



**International Convention on the  
Protection of the Rights of  
All Migrant Workers and  
Members of Their Families**

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**Committee on the Protection of the Rights of All  
Migrant Workers and Members of Their Families**

**Consideration of reports submitted by States  
parties under article 73 of the Convention**

**Initial report**

**Republic of Chile\***

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

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## I. Introduction

1. Chile has a policy of appropriate openness towards migratory flows which is based on respect for migrant workers' rights as enshrined in the Constitution and the international treaties that Chile has ratified. This means that foreign nationals who choose to live in Chile are treated without discrimination, in a general setting of respect for democratic institutions, the Constitution and the law and, in particular, current legislation governing migration.
2. The Government's focus, namely concern for migrant workers' rights, results in two management principles: regularization of residency status, and equal treatment in terms of labour rights for Chilean nationals and migrants, whether legal or illegal.
3. Government policy encourages foreign nationals to hold the residency permits necessary for pursuing activities, especially employment, because illegal residency can have undesirable effects both for foreigners and for the community in general: it leads to labour-market imperfections which make it easier to circumvent labour laws and hinder access by illegal immigrants to the social security and health systems. Therefore employers using illegal workers gain unfair advantage as they can recruit at pay rates below the minimum wage or going market rate.
4. The aim of immigration management in Chile has been to discourage the practice of employing migrant workers without legal status by recognizing their basic rights and thus encouraging efforts to urge workers and their families, especially from the most vulnerable groups, to regularize their situation in order to avoid falling victim to abuse. In practice, regularization has implied the recognition of additional rights.
5. Since 1990, migration has become an issue of growing and constant concern for the Government. Action on migration has sought to improve living conditions for foreigners so that their stay in the country may be of benefit to both them and the community at large.
6. During the term of office of President Patricio Aylwin (1990–1994), an initial amendment to the Aliens Act was introduced in order to facilitate migratory movements in the country at that time. Legal obstacles to mobility were removed and international commitments on asylum which Chile had undertaken were incorporated into internal law.
7. Later, under President Eduardo Frei (1994–2000), the first round of migrant regularization was completed and a start was made on modernizing the management of migration, changing the attitude of the authorities towards migrants for the better. Under President Ricardo Lagos (2000–2006), modernization was continued and international commitments on migration issues were incorporated into internal law. Chile has ratified the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families and has signed and ratified the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children and the Protocol against the Smuggling of Migrants by Land, Sea and Air, supplementing the United Nations Convention against Transnational Organized Crime.
8. President Michelle Bachelet expressly referred to the process in her Government Programme. There are four components to the commitment made in that programme: (a) to recognize current and past support received by thousands of Chileans abroad. This implies a commitment that the Chilean authorities will study the issue and propose policies with a human rights perspective; (b) to promote new legislation on foreign nationals incorporating the international commitments made by Chile; (c) to give prominence to migration issues in the regional integration processes in which Chile participates; and (d) to incorporate the subject of immigration into school curricula.

9. As regards the legal framework for migration policy, the Ministry of the Interior has, in keeping with the 2006–2010 Government Programme, made leading the development of a national migration and asylum policy one of its strategic objectives. The complexity of migration today is such that initiatives will have to be taken in a broad range of areas, including the modernization of institutions and legislation; multilateral discussion of migration at regional integration forums; and inter-institutional coordination to foster sectoral public policies that make provisions for immigrants as specific users of State services.

10. Regarding Chile's management of immigration and its relationship to the guidelines put forth in the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, the Convention has been taken as a basis for the many issues being pursued in the areas of regularization, integration and modernization of management, institution-building and legislation.

## **II. Organization of the report**

11. The background information given in this report is organized according to Committee guidelines as far as the differentiation within the Aliens Act in force in Chile allows, i.e., recognizing the differences between illegal and legal immigrants and emphasizing that the objective of public policy in this area is regularization.

