the Investigation Police (PDI), at the border. According to information from the same IDP, rejection rates vary according to nationality and "those flows with a significant presence of people of african descent coincide with the highest rejection rates, with Haitians and secondarily Dominicans being the most frequently rejected when entering"<sup>14</sup>.

#### **Recommendations:**

- **To speed up the judicial processes aimed at establishing responsibilities, sanctions and reparation measures as appropriate.**
- **Accelerate the legislative debate on the bill that typifies the crime of incitement to violence (Legislative Bulletin No. 11424-17), which is in its first constitutional stage and which typifies and sanctions incitement to violence towards different groups of people.**
- **Promote recognition of the State's responsibility for prevention by generating and implementing policies and programs for the prevention of discrimination, violence and hatred towards different groups of people, and by improving Law No. 20,609 on discrimination**

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<sup>12</sup> April 24, 2019.

<sup>13</sup> <https://www.latercera.com/la-tercera-pm/noticia/nombre-monise-joseph-muere-mujer-haitiana-esperando-atencion-hospital-barros-luco/668650/24/05/19>. 24 June 2019.

<sup>14</sup> Rojas-Pedemonte, Nicolas & Silva Dittborn, Claudia. (2016). Migration in Chile: Brief report and characterization. Ibero-American Observatory on Human Mobility, Migration and Development.

- To develop policies and programs that prevent and sanction racism, incitement to violence and hate towards different discriminated groups of migrant people. In particular, to promote the implementation of an intercultural approach in legislation, programs and public policies, especially in the field of health and education, both from the central and local governments.
- Guarantee the agility of the judicial processes in favour of migrants who are victims of discrimination and violence, establishing the responsibilities, sanctions and reparation measures.
- Ensure that the actions of the police, particularly from Carabineros, comply with State's obligations in the areas of human rights, non-discrimination and interculturalism.
- Implement measures to address the language barriers in public institutions, particularly in Carabineros de Chile, at national level.
- Include in the law proposal on migration and foreigners presented by the administration, the existing visas for vulnerable groups such as children, pregnant women, victims of domestic violence or illicit trafficking in persons. In addition, include an explicit clause to allow access of migrant women to any policy or program on gender violence prevention and treatment, regardless of their migration status.
- Develop strategies that address the high prevalence of gender-based violence experienced by migrant women.

### Part III: Human rights of all migrant workers and members of their families

17. The publication of statistical reports on migrant workers, which has been made available on the website of the Labour Direction Unit (DT) from the Ministry of Labour, is limited to two reports, both from the first half of 2018. In statistics provided to the press, the<sup>15</sup> Labour Direction Unit reports that between 2016 and 2018, complaints lodged by migrant workers for **violations of their labour rights** tripled from 1,855 to 7,427, representing 12.7 per cent of total complaints. This is a figure that doubles the number of foreigners residing in Chile, estimated at 6.6 per cent of the population, which means that their rights are being doubly violated.

18. It is even more striking that in 2018, only 1.9 per cent of the complaints lodged directly by foreign workers with the Labour Direction Unit were from private households with domestic service, a labour sector that has shown a persistently high level of informality, 10.6 per cent of which is made up of migrants.

19. At the end of 2014, the new law for **domestic workers** was enacted and came into force on 1 January 2015, which, among other things, made it compulsory for the contracts of private domestic workers to be registered with the Labour Direction Unit (DT) and thus reduced the high rates of labour informality, which exceeded 50 per cent.

20. According to the INE, in the July-August 2019 quarter, domestic work informality rose to<sup>16</sup> 52.1%, equivalent to 154,511 workers.

21. Among the main problems pointed out by organizations of domestic remunerated workers is the fragility of the control mechanism, which is given to the employer who are the ones that usually attempt against the labour law; the lack of state control of the law implementation as well as the lack of budget to avoid exploitation and abuse.

