



**2017**

**EXECUTIVE  
SUMMARY**

**RESUMEN  
EJECUTIVO**

**Annual Report  
Human Rights Situation  
in Chile**

**Informe Anual  
Situación de los Derechos  
Humanos en Chile**

**INGLÉS**

**12 DECEMBER 2017**

**RESUMEN EJECUTIVO INFORME ANUAL  
SITUACIÓN DE LOS DERECHOS HUMANOS  
EN CHILE 2017**

©Instituto Nacional de Derechos Humanos

**Consejo del Instituto Nacional de  
Derechos Humanos**

Miguel Luis Amunátegui Monckeberg  
José Aylwin Oyarzún  
Carolina Carrera Ferrer  
Consuelo Contreras Largo  
Sebastián Donoso Rodríguez  
Carlos Frontaura Rivera  
Debbie Guerra Maldonado  
Sergio Micco Aguayo  
Margarita Romero Méndez  
Eduardo Saffirio Suárez

**Director Instituto Nacional  
de Derechos Humanos**

Branislav Marelic Rokov

**Equipo de redacción INDH  
Unidad de Estudios**

Oswaldo Torres Gutiérrez  
Sebastián Del Pino Rubio  
Dhayana Guzmán Gutiérrez  
Alejandra Molina Millar  
Marcela Molina Vergara  
Marcia Núñez Catalán  
Marcia Tijero Méndez

**Traducción a cargo de:**

Alexis Psarras

## INTRODUCTION

**T**his 2017 Annual Report on the human rights situation in Chile is submitted to national authorities and the general public in order to protect and promote the exercise of the rights of all residents of the country by means of research into and analysis of the main themes and issues of concern to the Council of the National Human Rights Institute (INDH).

The Report is compiled in accordance with article 3 of Law 20.045 from which the INDH was established. The INDH is an independent entity with autonomy from the State and, as such, the Annual Report incorporates areas of discussion in relation to human rights in a multidimensional and plural manner. It is based on the national and international frameworks that comprise international human rights law and therefore enables Chilean society and all its constituent members to reflect on the standing of the country within that legal system.

The year 2017 culminates in the re-election of two of the State branches of power: the executive and legislative. From the perspective of the rule of law, this represents a new opportunity to strengthen the democratic mechanisms so essential to the exercise of power. Despite this opportunity, the INDH reiterates its concern, previously raised in 2016, with regard to the low electoral turnout that remains evident in Chile. Ongoing electoral abstention reflects a certain disinterest in the collective affairs of the country and a distrust of public representatives within institutions that are fundamental to democracy and the protection of human rights. Nevertheless, the implementation of a new electoral system based on proportional representation may have a positive impact in terms of increasing the exercise of the right to participate in the management of public affairs by facilitating the election of representatives under the new framework.

The 2017 electoral process has seen the implementation of new legislation that establishes gender quotas for Congressional posts; the right to vote for Chilean citizens abroad; an electoral system based on proportional representation; and regulations of Congressional and presidential campaign financing. It will be important to evaluate the impact of this new legislation over time in order to improve, if necessary, the way the distinct aspects function, as well as to ensure that the new laws are capable of fulfilling their original objectives.

Turning to progress made over the preceding 12-month period, a substantive step forward in human rights has been the strengthening of its institutional framework with the implementation of the Undersecretariat of Human Rights, which was established by Law 20.885 and operates under the purview of the Ministry of Justice and Human Rights. The Undersecretariat has compiled the National Human Rights Plan (PNDH), “to outline the sectoral and intersectoral policy priorities aimed at the respect, promotion and protection of human rights, over a period of four years, beginning from 2018, which will mark the year of implementation”. In addition to this noteworthy step is the consensus and progress made in Congress regarding the bill to create the National Preventive Mechanism against

Torture, with the bill itself designating legal responsibility for the administration of the Mechanism to the INDH<sup>1</sup>.

A further significant element regarding the recognition of human rights has been the systematic collection and analysis of the results of dialogue sessions staged with the general public, as well as with indigenous peoples more specifically, throughout 2016. The dialogue sessions formed part of the constituent process convened by President Michelle Bachelet, with human rights constituting a central component of these gatherings. Regarding the dialogue undertaken with indigenous peoples, it is important to highlight the culmination of the Constituent Indigenous Consultation in October 2017, which discussed measures related to constitutional recognition and effective political participation. The dialogue process as a whole convened 17,000 participants. Its conclusions are set to be incorporated into the bill to devise a new constitution for Chile, which is due for submission to Congress during the current legislative period. This consultation, which was observed by the INDH and in which the United Nations acted as guarantor, was based on the application of Convention 169 of the International Labour Organization which obliges signatory States to conduct prior consultation with indigenous peoples in relation to measures that concern or directly affect these communities.

With regards to persons with disabilities, the passage of Law 21.015 on workplace inclusion is noteworthy. This act establishes that all public institutions and private companies with 100 or more workers must ensure that at least 1% of annual staff are persons with disabilities or persons who receive a disability pension from any type of pension scheme. This represents significant progress in terms of the recognition of the dignity of persons with disabilities, and it also regulates equal remuneration in line with other workers on the basis of the minimum wage.

Finally, it is important to note the development and institutional adoption of the National Action Plan on Human Rights and Business, which comes under the purview of the Ministry of Foreign Affairs. The aim of the Action Plan is to oversee the implementation of the relevant United Nations Guiding Principles in Chile, which act as a guide to both the State and private businesses in the protection and respect of human rights.

Notwithstanding the aforementioned progress, the INDH has expressed, as a priority issue, its concern for certain vulnerable groups. One of the most complex of these situations has been the case of children and young persons under the responsibility and protection of the State within SENAME, the National Children's Service. SENAME has formed an ongoing part of public debate with regard to new cases of rights violations as well as the subsequent need for new legal initiatives introduced by the executive branch, which are currently undergoing discussion in Congress<sup>2</sup>.

Another group for which the INDH expresses particular concern is the Mapuche indigenous peoples in light of increased violence in La Araucanía Region. This situation has resulted in the main branches of the State passing pronouncements on the application of the Anti-terrorist Act, as well as the lengthy preventive detention of suspects, the questioning of evidence used to charge suspects, and police operations and violence in the region, among other issues. Such pronouncements more accurately represent symptoms of an underlying problem: the intercultural conflict between the Mapuche community and the Chilean State.