12. It is understood that a resident with regular migration status means a foreign national who has permission to live in Chile, be it to work or to participate in any other lawful activity. This status can be temporary (generally for a period of from one to two years) or definite (persons with a permanent residence permit). Irregular status applies to individuals who carry a valid residency permit but are engaged in unauthorized activities as well as to persons who have entered the country with a valid permit which then lapses and is not renewed.

13. Following the classification set forth in the Aliens Act, responses are provided to the groups of articles mentioned in the Committee guidelines. Chapter III contains general information on the institutional framework for migration, international agreements on migration signed by Chile, and quantitative and qualitative data on the subject. Chapter IV addresses the practical application of the Convention in Chile. Section A gives information on the general principles guiding application. Section B provides background information on the rights of all migrant workers and their families in Chile, regardless of residency status. When appropriate, actual practice in terms of access to certain rights by migrant workers and their families is described. Section C deals with the rights extended to migrant workers and their families with regular status. This report does not include background information relating to the fifth section of the guidelines — measures applicable to specific categories of migrant workers and their families — since Chilean law does not establish any of the categories referred to in articles 57 to 63 of the Convention. Section E covers measures aimed at promoting satisfactory, equitable, decent and lawful conditions for the international migration of workers and their families, including measures designed to protect migrants in the event of migration-related crimes.

### III. Information of a general nature

#### A. Description of the constitutional, legislative, judicial and administrative framework governing the implementation of the Convention, and of any bilateral, regional or multilateral agreements in the field of migration entered into by the reporting State party

##### 1. Constitutional framework

14. The ratification by Chile of the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families is an important element of the legal foundation for its migration policy. The Convention has been in force in Chile since 2005. The United Nations Convention against Transnational Organized Crime and two supplementary protocols thereto, namely the Protocol against the Smuggling of Migrants by Land, Sea and Air and the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, have also been in force since 2005.

15. The International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, along with all other international human rights treaties, forms part of the domestic legal system, and its applicability is guaranteed by the system of sources of law. The Convention has constitutional status in accordance with article 5, paragraph 2, of the Constitution.<sup>1</sup> With regard to its rank in the hierarchy of law, the Constitutional Court has ruled that international human rights treaties take precedence over other laws, such that, in the application of both in a given case, the treaty shall have primacy over domestic laws.<sup>2</sup> As part of a series of amendments to the Constitution introduced in 2005, it was established that: “the provisions of a treaty may only be repealed, modified or suspended in the manner provided for in the treaties themselves or in accordance with the general rules of international law”. This provision is of the utmost importance in ensuring respect for international human rights law within Chile, since it means that no international human rights standard which is binding on the State may be ignored or nullified by a domestic measure.

##### 2. Legal framework

16. There is no single statute in Chile that regulates migration issues. Rather, such issues are governed by the following series of laws on immigration and migration: the Aliens Act,<sup>3</sup> the Regulation on Aliens,<sup>4</sup> a decree delegating authority over issues concerning foreigners to various authorities at subnational levels of Government,<sup>5</sup> a resolution establishing the fees to be charged for residence visas,<sup>6</sup> and a decree establishing the consolidated text of the regulations on the naturalization of foreigners.<sup>7</sup>

<sup>1</sup> Article 5, paragraph 2, of the Constitution states that: “The exercise of sovereignty is subject to the respect of essential rights emanating from human nature. The organs of the State must respect and promote such rights, guaranteed by this Constitution, as well as by the international treaties that are ratified by Chile and that are in force”.

<sup>2</sup> Constitutional Court ruling, docket No. 346 Cons. 75.

<sup>3</sup> Decree-Law No. 1094 of 1975.

<sup>4</sup> Approved by Supreme Decree No. 597 of 1984 of the Ministry of the Interior.

<sup>5</sup> Supreme Decree No. 818 of 1983 of the Ministry of the Interior.

<sup>6</sup> Resolution No. 296 of 1995 of the Ministry of the Interior.

<sup>7</sup> Supreme Decree No. 5142 of 1960 of the Ministry of the Interior.