22. A large number of migrant families are highly excluded and have their rights violated. According to the Casen 2017 survey, **income poverty among** the unborn in Chile is higher (10.8

<sup>15</sup> <https://www.latercera.com/nacional/noticia/denuncias-migrantes-abuso-laboral-se-triplican-dos-anos/682253/> . 03 June 2019.

<sup>16</sup> October 5, 2019.

per cent) than that of the Chilean population (8.5 per cent), with the difference increasing for the population aged 0 to 17, where 22.1 per cent are unborn in Chile, compared to 13.7 per cent for Chilean children. These differences are maintained if multidimensional poverty is taken into account, especially in the population aged 0 to 17, with a higher rate of foreign children in this condition (31.6%) than national children (23.1%).

23. With regard to **education**, although regulations have been established for the access of migrant students to education, these are not guaranteed in private subsidized establishments, where some of them still require a Chilean identity card as a registration requirement. In addition, there are socio-economic, linguistic, cultural and regulatory barriers (mainly in higher education) that make education one of the most violated rights among migrant children. The same Casen 2017 survey includes indicators related to attendance at three levels of education. For basic education, national children between the ages of 6 and 13 have an attendance rate of 91.9 per cent, much higher than the 76.4 per cent of migrant children. For secondary education, this same rate for adolescents between 14 and 17 years of age born in Chile is 73.7 per cent, and for those who are not born in Chile it is only 59.6 per cent. The situation is worse in higher education, where the attendance rate for young nationals is 38.8 per cent, while for those who have migrated it is only 11.4 per cent.

24. The initiatives to address the language barrier in education are isolated efforts carried out by local governments such as Recoleta and Quilicura in the Metropolitan Region; however, in general, no policies or programs have been implemented by the Ministry of Education to address this barrier. In cases that have been known by Colectivo sin Fronteras, Haitian children who are not Spanish-speaking and are incorporated into education in different communes of Santiago in the Metropolitan Region, have had to learn the language by themselves, assuming the emotional and educational tensions that this means.

25. Although there have been regulatory advances in access to education and associated policies (Ord. 0894 Mineduc; R.E. 69 Junaeb), the exclusion of some students, mainly foreign students whose parents or themselves do not have an identity card, from public programs continues. This is the case with the school meals programs of the National School Aid and Scholarship Board (Junaeb), which are based on the Social Register of Homes, a register which cannot be accessed by adults who do not have a Chilean identity card.

26. The food barrier is a major barrier in the field of education affecting different rights of children, especially children in the early years of entry into the education system. As these are children from families with very different eating patterns from Chileans, children from nursery school to basic education have difficulty in eating because the food they receive under the school feeding program run by Junaeb has a standardized table for Chilean eating habits, and the institutions involved have not yet devised strategies to deal with the difficulties children face as part of this food barrier.

27. In terms of **housing**, migrant children and families live in critically overcrowded conditions, which for the national population is 5.8 % and 20.6 % for migrant families.

28. In recent years, evictions have been public with disregard to international human rights standards and have taken<sup>17</sup> place with intimidation and/or violence against children and their families. These evictions have been carried out mainly by the Provincial Government of Antofagasta (Frei Bonn camp), the Municipality of Viña del Mar (Toma Unidas) and the Municipality of Independencia (more than 30 collective housing units). Most of these spaces housed migrant families.

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<sup>17</sup> Basic principles and guidelines on development-based evictions and displacement are contained in annex 1 of the Special Rapporteur's report, A/HRC/4/18.



29. Currently, two bills are in process that propose modifications to the Law of Renting N° 18.101 and the General Law of Urbanism and Construction which include regulations related to the control of abusive renting. However, they have not considered measures to safeguard the rights of migrant persons who are already in the situation of abusive renting, nor alternatives to their housing needs.

30. Although progress had been made in dealing with eviction procedures with Circular No. 19 of 7 March 2017 from the Under-Secretariat of the Interior<sup>18</sup>, it was left without effect in 2018 - after the change of government - by the same Under-Secretariat<sup>19</sup>.