---

1 Official Gazette 11245-17.

2 These initiatives are as follows: the bill to create a Rights Guarantee System for children and young persons; the bill to create a Child Protection Advocate; the bill to create an Undersecretariat of Children; and the bills to create the National Service for the Specialized Protection of Children, and the National Youth Service for Social Reintegration.

A third group for which the INDH is preoccupied is immigrants, whose arrival flows have increased in recent years. The majority of arriving immigrants are from other nations in the region, from a range of ethnic and cultural backgrounds and with distinct dialects or languages. This situation is leading to instances of rights violations and arbitrary discrimination against immigrants for distinct motives, including physical appearance, ethnic origin or immigration status.

In previous Annual Reports, the INDH has expressed its concern for the foregoing situations and recommended a range of measures in response. In relation to children and young persons in the custody of the State, authorities have undertaken a number of initiatives, including the aforementioned bills, in addition to an associated budget increase during 2017 and greater rigour in the implementation and control of technical legislation. It is hoped that these initiatives will help to restore the living conditions and quality of care received. Part of this concern is addressed in this report.

Regarding the situation in La Araucanía Region, it is clear that there is still no national consensus on the type of solution required to resolve the conflict. Despite the existence of different announcements such as the Araucanía Plan, results have not yet materialized and, in the meantime, rather than tension being diffused it is deepening and spreading. This concern, as well as the need to address the causes that lie at the root of the problem from a human rights perspective, has been reiterated in a number of Annual Reports from the INDH.

With regards to the situation of the immigrant community, a legal initiative driven by the government in August 2017<sup>3</sup> seeks to update existing legislation to take account of the migrant reality facing the country. This move has its precedent in a bill introduced to Congress in 1993 which unsuccessfully sought the modification of a legal decree from 1975. In conjunction with this initiative, certain specific issues have been resolved to improve the access to education and healthcare of children of immigrants, as well as to recognize persons born in Chile to parents with irregular migratory status as Chilean citizens. Previously, such individuals were registered as ‘children of foreign-born temporary residents’. While these steps represent progress in the recognition of the rights of persons moving to Chile, the country still lacks a robust institutional framework in this area, as iterated in the 2013 Annual Report<sup>4</sup>.

It should be noted that there are other aspects of human rights that may affect groups of persons that are not sizeable in number (so-called ‘minorities’). Due to these minorities often being small in number, violations of their rights may not become common knowledge among the general public, or such behaviour may become normalized, or it may simply fail to receive sufficient attention. As such, it is important to consider that the World Conference on Human Rights, held in Vienna in 1993, stated in article 5 of its Declaration that all human rights are universal, indivisible, interdependent and interrelated, and that “the international community must treat human rights globally in a fair and equal manner, on the same footing, and with the same emphasis”.

In understanding the interdependent and indivisible nature of human rights, the INDH also focuses on the following situations in this report: situations experienced by persons as a result of the destruction of biodiversity and the environment, as is the case of the observation mission currently underway in the Chilean municipality of Tiltil; situations of young persons in conditions of imprisonment; situations of persons under conditions of imprisonment who, despite not having been convicted and issued with an afflictive sentence or are in preventive detention, have been deprived of the right to vote; situations of persons who have resided in psychiatric units for long periods of time; and situations of discrimination against women, as well as discrimination against trans and intersex children.

<sup>3</sup> Official Gazette 11395-06.

<sup>4</sup> Similar and complementary statements can also be found in the Annual Reports of 2011, 2012 and 2016.

Furthermore, the INDH has not ceased to identify and analyse the human rights situation of victims of crimes committed by agents of the State during the dictatorship. Accordingly, the INDH has continued and expanded its policy of allowing victims recognized by the National Commission on Political Imprisonment and Torture to access its archives. Moreover, the Institute has conducted a review of the associated reparations policy, including an evaluation of achievements to date and challenges pending, within the framework of transitional justice for the period 1990-2016. This review is outlined in the chapters six of this Annual Report.

One aspect that permeates this report is an issue raised by the United Nations during its 2015 General Assembly session and whereby political agreement on which led to the creation of the document, 'Transforming our World: the 2030 Agenda for Sustainable Development'. This document began a joint international effort similar to the Millennium Development Goals (2000-2015), albeit this time with an emphasis on different dimensions of the lives of persons and the planet. The commitment that arose consists of 17 interrelated Sustainable Development Goals (SDGs) and 169 Targets, to which countries must contribute according to certain conditions. While these SDGs are not legally binding, the Chilean Government has complied with the agreement in terms of implementing a national framework for their design and execution. This responsibility has been assigned to the Council for the Implementation of Agenda 2030, in which the chair is the Minister of Foreign Affairs and the executive secretary is the Ministry of Social Development<sup>5</sup>.

The INDH places significant importance on Agenda 2030. As the Declaration which launched the initiative states, the Agenda "is guided by the purposes and principles of the Charter of the United Nations, including full respect for international law. It is grounded in the Universal Declaration of Human Rights, international human rights treaties, the Millennium Declaration and the 2005 World Summit Outcome Document. It is informed by other instruments such as the Declaration on the Right to Development"<sup>6</sup>. Therefore, the SDGs are focused on people, the planet and prosperity and contend that the goals will only be met if peace is achieved and international partnerships and cooperation are strengthened.

As such, the 2017 Annual Report contains a set of issues that affect the country as a whole as well as specific sections of society. These issues are addressed in the following order: 1) Manifestations of racial discrimination in Chile: a study of perceptions; 2) Culture of arbitrary discrimination against women; 3) Reality and challenge: trans and intersex children and young persons in health and educational contexts; 4) Torture and cruel, inhuman and degrading treatment, which contains three sub-chapters: i) Living conditions in long-stay psychiatric units; ii) Situation of young persons in State-controlled detention centres; and iii) Situation of children and young persons in state-controlled residential centres who experience rights violations; 5) Biodiversity protection, climate change and human rights; and 6) Transitional justice and reparations.

The chapters of this report have received the general approval of the Council of the National Human Rights Institute during its session no. 395, held on 19 November 2017<sup>7</sup>.