(i) *Draft bill on migration*

17. With a view to modernizing migration management and fulfilling Chile's international obligations in this regard, the Ministry of the Interior has drafted a proposal that is currently being reviewed by other government agencies. Once the relevant observations have been made and incorporated into the text, the bill will be sent to Congress for consideration. The draft proposal incorporates guiding principles on migration management concerning respect for human rights, non-discrimination, family reunification and equal rights and obligations in the workplace; restructures residency categories in accordance with international standards; modernizes the systems for implementing migration penalties; adjusts the established grounds for refusal, revocation and expulsion by bringing them into line with the procedural concepts set out in the new Code of Criminal Procedure, which recently entered into force; systemizes the established grounds for expulsion and assigns responsibility for their implementation; sets out administrative control measures; and systematizes the remedies available to challenge a migration authority's decision.

(ii) *Bill on asylum*

18. Congress is currently considering a bill on asylum that would align domestic legislation with the international commitments entered into by Chile, especially the provisions of the Convention relating to the Status of Refugees and the protocol thereto; separate legislation on asylum from legislation on migration; formalize the existence of an institutional structure with responsibility for conferring refugee status; specify the rights of refugees and the grounds for termination or loss of refugee status, for denial of applications and for revocation of refugee status; assign responsibilities in the integration process for applicants and persons upon whom refugee status has already been conferred to a wider range of State agents so that a coordinated response to refugees' needs can be provided; and establish a commission to determine refugee status. This bill on the protection of refugees was submitted to Congress in April 2009, approved by the Chamber of Deputies and sent to the Senate in October 2009 for its second reading.

(iii) *Bill criminalizing the offence of trafficking in children and adults*

19. This bill, which provides for the prevention and more effective criminal prosecution of this offence, is also in its second reading in the Senate after having been approved by the Chamber of Deputies. It criminalizes the offences of trafficking in persons and smuggling of migrants in accordance with the United Nations Convention against Transnational Organized Crime.

### **3. Administrative framework**

(i) *Role of the Aliens and Migration Department of the Ministry of the Interior*

20. The national immigration system is made up of various government agencies that work together under the coordination of the Ministry of the Interior through its Aliens and Migration Department. This government body, together with officials from subnational levels of government (regional administrations and provincial governments), the National Office of Overseas Affairs and International Police and the Ministry of Foreign Affairs, performs the following tasks: coordinating the monitoring and application of the regulations on aliens and migration that must be observed by all foreigners residing in the country; proposing amendments to this legislation; developing and implementing policies on the international migration of workers and members of their families; coordinating the efforts of various government agencies to facilitate the integration of the immigrant population in Chile in accordance with Presidential Instruction No. 9 on national migration policy;

exchanging information with other States; and providing information and assistance to various civil society agencies involved in migration issues.

(ii) *Role of the Department of Diversity and Non-Discrimination of the Division of Social Organizations of the Office of the Minister and Secretary-General of Government*

21. At the World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance held in Durban in 2001, Chile made a commitment to develop measures against racism and discrimination. The chapter entitled “We Are All Chile” in President Bachelet’s Government Programme notes as a priority the “eradication of all forms of discrimination on the basis of race, colour, gender, sexual orientation, language, religion, political or other opinion, *national* or social *origin*, *immigration status* or situation, economic position, birth or any other social status”.

22. These commitments were entered into by the Division of Social Organizations of the Office of the Minister and Secretary-General of Government through the Civil Society Participation Agenda that President Bachelet presented to the country on 29 September 2006. The Plan of Action against Racism and Discrimination was launched with a view to creating the necessary conditions to enable all individuals to participate effectively in the decision-making process and to exercise their civil, political, economic, social and cultural rights in all areas of life on a non-discriminatory basis.