31. The **social protection** system excludes migrants who are in an irregular migration situation, even if they are residing for a significant period of time in Chile. This is because adults are required to have a Chilean identity card in order to apply for the instrument that is the gateway to the system, the Social Registry of Homes (RSH). This requirement leaves out of the social protection system even Chilean children whose migrant parents have not been able to regularize their migratory status.

32. During the second administration of President Piñera, there have been setbacks in the rights of **asylum-seekers and refugees** with practices that violate the right to refuge in Chile.

33. These include recurrent denials of the right to seek asylum, especially for families from Colombia, Venezuela and Cuba. Among those affected by these procedures are children and adolescents who were part of these families. In some of these cases, the National Institute of Human Rights (INDH) was able to submit appeals for protection; however,<sup>20</sup> there is no record of these procedures or of the persons who are denied these applications or the reasons for them.

34. In addition, information was provided by officials of the Investigation Police (PDI) to a committee of the Chamber of Deputies, in which they reported having received documents from the Ministry of Foreign Affairs that were aimed to restrict the entry of persons, including asylum-seekers.<sup>21</sup>

35. According to statements made by the Under-Secretary of the Interior and Public Security on 10 July 2019, the Department of Foreigners and Migrants is currently reviewing more than 1,000 applications for asylum that were approved during the previous Government,<sup>22</sup> which would mean that a right granted to adults and children and adolescents who are part of these families that have been living in Chile for some time, is not being recognized.

36. There is concern about the drastic reduction in asylum applications, which fell from 2,297 (2016), 5,723 (2017), 5,727 (2018), to 352 during the first half of 2019. The number of applications received this year represents 6.1% of the applications of the previous year. The same drastic reduction is seen in the number of refugee status recognitions granted, which

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<sup>18</sup> This Circular considered that in administrative eviction procedures carried out by the Regional Government, the dignity of the people should be considered, making them participants in the process and protecting their integrity, including when granting transitional housing solutions (Torres Montenegro, 2019)

<sup>19</sup> <https://www.interior.gob.cl/transparencia/doc/ActosTerceros/1/5105777.pdf>

<sup>20</sup> 20 August 2018. <https://www.indh.cl/suprema-acoge-recurso-de-proteccion-indh-antofagasta-y-ordena-tramitar-solicitudes-de-refugio-de-27-extranjeros/>, 14 March 2019. <https://www.indh.cl/indh-logra-que-42-extranjeros-soliciten-refugio-en-iquique-y-antofagasta/>, 10 July 2019. <https://www.indh.cl/indh-presenta-amparo-en-favor-de-20-venezolanos-a-quienes-se-les-nego-refugio/>, 28 June 2019.

<sup>21</sup> July 11, 2019.

<sup>22</sup> July 10, 2019.

were 63 (2016), 162 (2017), 171 (2018) and during 2019 reached only 7 cases, representing only 4.1% of the previous year's recognitions.<sup>23</sup>

37. This drastic drop in asylum applications could be explained by a number of irregularities reported in the procedures carried out by the Department of Aliens and Migration (DEM), in particular "an interview on the admissibility of the asylum procedure that is not provided for in the law, which, moreover, often leads to a refusal to enter the procedure itself. In addition, the summons to the interview often forces people to enter or remain in an irregular state of residence, since the summons is issued for several months after the application. Finally, the above-mentioned authority does not receive the letters of entry to the asylum procedure by the office of parties, in order to make the application for asylum in writing. In this way, the State of Chile not only delays or enters into the procedure for recognition of refugee status, but also prevents foreigners from entering the procedure in any form, whether in person or in writing, thereby directly violating the right to seek and receive asylum.<sup>24</sup>

38. This leaves the family exposed to critical situations and the children of applicants without access to important social programs such as priority in child care programs (nurseries or kindergartens) or more seriously, violates the right to education and excludes them from applying for public initiatives to support access to higher education, which require a permanent residence visa.<sup>25</sup>

39. In this context, the Foreigner Department provides notifications to children of refugees, who, in the third year of waiting for their applications to be resolved, are told that they must apply for some kind of visa other than a refugee visa because there would be no reason to grant them refuge, while the other members of the family group are left unanswered.