<sup>5</sup> Decree No. 49 of the Ministry of Foreign Affairs, 24 May 2016.

<sup>6</sup> The Declaration also states, in point 10, that the shaping of Agenda 2030 was assisted by "the Rio Declaration on Environment and Development; the World Summit on Sustainable Development; the World Summit for Social Development; the Programme of Action of the International Conference on Population and Development, the Beijing Platform for Action; and the United Nations Conference on Sustainable Development".

<sup>7</sup> Details of the discussion and voting that took place are available in the Council minutes in relation to the sessions held in October and November 2017, at: [www.indh.cl](http://www.indh.cl)

# EXECUTIVE REPORT ANNUAL REPORT, HUMAN RIGHTS SITUATION IN CHILE 2017

## **Manifestations of racial discrimination in Chile: a study of perceptions**

Regarding manifestations and perceptions of racism in Chile, this chapter stresses that racism is a form of discrimination that has been expressed throughout history in a variety of forms, as a result of structural as well as subjective dimensions. Racism cannot be solely attributed to racist individuals, nor is it an isolated or time-specific phenomenon. Arbitrary discrimination on the basis of race, ethnic origin or nationality, refers to the idea of ‘purity’ and ‘superiority’, generated to justify cultural and ‘racial’ hierarchies. This line of thinking establishes itself as a powerful ideology that legitimizes and justifies domination and the execution of discriminatory and violent practices against persons who are perceived to embody the origins and physical characteristics of groups from the lowest level of cultural hierarchies.

The INDH has explored the problem of racial discrimination and the primary manifestations thereof in Chile. This has included carrying out a national survey on incidents of racism in the country, enabling the Institute to collect relevant primary source data. In conjunction with experts in the field, a number of instruments were developed and then tested for their subsequent deployment at the national level. This enabled the collation of Chilean perceptions of immigrants and indigenous peoples by means of distinct questions related to expressions of discrimination. This study has taken place in a wider context of increased rates of immigration to Chile and a growing awareness of the demands being made by indigenous peoples in the country.

The results of the survey demonstrate a crystallization of racist discourse in certain sections of society as well as contradictory responses from individual respondents and differences across regions. Discrimination linked to prejudice towards immigrants, including opinions that such individuals are taking jobs away from Chileans or leading to the collapse of health and education systems, are the most pronounced. Skin colour and indigenous features operate as explicit indicators of racism.

The chapter provides a breakdown and analysis of the results of the survey. In doing so, it demonstrates that racism is manifested subjectively, in daily face-to-face interactions, as well as structurally, i.e., from institutional practices and discourse emanating from the State. This situation requires State and cultural efforts to prevent the legitimization of racist ideas and involves both symbolic and structural elements. To avert discrimination, the full protection and enjoyment of the rights of migrant persons and indigenous peoples must be guaranteed.

## **Culture of arbitrary discrimination against women**

This chapter analyses arbitrary discrimination against women in distinct manifestations across State institutions or institutions over which the State has a supervisory role. It also analyses the characteristics of discrimination against women in the mass media and advertising in Chile.

Discrimination against women has multiple causes. Among the most significant of these are cultural patterns that maintain and perpetuate gender inequality related to power and hierarchy.

These forms of arbitrary discrimination occur in different contexts, for example, in the workplace in terms of the gender pay gap which is prevalent regardless of the area of economic activity in which women work, the occupational level they occupy, or the roles and responsibilities to which they have access. Men earn more than women regardless of educational level and type of work being undertaken. Moreover, regarding professional responsibility, in both the public and private sectors, less than a third (27.4%) of all persons to have occupied a position of senior management and/or decision-making are women.

Women are also confronted with inequality following retirement. Research undertaken into the current status of the individual capitalization system (AFP), the Chilean pension system, shows that career paths of women are not conducive to adequate pension savings. The failure to consider the specific conditions of women in this regard results in them occupying a disadvantageous position. The existing institutional framework does not account for this reality.

In the sphere of healthcare, practices undertaken by the private health insurance companies, known as ISAPRES, in addition to regulatory deficits, impact the human rights of women. Specifically, they impede access to continuation in this private system by increasing the costs of healthcare programmes over time. In the case of FONASA, the public healthcare system, women are one of the groups most affected by the waiting lists associated with GES, a set of legally guaranteed benefits for people affiliated with FONASA and the ISAPRES. This is because two serious diseases which are exclusive to women (uterine cervical cancer and breast cancer) correspond to the longest waiting times for treatment.

Similarly, the prevalence of discrimination against women not only on the basis of gender, but also related to ethnic origin and/or nationality is a concerning situation. This is the case for immigrant women and women from indigenous communities.

Finally, regarding mass media and advertising, messages are emitted through news broadcasting and entertainment channels in relation to what society expects from men and women. Specifically, this relates to stereotypes that reinforce the subordination of women and reaffirm the importance of their domestic roles and duties, thereby legitimising discrimination.

### **Reality and challenge: Trans and intersex children and young persons in health and educational contexts**

In recent years, a number of cases have been identified in which trans and intersex children and young persons have experienced discrimination or been subject to degrading treatment on the basis of their physical appearance or sexual characteristics within health and educational contexts. Accordingly, this chapter analyses the international legal status of trans and intersex persons and the situation in which they live in Chile.

Beyond the philosophical, political or religious arguments related to this issue, the situation of discrimination and violence to which trans and intersex children and young persons are exposed is a concern to the INDH and a range of bodies within the United Nations human rights system. Thus, in the context of the compliance report submitted by the Chilean State to the Committee on the Rights of the Child in 2015, concern was expressed “for the persistence of discriminatory attitudes and practices [...] and negative attitudes towards homosexual, bisexual, transgender and intersex children” (par. 24). The report also expressed its “profound concern for the high levels of violence in educational environments, particularly acts of homophobic and transphobic intimidation” (par. 40).

In Chile, trans children are subject to discrimination whereby their self-identified name is not respected in contexts related to both health and educational services. Although



the Ministry of Health has designed instruments that aim to ensure that trans persons are treated in accordance with their self-identified name and gender, this practice is not consistently enforced. In the context of public healthcare, this is because employees lack the required knowledge of the aforementioned legal instruments. In the case of educational institutions, it has been found that trans children and young persons can be isolated, discriminated against and abused, with many perceiving school as an environment that is hostile to their identity.