23. This plan of action includes a series of initiatives relating to migration in the following areas: (a) institutional measures (training workshops for public officials and cooperation agreements with national and international organizations); (b) public policy and citizen participation initiatives (intersectoral governmental coordination with groups of persons whose rights have been violated and colloquiums for civil society organizations focusing on national policy on migration and trafficking in persons); (c) dissemination and communication activities (creating materials for dissemination and publications on migration and non-discrimination); and (d) citizen participation (contests and events for migrants and other groups). The concrete measures taken concerning migrants, in the context of the plan of action, are related to the rights set out in the Convention, such as freedom of expression, respect for cultural identity and the right for migrants to be informed about their rights. These measures are described later in this report in the sections dealing with the articles related to specific rights.

(iii) *Role of the Directorate for Chilean Communities Abroad of the Ministry of Foreign Affairs (DICOEX)*

24. The objective of this Government body is to formulate, coordinate and implement outreach and development policies for the 857,781<sup>8</sup> Chileans residing outside the country by: promoting their human rights; preserving their cultural identity and bonds with the country; including them in national development efforts and affairs; backstopping associations of Chileans living abroad; and disseminating information within those communities on Government measures affecting them. The aims and contents of the Convention are one of the primary frameworks used by the Directorate as a guide and reference point in designing and implementing its programmes.

25. One of the primary initiatives implemented to achieve these objectives was the creation of the Inter-Ministerial Committee for Chilean Communities Abroad in June 2008.<sup>9</sup> The Committee’s mission is to advise the various ministries and to coordinate their

<sup>8</sup> National censuses and the INE-DICOEX register.

<sup>9</sup> Decree No. 139 of the Ministry of Foreign Affairs.

work on public policies on outreach to these communities and on their inclusion and development through the promotion of their civic, social and cultural rights.

(iv) *National migration policy*

26. The President<sup>10</sup> availed herself of the power vested in her office to issue an instruction to all Government bodies under her authority concerning the handling of all aspects of migration issues not regulated by law.

27. Presidential Instruction No. 9 on national migration policy of 2 September 2008 analyses migration trends in Chile, defines major courses of governmental action, establishes inalienable principles as the basis for migration policy to guide such action, incorporates the principles and provisions of the relevant international agreements and conventions to which Chile is party, and defines an organizational structure for the implementation of these policy lines. The core element of this structure is the Council on Migration Policy, which has been assigned a multisectoral coordinating role in the proposal of initiatives for the regulation of immigration in Chile based on the fundamental rights of migrant workers. These initiatives are to be carried out within the framework of a national strategy on migration policy.

28. The principles of this policy are: residency and freedom of movement; freedom of thought and conscience; access to residency on an equal and informed basis; access to justice; social protection and integration of migrants, in conjunction with guarantees of their right to education, health and work; respect for the labour rights of migrant workers regardless of their status as foreigners; Chile's self-concept as a country that is duly open to migration and that seeks to admit migrants who decide to reside in the country on a non-discriminatory basis; promotion of the regularization of migrants' immigration status; reunification; and citizen participation in migration management.

29. With a view to achieving the main objectives of the national migration policy, the Government has advocated the following measures:

- Creating the intersectoral Council on Migration Policy, which will enable the Government to take a multidisciplinary approach to the challenges of migration management. The Council is responsible for analysing the migration issues, updating the relevant information, and coordinating with government departments and civil society.
- Appointing the Aliens and Migration Department of the Ministry of the Interior as the technical secretariat for the Council on Migration Policy.
- Modernizing migration management with a view to creating efficient systems to respond to migrants' needs.
- Establishing intersectoral commitments with a view to coordinating responses on the part of the various national public services.
- Promoting "safe migration" in order to protect the lives of migrants and prevent human trafficking and people smuggling.

#### **4. Judicial framework**

30. The existing case law on the protection of the dignity and rights of migrants is not abundant, but is exemplified by the case described below concerning Peruvian migrant workers:

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<sup>10</sup> Constitution of Chile, art. 32, para. 8.