40. We emphasize that there is no prior admissibility procedure established by law, and the rejection and granting of refugee status is a practice of exclusive responsibility of the Ministry of the Interior, by means of a resolution of the Under-Secretary of the Interior. In this connection, in 2019, in response to arbitrary actions and violations of rights, the Jesuit Refugee Service (SJM) filed a total of 10 applications for protection with the Court of Justice seeking the granting of refugee status by the Refugee Section of the Aliens Department.<sup>26</sup> A total of 43 persons were represented in these actions, 34 of whom have already been admitted to the procedure thanks to a favourable ruling by the Supreme Court and 2 of whom are awaiting a final ruling in their cases, which have already been positively resolved by the Court of Appeal, and 7 of whom are still awaiting the ruling of the Court of Appeal. This concludes that 100 per cent of the cases decided by the Supreme Court were favourable, with the result that the impediment that has been presented to the asylum seekers is not in accordance with the law.

41. Expulsions of migrants have been one of the most visible issues in the policy of President Piñera's government in relation to this population. In June 2019, one of the most regrettable episodes occurred when the vulnerability of the children of those who were expelled was made public, in particular because of the rejection of an application for habeas corpus filed by the National Human Rights Institute (INDH) on behalf of migrants in an irregular situation, some of whom had Chilean children<sup>27</sup>. This "has highlighted the violation of various rights of migrant children and adolescents (NNA), e.g., the right to family life, health, education, to be heard and the right to life and development. While the authorities maintain that the

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<sup>23</sup> Department of Foreign Affairs and Migration (2019). Minute Refuge in Chile.

<sup>24</sup> Universidad Diego Portales (2019), Annual Report on Human Rights in Chile.

<sup>25</sup> July 24, 2019.

<sup>26</sup> Cases Rol 3,146-2019, 3,410-209, 15,130-2019,36,207-2019 (Supreme Court); 199-2019, 198-2019, 293-2019, 814-2019 (Court of Appeals of Arica); 70,772-2019; 184,176-2019 (Court of Appeals of Santiago)

<sup>27</sup> June 12, 2019.

expulsions are in accordance with the law, the execution of these measures is opposed to due consideration of the best interests of the child and international instruments such as the Convention on the Rights of the Child".<sup>28</sup>

42. SJM has dealt with several cases in which it has been found that migrants have been tricked into being deported quickly without access to due process<sup>29</sup>. The IDP has even arrested people who were outside the premises of this institution waiting for its doors to open so that they could be attended to. The Supreme Court has repeatedly declared the illegality of the expulsion orders issued by the municipalities in cases of foreigners entering the country illegally, in response to petitions submitted by civil society. In this regard, in case ROL 168-2019 presented to the Court of Appeals of Arica in September, the Supreme Court revoked expulsion orders after their execution, due to the illegality and arbitrariness of the procedure. In this case, two persons had been summoned to police stations, where they were notified of the expulsion order issued against them, and were expelled within less than 24 hours of that notification.

43. In relation to expulsion orders issued by the government on the grounds of entry by unauthorized passage, during 2019 SJM filed a total of 14 actions for protection seeking the revocation of these sanctions on the grounds of their arbitrariness and illegality. Through these actions, a total of 198 persons of different nationalities were represented, although the majority were Venezuelan nationals. Of all the actions presented on the grounds of revocation of expulsion orders with the sole reason of clandestine entry, 100% were accepted and confirmed by the Supreme Court, which reveals the illegality of the government's action.