The situation of intersex children and young persons, although less visible, is no less complex than the reality facing trans youngsters. The medical community has previously judged the biological variations specific to intersexuality as “the result of defective, disordered, incomplete, pathological and abnormal development programmes” (Jorge, 2011, p. 253)<sup>8</sup>. Consequently, “standard medical protocols are founded on an early-as-possible diagnosis in order to perform surgery during childhood (of intersex persons)” (Carrillo, 2005, p. 54)<sup>9</sup>.

From an early age, intersex persons are subject to irreversible surgical procedures that aim to alter their sexual organs in order to reflect standards considered ‘acceptable’. However, politically organized intersex persons reject surgical procedures and consider them a form of ‘mutilation’. They argue that the morphology of their bodies is not the result of a disorder that could or should be corrected; at least until an intersex person is able to provide their consent to such a procedure. Other groups of parents and doctors contend that there is no gender ambiguity with regard to girls with congenital adrenal hyperplasia (CAH) and they argue in favour of early medical intervention to prevent physical and psychological problems from arising in the future.

While considering the complexities raised, the State should adopt the necessary measures to ensure that trans and intersex children and young persons are able to exercise their rights without discrimination in all aspects of life, particularly in contexts as significant to childhood development as health and education.

### **Torture and cruel, inhuman and degrading treatment**

This chapter analyses torture and cruel, inhuman and degrading treatment from the perspective of three types of facilities in which persons are held in the direct custody of the State. As such, a definition is provided for each of these categories in accordance with international norms and Chilean law that penalize torture and mistreatment, prior to an analysis of long-stay psychiatric units, youth detention centres, and youth residential centres under State control.

### **Living conditions in long-stay psychiatric units**

As is well documented, persons with disabilities have experienced rights violations for a long period of time. For decades such persons were separated from the rest of society and spaces were created in which for them to lead their lives, without the provision of the required support or services. The case of persons with mental disabilities institutionalized in long-stay psychiatric hospitals is paradigmatic in this context.

<sup>8</sup> Jorge, Juan (September-December 2011). Medical lessons on the sexual variant: XVI century hermaphrodites and XXI century intersexual persons. *Cuicuilco*, vol. 18, no. 52: 251-272. Available (in Spanish) at: <http://www.redalyc.org/pdf/351/35124304014.pdf>

<sup>9</sup> Carrillo, Salvador (2005). Intersexual states. Ambiguous genitalia. *MediSur*, vol. 3, no. 5: 54-58. Available (in Spanish) at: <http://www.redalyc.org/pdf/1800/180019795010.pdf>

The 2017 Annual Report specifically addresses the situation of persons with mental disabilities housed in public long-stay units. Currently, the design of the National Plan for Mental Health and Psychiatry includes the social insertion of persons with mental disabilities rather than their segregation. This is due to the fact that the Plan is founded on the principles of community-based rehabilitation, which seeks to promote social inclusion and care in accordance with the needs of individuals and within a framework of respect for rights. Nevertheless, long-stay units still operate in public psychiatric hospitals and in which persons with mental disabilities with high levels of dependency are institutionalized. In addition, there is a private clinic, which receives State funding, to which women from the public health system are referred.

The situation of isolation in which many of these persons find themselves constitutes a risk factor and increases possible exposure to abuse and mistreatment. Consequently, it was deemed necessary to evaluate the living conditions of persons with mental disabilities who are interned in the long-stay units of public psychiatric hospitals and the aforementioned private clinic. This involved the design and subsequent application of different instruments within these institutions.

Among the most relevant findings, it was identified that in three of the four institutions evaluated, new admissions of persons with mental disabilities continued to take place, despite the practice being prohibited. It was also discovered that a total of 22 persons have been granted permission to leave the facilities but that they are unable to do so due to their lack of family support networks or because the community mechanisms created by the State, including protected residences and homes, do not have sufficient space to house them.

Forms of treatment and living conditions were generally found to be positive. However, there was evidence of particular cases which are cause for concern due to the denial of certain rights afforded to persons with mental disabilities.

In view of the foregoing, it is essential that the State accelerates the definitive cessation of long-stay units for persons with mental disabilities and commits the necessary resources to increase the number of places in protected residences and homes. It is also critical that the State implements all required measures to protect the human rights of these persons.

### **Situation of young persons in State-controlled detention centres**

Another issue addressed in this Annual Report is the disclosure of practices or ways of operating which violate rights within distinct types of detention centres for young persons, known in Chile as Provisional and Closed Detention Centres (or CIP-CRC). These centres are administered by SENAME, with assistance from the Chilean Prison Service (Gendarmería de Chile), which both come under the purview of the Ministry of Justice and Human Rights. These centres intern young persons aged 14 or over who have been issued with a preventive detention order or a criminal conviction and sentence to a closed system, under the framework established by Law 20.084 on Juvenile Criminal Responsibility.

The exploratory study undertaken by the INDH analysed all 18 of the existing CIP-CRCs in Chile, which were visited simultaneously and without prior notice. The study surveyed 98 young persons, all heads of the relevant prison service detachment offices, and directors of the SENAME centres in an attempt to identify practices or ways of operating that, directly or indirectly, may constitute torture or mistreatment.

The data collected during this exploratory study has helped to identify and warn about the cross-cutting nature of rights-based violations within these institutions that have become normalized among the young persons themselves, as well as among SENAME and

prison service employees. Accordingly, evidence has been gathered of procedures that are more commonly associated with adult prisons and which, in line with the particular objectives of the juvenile justice system and its national and international legal framework, should not be replicated in the CIP-CRCs. The most common such practices discovered include the excessive use of pepper spray and the stripping naked of inmates. It is also clear that young persons are at the greatest risk of mistreatment and rights violations during raids by prison staff.

It was discovered that none of the detention centres visited had infrastructure that was specifically designed to house female young persons or to ensure the protection of their rights. This represents one of the many examples of the inability of SENAME to guarantee the special requirements reserved for girls, as outlined in paragraph 8 of Law 20.084 on Juvenile Criminal Responsibility.