44. In the area of **social security**, the Superintendency of Pensions states that Chile has signed 27 agreements that seek to benefit migrants from 28 countries. With the exception of the Chile-Peru agreement, which allows the transfer of pension funds, the other agreements generally consider the submission of applications in one State to obtain pensions, supplementing periods worked in different countries to obtain benefits, health protection, etc., which change from case to case. However, most workers who decide to return to their countries before retirement age do not have the possibility of recovering their funds saved in Chile's pension fund administrators (AFPs).

45. Despite the fact that Law 18,156 provides for the possibility of the return of AFP funds, its application is extremely restricted, in principle because it applies only to professionals and technicians, which is already discriminatory. Thus, while Law 18.156 requires a declaration in the employment contract that exempts them from paying contributions to the AFP, provided that they are already registered in another pension system, the Department of Foreigners and Migration requires the opposite for many migrant workers. For the purposes of processing their visa, the employment contract must have a clause that commits the worker to contribute in Chile, and workers are obliged to join an AFP.

46. Despite the regulations on migrant access to the **health** system, one of the areas of greatest impact on multidimensional poverty is the lack of health coverage, where there is a very wide gap, with 15.8 per cent of the foreign population in this condition, far from the 2.2 per cent of nationals in the same situation. In the case of children, 1.7% of the population living in Chile between the ages of 0 and 17 has no affiliation to the health system, which for the group of foreign children between the ages of 0 and 14 increases to 21.4% (Casen, 2017).

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<sup>28</sup> Cepeda Valdés, Sebastián (2019): *Is it possible to protect the human rights of migrant children and adolescents within the framework of current migration regulations?* Revista Señales Nº 21, vol. XIII, 2019. Sename.

<sup>29</sup> <https://m.elmostrador.cl/noticias/pais/2019/12/13/director-del-sjm-denuncio-deportacion-de-extranjeros-bajo-engano/>

47. Although the implementation of the Ministry of Health's immigrant health care programme is an important step forward, there are still gaps in information on the right to health and other rights of migrants, and in the incorporation of an intercultural approach. In the experience of accompanying Haitian families, Colectivo Sin Fronteras has identified serious problems associated with linguistic and cultural barriers. Thus, the lack of communication between users and health personnel limits both adequate care and treatment, especially when users do not understand or are not effectively informed of the indications to be followed. This, among other consequences, generates serious errors in the preparation and dosage of pharmacological treatments, including those for children, which can lead to health complications.

48. We also stress that the new bill establishes the need to remain in Chilean territory for two years in order to be eligible for health benefits entirely for tax purposes.

49. On 23 April 2018, Chile had ratified the 1954 Convention relating to the Status of **Stateless Persons** and the 1961 Convention on the Reduction of Statelessness, but had not established regulations to integrate international responsibilities into the domestic legal system.

50. With regard to applications for a declaration of nationality, that is, persons who were not registered as Chileans and who request the rectification of their nationality through administrative channels by issuing a declaration of their nationality. The Department of Foreigners and Migration (DEM)<sup>30</sup> noted that between 2000 and 2018 a total of 3,131 applications were received. Until April 2018, the DEM did not have systematized information on the nationality of the mother and/or father, or the age of the applicants, for which reason it is not possible to distinguish whether these applications for a pronouncement of nationality were the result of children of foreign parents born in the country who were not allowed to apply for nationality, or the children of Chileans born abroad.

51. From the end of 2015 to 2017, in a partnership between DEM, civil society and UNHCR, the "Chile Recognizes" programme was developed to promote the recognition of the nationality of so-called "children of foreigners who are transients". According to UNHCR-Chile, as a result of this project,<sup>31</sup> 395 people were granted nationality. However, we have noted a growing number of new cases of registration of children born in Chile, registered as "children of foreign nationals who are transients" in the year 2019.