Furthermore, there is a shortfall in terms of mental health professions working in the CIP-CRCs. For example, 78% of directors indicated that their centre did not have a psychiatrist contracted by SENAME. This is particularly significant given the importance of psychiatric care in the context of imprisonment. In turn, a large majority of young persons stated that they had received medication in order to calm them down or to fall sleep, but said they had not been provided with an explanation of the side effects of these drugs.

Additional findings include a lack of inter-institutional coordination; regulatory non-compliance; a shortage of specialized personnel; instability among senior positions; and too few centralized mechanisms to prevent mistreatment and provide ongoing monitoring and advisory services to local teams.

This exploratory study points to the need for reflection and action from public bodies. This includes reviewing not only the progress made over the last decade since the enactment of Law 20.084, but also the challenges that lie ahead. It is important to consider that the young persons interned in these centres need to feel safe and secure, be treated with dignity, and have the most suitable conditions possible in order to undergo successful rehabilitation and positive reinsertion into society.

### **Situation of children and young persons in state-controlled residential centres who experience rights violations**

The Directly Administered Centres of Specialized Reparation (CREAD) are residential centres run by SENAME to provide care for children and young persons who, as a result of family courts or the public prosecutor, are deemed to constitute highly complex situations associated with risky or damaging behaviour, at the individual, family and/or society-wide level. The care provided by these centres is divided in two separate age groups: one for infants and pre-schoolers; the other for children and young persons aged between 6 and 16. The contents of this chapter relate to the latter age group.

Data was extracted from the SENAME Observer Mission undertaken by INDH in 2017. In total, the mission visited 11 CREADs across the country and held interviews with their directors as well as a random sample of children and young persons. These centres are concentrated in 6 Regions. This demonstrates an unequal geographic distribution and can, in turn, lead to the uprooting of families and communities. There is overcrowding in 5 of the 11 centres and the overall number of 789 registered children and young persons exceeds the institutional capacity which is set at 750.

The Observer Mission detected prison-like dynamics within these centres. Living conditions are frequently substandard compared to desired levels, exemplified by the findings of the child surveys in which 9 out of the 50 questioned claimed to have experienced hunger, so-

metimes cold and a lack of personal hygiene products. There is also insufficient specialized intervention for LGBTI children and young persons, as identified by numerous youngsters claiming to have been mistreated on the basis of their sexual orientation.

Furthermore, a large proportion of on-site staff who provide direct care to children and young persons were found to be experiencing excessive workloads. This impedes their ability to perform their duties towards children and young persons under their care in an optimal manner, particularly since this type of work requires specialization, the management of distinct techniques, a good disposition and alertness.

It is concerning that certain children and young persons interviewed claimed to be unaware of their judicial case and did not know the two professionals responsible for informing them of these details (psychologist and social worker). Furthermore, a number of them stated knowing nothing about their legal and/or family situation, which is a violation of their right to be informed.

Finally, evidence was found of punishments being carried out that are contrary to international human rights law and the affirmation of the Inter-American Commission of Human Rights (IACHR) which states, “the aim of the special protection measures cannot be other than the protection of children and young persons and the preservation and restoration of their rights”.

### **Biodiversity protection, climate change and human rights**

The topic of biodiversity protection, climate change and human rights is also included in this report since it represents a further area of concern for the Council of the INDH. Currently, Chile is confronted with two closely linked phenomena that affect the human rights of all its inhabitants, and which are the consequence of the way in which society has chosen to build its relationship with the environment, the diverse ecosystems in the country and its natural resources. One phenomenon relates to the loss of biodiversity as a result of human activity, the conservation and sustainable use of which is essential to secure the future of coming generations and to guarantee the exercise of human rights, today. The second is climate change, a global phenomenon to which Chile is not immune and the negative effects of which are beginning to be felt on nature and the wellbeing of human populations in the country.

According to the findings analysed, there is data to show the degradation of biological diversity. This degradation is in need of attention, particularly considering that a part of it is endemic. Of the 35,000 known species in Chile, only about 1,000 have been evaluated, of which approximately 7% are classified as in danger of extinction. Moreover, six species of fish to have undergone assessment are classified as overfished and nine have seen their stocks exhausted. Of the 127 land-based ecosystems, 16 are under threat, primarily those located in the central-south of the country.

With regard to the effects of climate change on Chile, research has focused on rain and temperature patterns and warns of increased drought in the central-north of the country, more episodes of red tides in the south, and heat waves and extreme events such as flooding and mudslides nationwide.

In conjunction, the conclusions stress not only the need to complete existing and further studies to fully understand the magnitude of the situation, but also to ensure an early response to the factors linked to the loss of biodiversity and the effects of climate change, such as controlling invasive exotic species, limiting greenhouse gas emissions, and safeguarding and pursuing the sustainable use of resources. These steps will help to foresee, mitigate against and repair the human rights violations related to environmental aspects,

existence conditions (life, health, food, work, housing), and self-determination of economic, social and cultural development, among other aspects in which the State must ensure guarantees and protections.

Finally, the chapter highlights the efforts of local and indigenous communities who preserve practices to protect the biodiversity of land which is either under their ownership or which they have traditionally occupied. These experiences, which, to date, lack legal protection, are fundamental components for combatting climate change in Chile and making it possible to enjoy not only the right to live in a pollution-free environment, but also other related rights.

### **Transitional justice and reparations**

One issue that continues to reflect the shortcomings in terms of the international obligations adopted by Chile relates to transitional justice, which is understood as the set of measures implemented by a society to confront large-scale and systematic human rights violation. These measures comprise distinct mechanisms which set forth State obligations towards the international community.

This report describes and analyses the measures adopted by the Chilean State between 1990 and 2017 in relation to truth, justice, reparations and non-recurrence. It outlines problems regarding justice in response to serious human rights violations committed during the dictatorship and in determining the challenges posed by the current political and legal system in terms of compliance with international standards in this field.

In Chile, official recognition of the acts and crimes committed during the dictatorship has been gradual and consistent over time. However, steps taken by the State to recognize the truth and to quantify the number of victims has received criticism, primarily in relation to their scope, duration, utilization of relevant information to bring about justice, and use of sources of information to search for the persons who were ‘disappeared’, among others. While progress has been made following decades of legal investigations, few processes have contributed to determining the final destination of the disappeared victims, which is one of the explicit obligations in terms of transitional justice.