52. The Civil Registry and Identification Service<sup>32</sup> reports that between 1981 and 2018, 1925 cases of children of transient foreigners were identified. Of these, a total of 26 cases are identified as stateless, as the nationality of the parents was not recorded. However, it is not clear from the State how many of these persons are in this condition, where they are and whether they currently have any nationality.

53. In 2019, Colectivo Sin Fronteras received a request for support from a Haitian family whose child was not registered with the Civil Registry until he was 5 months old. As part of this case, it was also made clear that foreigners with visas in process were prevented from being witnesses to the birth according to the regulations of the Civil Registry for these purposes. In addition to the violation of the right to nationality, other rights were also violated in this case, such as health and protection of the child in question.

54. Different forms of **racism** are increasingly present in Chile. The results of the study on the Chilean population's perceptions of immigrants and indigenous peoples were published in the annual Human Rights Report 2017, developed by INDH. The results show that the majority of

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<sup>30</sup> in response to information request AB001W0009972

<sup>31</sup> 25 June 2018.

<sup>32</sup> consulted by request for information number AK002T0005863

Chileans consider themselves to be "whiter than other people from Latin American countries", while they consider migrants to be more "dirty" than the Chilean population. These perceptions are transferred to everyday relations in educational establishments. In a survey carried out by Colectivo Sin Fronteras in which 50 migrant children participated, 26% said that during the last year they had felt ill-treated or discriminated against because of their nationality, that of their parents, or the color of their skin. 40% say that quite a few or many times verbal violence has occurred between peers (insults, offenses, mocking or threats), while 18% have experienced it quite a few or many times. 30% state that quite a few or many times physical violence has occurred between partners and 14% have experienced it quite a few or many times.

55. According to estimates by the Department of Foreign Affairs and Migration (DEM) and the National Institute of Statistics (INE), there were approximately 287,000 Venezuelans living in Chile as of December 2018. According to declarations by the Head of the Department of Foreign Affairs,<sup>33</sup> during 2019, close to 100,000 Venezuelans entered the country, which means that the current Venezuelan **population in Chile** could be expected to be close to 400,000.

56. On June 22, 2019, Venezuelans were required to apply for tourist visas through the consular system, which meant that during the last days of June about 400 people were stranded at the Chacalluta border crossing in very precarious conditions. They were then transferred to the Chilean Consulate in Tacna to apply for a democratic responsibility visa or a tourist visa, creating family camps that waited for weeks for a solution. The imposition of the tourist consular visa not only implied a humanitarian crisis during June and July 2019 in Chacalluta and Tacna, but also derived in the implementation of administrative barriers for the entry of Venezuelan people to Chile: while between February and June about 167 thousand Venezuelan people entered the country (without discounting the departures from the country), between July and November that number barely exceeded 46 thousand. This has led to an<sup>34</sup> exponential increase in the number of Venezuelan nationals entering the country through routes that were not authorized for Chile, in addition to a worrying increase in cases of human trafficking and the smuggling of migrants.<sup>35</sup>

57. During April 2018 and May 2019, 78% of Venezuelans who entered Chile did so as tourists and 22 per cent as residents, considering that the tourism permit was requested at the border and no prior consular processing was required.<sup>36</sup>

58. In addition to the new tourist visa required of Venezuelan nationals, a new visa, the Democratic Responsibility visa, was also announced. In April 2018, the Government announced the creation of a special visa for the Venezuelan population, which is requested and processed through consular channels, initially at the Chilean consulates in Venezuela and subsequently extended to other Chilean consulates abroad. Although this measure is positive in terms of allowing Venezuelan nationals to enter the country with a previously approved residence, it has not been enough given the long processing times and the low number of visas granted. As of November 27, 2019, more than 200,000 democratic responsibility visas had

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<sup>33</sup> Available at <https://www.latercera.com/pulso/noticia/gobierno-reformulara-las-visas-laborales-deja-pausa-ultimo-permiso-creo-august/987626/>

<sup>34</sup> Information provided by the Investigation Police (PDI) by means of a request for public information.