Furthermore, reparations for victims of the dictatorship have only been forthcoming following extensive pressure and ongoing tension between victims and distinct branches of the State. It is important that these policies are understood as a broad and comprehensive response, linked to the tasks of truth, justice and non-recurrence.

The first stage took place between 1990 and 1995, during which time a number of programmes were approved to provide reparations to families of victims who were disappeared, executed, exiled or subjected to torture which resulted in death. Authorities also implemented a system of health-related reparations which would later undergo formalization in the Programme of Comprehensive Reparation and Care in Health and Human Rights (PRAIS). Likewise, programmes were created to provide reparations to the politically exonerated and, in 1995, schemes were launched to ensure reparations for persons exonerated of land.

A second phase began in 2004. The proposal ‘there is no tomorrow without yesterday’ sought to address certain historic demands, including reparatory measures from survivors of political prison and torture. The third phase was implemented in 2009 following the findings of the Valech Commission II and the creation of the INDH and Undersecretariat of Human Rights.

The reparation of victims, in accordance with transitional justice, must ensure the principle of satisfaction. Accordingly, a significant number of the reparation policies implemen-

ted in Chile have been noted for their compensatory nature rather than being conceived of from a logic of comprehensive victim reparation. Indeed, despite this approach, many of the policies still present numerous economic shortcomings. This has prolonged the battle for compensation between the State and victims' groups, both in court and with the State Defence Council. Moreover, the different reparation pensions (related to victims of torture and exoneration) are mutually incompatible, resulting in victims having to select only one particular form, despite the reparations themselves relating to distinct types of abuse. In addition, in the area of historical memory of the events that took place during the dictatorship and the safeguarding of memorial sites, human rights organizations and victims' groups have fulfilled the fundamental role of promoting the concept of non-recurrence. However, they still lack sufficient support to ensure their endeavours are sustainable over the long term.

## GENERAL RECOMMENDATIONS

- 1 To respect and guarantee existing international treaties. The INDH recommends that the State adopts all administrative, legislative and other necessary measures to ensure the fulfilment of the rights enshrined in the international human rights treaties ratified by Chile and currently in force<sup>10</sup>.
- 2 To ratify international human rights treaties. The INDH reiterates the need to ratify the international human rights treaties and protocols that remain pending for the Chilean State. This will provide the country with additional legal tools with which to guarantee human rights for all.
- 3 To implement and comply with the National Plans related to human rights. While recognizing the significance of the enactment of the National Human Rights Plan and the National Action Plan on Human Rights and Business with regard to consolidating the rule of law, the INDH recommends that the State ensures their implementation, monitoring and compliance. In this regard, it reiterates the importance of disseminating and explicitly stating the critical link between human rights and core democratic values such as dialogue, mutual respect and participation, among others.
- 4 To broaden and consolidate a perspective of human rights and interculturalism through State action. Due to the current challenges facing Chilean democracy, which are visible in a context of growing distrust of public institutions, as well as rising intercultural conflict, it is essential that high-level decision-making is capable of securing social legitimacy, particularly in contexts of crisis. Therefore, the INDH urges the three branches of the State to incorporate perspectives of interculturalism and dialogue with regard to the distinct indigenous peoples in Chile, and their representative institutions, as well as the general public.
- 5 To strengthen control and oversight of public institutions. The INDH calls for the colegislative branches to strengthen the institutions responsible for supervising the actions of the State as well as private entities that provide social services, in order to safeguard their autonomy, operational functionality and ability to conduct monitoring across the entire nation.
- 6 To strengthen human rights institutions. The INDH urges the colegislative branches to make progress towards the establishment of an autonomous institutional human rights framework, expediting the passage of the bill to create the National Preventive Mechanism against Torture.

---

<sup>10</sup> The core international treaties in the United Nations System are: the International Convention on the Elimination of All Forms of Racial Discrimination; the International Covenant on Civil and Political Rights; the International Covenant on Economic, Social and Cultural Rights; the Convention on the Elimination of All Forms of Discrimination against Women; the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment; the Convention on the Rights of the Child; the International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families; the International Convention for the Protection of All Persons from Enforced Disappearance; and the Convention on the Rights of Persons with Disabilities. In addition to these treaties are the optional protocols and other related instruments, including, for example, the American Convention on Human Rights and further inter-American instruments.

## SPECIFIC RECOMMENDATIONS

### Manifestations of racial discrimination in Chile: a study of perceptions

- 1 The INDH recommends that the Ministry of Education designs and implements initiatives with an intercultural focus that favours integration without discrimination against children of different ethnic backgrounds and nationalities. The objective of this approach is to provide these children with protection against abuse and discrimination, in accordance with the Convention on the Rights of the Child and the International Convention on the Elimination of All Forms of Racial Discrimination.
- 2 The INDH reiterates to the colegislative branches the urgency of implementing a specialized regulatory and institutional framework on immigration, to take on the responsibility of the protection of migrants against distinct forms of racial discrimination, as well as other types of rights violations. This framework will help to ensure the implementation of measures to safeguard equality of rights and non-discrimination, as well as full compliance with the International Convention on the Elimination of All Forms of Racial Discrimination and the International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families.
- 3 The INDH recommends that the Ministry of Justice and Human Rights and the Ministry of Social Development design public policies that promote intercultural dialogue with the Mapuche community and foster peace in areas of conflict. This will facilitate compliance with Convention 169 of the International Labour Organization on Indigenous and Tribal Peoples in Independent Countries, especially in relation to the full enjoyment of human rights and fundamental freedoms.

### Culture of arbitrary discrimination against women

- 1 The INDH recommends that the Chilean State implements the legal, administrative or judicial mechanisms to prevent and bridge the prevailing gender pay and pension gaps between men and women; ensure the full application of Convention 100 of the International Labour Organization signed by Chile; and revise current legislation to guarantee and safeguard the right to equal pay based on non-discrimination.
- 2 The INDH recommends that the colegislative branches introduce technical and financial elements into the initiative to reform the pension system in order to address the arbitrary discrimination which prevails in the existing framework. Accordingly, it recommends that account is taken of article 11 of the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW).
- 3 The INDH recommends, regarding the ISAPRES, that the Chilean State promptly seeks a legal amendment to address the arbitrary discrimination that these private health schemes commit against women, as well as the gaps that remain following the Constitutional Court ruling that sections 1 to 4 of article 38 ter of the ISAPRES Act are unconstitutional. Accordingly, it recommends that the State takes account of article 12 of CEDAW.
- 4 The INDH recommends that the Ministry of Health provides a prompt solution to the GES waiting lists, particularly with regard to diseases that affect women and entail serious risk if patients fail to receive opportune treatment for diseases such as uterine cervical cancer and breast cancer.



- 5 The INDH recommends that the National Television Council (CNTV) continues to regulate television channels to ensure best practices regarding respect of the dignity and rights of all persons, particularly in order to protect against the perpetuation of stereotypes that promote discrimination and violence against women. Accordingly, it recommends the consideration of CEDAW and the Inter-American Convention on the Prevention, Punishment and Eradication of Violence Against Women (Convention of Belem do Para).
- 6 The INDH recommends that the State strengthens its ongoing educational programmes and campaigns of awareness raising and prevention of violence and discrimination against women, in line with the framework of the Inter-American Convention on the Prevention, Punishment and Eradication of Violence Against Women (Convention of Belem do Para).
- 7 The INDH recommends that the executive branch, under the coordination of the Ministry of Women and Gender Equality and the National Corporation of Indigenous Development (CONADI), ensures that its public policies place particular emphasis of the vulnerable situation of indigenous women, in order to grant them the protection required to prevent the multiple forms of discrimination to which they are habitually subjected. This should be undertaken in accordance with the proposals made by the Committee on the Elimination of Discrimination against Women in its General Recommendation No. 25 of 2004, and article 9 of the Inter-American Convention on the Prevention, Punishment and Eradication of Violence Against Women (Convention of Belem do Para).

#### **Reality and challenge: trans and intersex children and young persons in health and educational contexts**

- 1 The INDH reiterates to the executive branch, particularly the Ministry of Education and the Ministry of Health, the importance of providing human rights training to public sector workers related to treatment of trans and intersex persons, especially children and young persons, in order to prevent discrimination in the contexts of education and health. Accordingly, it recommends that account is taken of articles 24, 28 and 29 of the Convention on the Rights of the Child regarding the rights to health and education.
- 2 The INDH recommends that the Ministry of Education adopts all measures required to ensure that the national curriculum includes adequate teaching of the principle of equality and non-discrimination, in accordance with the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights, the Convention on the Rights of the Child, and the American Convention on Human Rights.
- 3 The INDH recommends that the State, when evaluating the pertinence of an irreversible surgical procedure, takes account of the right to be heard in line with article 12 of the Convention on the Rights of the Child, in addition to the opinion of the parents or legal guardians, as well as the assessments of an interdisciplinary and ethics committee.

## Torture and cruel, inhuman and degrading treatment

### Living conditions in long-stay psychiatric units

- 1 The INDH recommends that the Ministry of Health prevents new admissions to long-stay psychiatric units and institutions, and evaluates new forms of care provision such as protected homes, in order to foster the social inclusion of persons with mental disabilities in accordance with article 19 of the Convention on the Rights of Persons with Disabilities, and Law 20.422. It recommends that this is undertaken to ensure respect for the right to live independently and to be included in the community.
- 2 The INDH recommends that the executive branch, by means of policy that is coordinated from the ministries of Health, Housing and Social Development, formulates a strategy to create additional places in protected residences and homes to accommodate self-reliant persons capable of entering such spaces. Regarding persons with serious mental disorders caused by organic deterioration or ageing, the INDH recommends taking steps towards the creation of alternative forms of residential psychiatric care to allow facility users suitable living conditions and social protection, in accordance with article 28 of the Convention on the Rights of Persons with Disabilities.
- 3 The INDH urges the Ministry of Health to adopt the protocols and other measures required to ensure that users of long-stay psychiatric institutions are able to file complaints and have these duly processed. Similarly, it recommends the implementation of a Metropolitan Regional Protection Commission, in conjunction with the appropriate human and financial resources required for its operation. The work of the Regional Commissions and the National Commission for the Protection of the Rights of Persons with Mental Illnesses (CONAPPREM) should be maintained, due to its importance in safeguarding the validity of article 15 of the Convention on the Rights of Persons with Disabilities on protection against torture, as well as article 17 of the same instrument on personal integrity.
- 4 The INDH recommends that the colegislative branches seek a reform of Law 20.584 on the rights and responsibilities of persons regarding actions linked to their health-care provision. It recommends that this reform enables the National Commission for the Protection of the Rights of Persons with Mental Illnesses (CONAPPREM) and the Regional Protection Commissions to exercise their responsibilities independently, without being subject to the Ministry of Health. It also recommends that these bodies are assured of the human and financial resources required to fulfil their legal mandates to uphold article 16 of the Convention on the Rights of Persons with Disabilities on protection against exploitation, violence and abuse.
- 5 The INDH recommends that the Ministry of Health adopts the measures required to ensure that employees of long-stay units and institutions are fully trained in the social model of disability in order to promote the users of these facilities receiving care as subjects of rights in accordance with the Convention on the Rights of Persons with Disabilities and Law 20.422.

### Situation of young persons in State-controlled detention centres

- 1 The INDH recommends that the Ministry of Justice and Human Rights, SENAME, and the Chilean Prison Service consider the results of the exploratory study undertaken by the Institute in Provisional and Closed Detention Centres (CIP-CRC) and subsequently take the required steps regarding the identified rights violations. Accordingly, it recommends the urgent creation of preventive mechanisms, as well as the improvement of detention conditions in general, as was recommended in the 2012 Annual Report. Such steps will ensure compliance with article 37 of the Convention on the Rights of the Child which stipulates that all children in conditions of detention must be treated with respect for their inherent dignity.
- 2 The INDH recommends that the colegislative branches, in the context of the legislative debate to modify the current institutional framework on juvenile criminal responsibility, considers the framework established under the Convention on the Rights of the Child and the recommendations previously submitted by the INDH, particularly those related to the generation of optimal conditions for rehabilitation and social reinsertion of young persons in State-controlled detention centres.
- 3 The INDH recommends that the judicial branch intensifies the work of the Courts of Guarantee regarding their role as rights guarantors during sanctioning and/or the definition of applicable measures. Particular care should be taken regarding the best interests of the child, enshrined in both Law 20.084 and the Convention on the Rights of the Child. Although judges conduct visits to detention centres, it is necessary to review the associated mechanisms utilized for, as well as the efficiency of these visits in order to ensure that they fulfil their objective.
- 4 The INDH reiterates its recommendation to the State regarding the urgent need to protect against and eliminate all forms of violence, torture and violations of human rights regarding young persons in State-controlled detention centres under the framework of Law 20.084. This is required in order to comply with the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, and its optional protocol, under the framework of the United Nations System.