<sup>35</sup> Available at <https://www.latercera.com/nacional/noticia/pdi-advierte-alza-delitos-trata-personas-trafico-migrantes-chile/1004411/#>

<sup>36</sup> "Report on the situation of Venezuelan people on the northern border of Chile." Jesuit Migrant Service, 2019. Available at <https://www.migracionenchile.cl/publicaciones>.

been requested, of which only 26.6% had been granted, while 47% were still being processed and the remaining 26.4% had been rejected.

59. Both measures mentioned above generated a large **increase in entries per unauthorized passage** at the border.<sup>37</sup> Of the total income from unauthorized crossings over the last decade in Chile, 50 per cent is concentrated in the last two years, reflecting the consequences of certain policies implemented by the Government. The Venezuelan case is especially relevant, as it went from having only one case of irregular entry registered in 2015 to registering 2,876 by October 2019, due to the requirement of a consular tourism visa to enter Chile. Something similar occurs with Haiti, which has been required to have a Consular Tourism Visa since April 2018. In 2017, 12 people were registered who entered through unauthorized entry, while in October 2019 there were already 490. Both cases are worrisome, because regularization within the country has been complex and slow, due to the fact that administrative processes take time to obtain a response from the institutions. In the case of the Venezuelan population in particular, there has been income from unauthorised entry when the possibility of applying for asylum at the border was denied, thereby violating the right to due process; or in the case of administrative barriers they encounter when applying for visas through consular channels.

60. In particular, a growing number of children and adolescents are entering Chile through unauthorized entry. The main reason for this is that consular visa procedures are very extensive and often difficult to access. In addition, Chile does not have a family reunification visa for Venezuelan nationals and requires many documents that Venezuelan nationals do not regularly possess in order to obtain a visa.

61. It is important to note that part of the income of identified minors is for family reunification, where the parents are already in Chile, even on a regular basis. In particular, SJM has received cases of mothers and fathers who, having visas and Chilean identity cards, went to Venezuela to pick up their children and, unable to enter with them regularly, were forced to do so by unauthorized entry, resulting in the loss of their visas. In addition to the administrative sanction of losing the visa and obtaining an expulsion order, they had to go through a situation of extreme vulnerability with their children in order to enter Chilean territory.

62. Although the creation of the NNA visa in 2017 makes it possible to regularize children and adolescents regardless of the immigration status of their parents or guardians, the Chilean State does not allow the temporary NNA visa without the presentation of the document issued by the PDI for entry into the country, which makes it difficult to regularize minors who enter by way of an unauthorized passage.

63. On 23 April 2018, the possibility of applying for a **visa for labour reasons**, which had been established in 2015 by Circular Letter No. 7, with the intention of offering an alternative to the contractually required visa, was eliminated, taking into account that this type of residence permit would not comply with international human rights standards. In this document, the administrative authority indicated that article 25 of Legislative Decree 1094, which establishes that the termination of the labour relationship is a cause for the expiration of the residence visa subject to contract, would be in "open dissonance" with the provisions of article 49.2 and 49.3 of the Convention. Despite the fact that this administrative modification had meant an advance in this matter, article 25 of DL 1094 remains in force.

64. The return to the use of the **contract-based visa was the** result of an immigration reform and national policy on migration and foreigners presented by President Piñera, which had as

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<sup>37</sup> <https://www.latercera.com/nacional/noticia/extranjeros-ingresan-pasos-no-habilitados-suman-26-mil-10-anos/955795/>

one of the administrative measures with immediate effect the elimination of the temporary visa for labour reasons that corresponded to the total of 74 per cent of all temporary visas granted by Chile in 2017<sup>38</sup>. In this way, the migrant worker was once again deprived of his or her residence permit simply because of failure to fulfil an obligation arising from an employment contract. In addition, since the migrant is subject to a specific employment contract, he or she is more vulnerable to labour abuses.