### Situation of children and young persons in state-controlled residential centres who experience rights violations

- 1 The INDH recommends that the judicial branch, the Ministry of Justice and Human Rights and SENAME safeguard the elimination of all forms of violence and/or mistreatment carried out against children and young person who live in State custody in Directly Administered Centres of Specialized Reparation (CREADs). This requires the creation of appropriate prevention mechanisms, as well as investigation and establishment of responsibility, in addition to the application of corresponding sanctions in the event that such violations occur.
- 2 The INDH recommends that all measures be taken to improve residential care standards, as well as to enhance responses to serious situations, particularly with regard to the prevention of torture, mistreatment and violence within the CREADs. This requires the prioritization of a human rights approach at all times in the application of rules and regulations.
- 3 The INDH recommends that the colegislative branches, in the context of the legislative debate to create a National Service for the Specialized Protection of Children and Young Persons, take account of the Convention on the Rights of the Child and the recommendations previously submitted by the INDH, particularly that related to the

specialization and professionalization of the institutions to safeguard children who require special forms of protection.

- 4 The INDH recommends that SENAME conducts a systematic monitoring and evaluation of Regulation 2309, issued in 2013, which relates to the prevention and sanction of the mistreatment of children in its custody.
- 5 The INDH recommends that SENAME adopts a regulation that efficiently supervises the correct functioning of institutional residences, in order to ensure compliance with international human rights standards, particularly the Convention on the Rights of the Child.
- 6 The INDH reiterates its recommendation to the executive branch, first raised in the 2011 Annual Report, to renew its obligation to safeguard the enjoyment and exercise of the fundamental rights of children and young persons who are institutionalized. This includes ensuring that the distinct ministries and services, particularly those related to health, education and social development, comply with their responsibilities in this area.
- 7 The INDH recommends that the executive branch promotes a more active role on behalf of its different public entities in order to create enhanced and more effective ties between children and young persons institutionalized in the CREADs and their families and social and community environments. The objective of this approach is to foster the creation of a bond that unites children and young persons in State custody with wider society, thereby fulfilling the obligation enshrined in the Convention on the Rights of the Child to guarantee the widest enjoyment of a safe and healthy life.

### **Biodiversity protection, climate change and human rights**

- 1 The INDH urges that the colegislative powers accelerate the passage of the bill to create a Biodiversity and Protected Areas Service and a National System of Protected Areas, which aim to conserve biodiversity across the country by providing protection and support to the contributions realized towards that end by both the public and private sectors, as well as indigenous peoples and local communities.
- 2 The INDH recommends that the colegislative powers take account of the contributions made by the Indigenous Consultation process with regard to the bill to create a Biodiversity and Protected Areas Service and a National System of Protected Areas. Furthermore, it recommends that Congress promotes the greatest participation possible of indigenous peoples in the debate on the aforementioned bill.
- 3 The INDH recommends that the executive branch increases and entrenches the levels of coordination between State agencies. This is essential since the challenges of biodiversity and climate change are generated by and affect distinct sectors, especially those that are required to undergo significant transformations as a result of their high and synergetic impact on these phenomena. In particular, they include the sectors of energy, infrastructure, mining, agriculture, livestock farming, forestry, and aquaculture, among others.
- 4 The INDH recommends that the executive branch, particularly the Ministry of the Environment, initiates a range of legislative, administrative and public policy actions in order to ensure full compliance with the twenty targets established by the Strategic Plan for Biological Diversity 2011-2020, in accordance with the Convention on Biological Diversity. As such, it recommends that these actions safeguard the conservation and sustainable use of biological diversity, as well as the right to a

pollution-free environment, guaranteeing protection to the public in general as well as specific groups that may be more adversely affected by changes to ecosystems.

- 5 The INDH recommends that the executive branch, by means of the Ministry of the Environment, publishes the five pending sectoral plans on adaptation to climate change as soon as possible. These plans are a critical component in the implementation of the National Action Plan on Climate Change 2017-2022 (PANCC-II), the public policy which aims to ensure compliance with the international commitments enshrined in the United Nations Framework Convention on Climate Change.
- 6 The INDH urges the executive branch, by means of the Ministry of the Environment and the Ministry of Foreign Affairs, to not only promote the National Action Plan on Human Rights and Business, but also to generate public-private agreements to foster the implementation of sustainable business practices, the protection of existing biodiversity across the country, and the realization of contributions to the adaptation to and mitigation of climate change. Similarly, the State must fulfil its responsibilities in relation to supervision and the implementation of nationwide planning instruments that are geared towards biodiversity protection. The aforementioned is founded on the provisions of the Convention on Biological Diversity, the United Nations Framework Convention on Climate Change, and the United Nations Guiding Principles on Business and Human Rights.

### **Transitional justice and reparations**

- 1 The INDH recommends that colegislative branches re-evaluate the total amounts provided by the different reparation pensions available. Similarly, it recommends the amendment of the law that establishes the incompatibility between distinct pensions. This incompatibility obliges victims to select only one form of reparation, despite the fact that they relate to reparations arising as a result of different acts.
- 2 The INDH recommends, as a means of guaranteeing the non-recurrence of events that took place during the dictatorship, that colegislative branches, without prejudice to existing legislation, evaluate the ratification of the Convention on the Non-Applicability of Statutory Limitations to War Crimes and Crimes Against Humanity, which was submitted to the Senate in July 1994.
- 3 The INDH recommends that the executive branch safeguards the sustainability of all memorial sites to ensure the recovery, conservation and dissemination of historic memory related to the large-scale and systematic human rights violations that occurred on or within these locations. It also recommends the inclusion of these sites within educational programmes as a means of guaranteeing non-recurrence.