**Recommendations:**

- **Increase inspection and information activities on the rights of women domestic workers, adapting the regulations in force to guarantee effective inspection mechanisms.**
- **Establish programs with an adequate budget to address the vulnerability of the migrant population and reverse the violations of fundamental rights such as health, education and decent housing.**
- **Make regulatory adjustments to the requirements of social protection policies, to include the migrant population in public policies that correspond to their vulnerability, regardless of their migratory status or that of their legal guardians.**
- **Expand awareness-raising and training initiatives on migrants' rights, non-discrimination and intercultural approach in public services and institutions, in particular civil registries, educational centres and health services, as well as public campaigns aimed at society as a whole.**
- **Respect the protocols and procedures set out in the law and regulations for receiving refugee applications and assessing these applications in accordance with human rights**
- **To increase oversight by the Office of the Comptroller of the procedures being carried out by the Department of Aliens and Migration and for the State to report on the justification for conducting a pre-interview procedure to pre-screen asylum seekers and their families, as well as the reasons for the low number of asylum applications and the low rate of recognition.**
- **Generate a summary appeal procedure for applicants whose applications are rejected at first instance.**
- **Incorporate legal responsibilities for refugee matters into the domestic legal system, especially to ensure that adolescent refugee applicants with long waiting times for their applications are able to access higher education policies in particular**
- **Ensure that legal or administrative procedures for resolving applications for international protection and determining refugee and complementary protection status are in accordance with the Convention.**
- **To guarantee the best interest of the child and respect for the right to family unity in all decisions made about migrants so as not to generate expulsions that make the lives of children precarious or lead to indirect expulsions.**
- **Ensure due process in cases of expulsion of aliens**
- **Modify the requirements requested for the return of AFP funds to ensure that migrant workers who decide to return to their countries of origin can recover their funds.**
- **Eliminate the income tax charged on the return of pension funds.**

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<sup>38</sup> [http://cdn.digital.gob.cl/filer\\_public/b0/09/b0099d94-2ac5-44b9-9421-5f8f37cf4fc5/nueva\\_ley\\_de\\_migracion.pdf](http://cdn.digital.gob.cl/filer_public/b0/09/b0099d94-2ac5-44b9-9421-5f8f37cf4fc5/nueva_ley_de_migracion.pdf)

- **Develop initiatives aimed at including the migrant population in the health system, focusing efforts especially on the most vulnerable groups such as children and the elderly**
- **Expand and strengthen the immigrant health care program and strengthen the awareness and training of health officials in migrant rights and the implementation of strategies that address barriers to intercultural health care.**
- **To develop actions aimed at rectifying cases of statelessness and lack of knowledge of nationality of persons born in Chile who were registered as children of foreign nationals who are transients.**
- **Review the protocols and regulations governing the registration of newborns to ensure smooth and timely registration without discriminating against migrants who can testify to births in appropriate cases.**
- **To generate a policy that addresses the language barrier in all the establishments that require it, allocating the necessary resources for this purpose.**
- **Generate regulatory adjustments so that all students can have access to public education policies, especially eliminating the requirement of identity cards for children or their responsible adults as a requirement of any policy aimed at vulnerable populations.**
- **Implement plans and programmes aimed at eradicating discrimination and racism in the education system, both in the area of training and in promoting reporting.**
- **Generate programs or initiatives that address language barriers and dietary differences associated with the presence of increasingly diverse populations, especially in education, health or municipal institutions.**
- **To facilitate and speed up the processes of granting consular visas, avoiding discretionality in their processing and granting; to create an effective visa for family reunification; to make the documents requested for the visa of minors more flexible; to carry out a process of extraordinary regularization of the minors already entered in Chile, which can be through the temporary NNA visa without the need to show the travel document issued by the Investigation Police.**
- **Reinstate the temporary visa for labor reasons and incorporate it into the bill currently under legislative discussion.**