The Santiago Court of Appeal pronounced a judgement<sup>11</sup> in 2005 rejecting an appeal by the *Megavision* television channel of a decision by the National Television Council,<sup>12</sup> which had censured the channel for having offended the dignity of Peruvian citizens residing in Chile because of a joke that had been broadcast on one of the channel's programmes.<sup>13</sup> One of the concurring judges cites article 5, paragraph 2, of the Constitution, which states that: "The exercise of sovereignty recognizes as a limitation the respect of essential rights emanating from human nature. The organs of the State must respect and promote such rights, guaranteed by this Constitution as well as by the international treaties that are ratified by Chile and that are in force." He then points out that the American Convention on Human Rights (Pact of San José) and the International Covenant on Civil and Political Rights, both in force in Chile, establish all persons' right to respect for their honour, the recognition of their dignity, the guarantee that they shall not be subjected to arbitrary or unlawful interference with their privacy, family, home or correspondence, and their right to the protection of the law against such interference or attacks. Referring to the case at hand, he indicates that the programme in question clearly violated the legal principles cited above and that the fact that the phrase offending the dignity of Peruvians had been broadcast as part of a popular and widely watched television programme only served to reinforce xenophobic sentiments which were to some degree beginning to arise as Peruvians immigrated to Chile in search of certain types of jobs.

## **5. Bilateral, regional or multilateral agreements in the field of migration entered into by the State party**

31. Agreements entered into by Chile as an associate member of MERCOSUR:

- At the MERCOSUR Specialized Forum on Migration, an agreement was reached on a procedure for verifying the entry and exit documents of minors travelling between any of the member and associate States of this regional trade agreement. The purpose of the agreement, which has been in force in the country since September 2006, is to increase protection for minors who travel between the countries in the region from illicit trafficking.
- Since 2003, Chile has been making it easier for Argentine nationals to obtain residency in Chile by allowing them to obtain temporary residency for up to two years solely on the basis of their nationality. This initiative is based on the Agreement on Residency for the Nationals of MERCOSUR, Bolivia and Chile and on the Agreement on the Regularization of Migration within States parties and Associate Member States, both of which were signed at the MERCOSUR Specialized Forum on Migration.

<sup>11</sup> In case No. 8833-2005.

<sup>12</sup> Contained in Judgement No. 506 of 14 September 2005.

<sup>13</sup> This judgement takes into account, inter alia, the following grounds adduced by the National Television Council: (fourth) "... that not only does humour not enjoy a privileged status but, on the contrary, it requires especially careful treatment because some of its forms, such as mockery or satire, are often cruel and offensive"; (seventh) "Throughout history, there have been more than a few cases that have had tragic consequences: cases in which indeterminate groups, ethnicities or nationalities were the object of violations of human dignity and scorn that resulted in irreparable atrocities. It is upon careful consideration of certain facts ... that the Council is attempting to put a stop to any hint or suggestion of mockery or caricature that disparages certain social groups or nationalities ... There are many reasons to affirm that jokes about Peruvians are completely inappropriate, that they stem from the history of relations between Chile and Peru, and that Peruvian nationals living in Chile are in a difficult situation, far from their families, in a foreign country that mocks them instead of welcoming them."

- Within the framework of the Meeting of Ministers of the Interior of MERCOSUR and its Associate Member States, in December 2006 a plan of action was drawn up to combat trafficking in persons. The aim is to use international cooperation to seek joint solutions for the existing problems in this area in the member and associate member States of MERCOSUR. This plan is a regional instrument that seeks to some extent to embody the commitments assumed by the signatories to the United Nations Convention against Transnational Organized Crime and the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children. It does not need to be incorporated into the legal system of the member and associate member States as it regulates aspects of the organization or operation of MERCOSUR itself.
- The Agreement on Residence for Nationals of States Parties, Bolivia and Chile was drawn up in 2002 at the Meeting of Ministers of MERCOSUR. This agreement allows the nationals of those countries to obtain a residence permit in any other of those countries solely on the basis of their nationality. It entered into force on 2 October 2009 during the Twenty-sixth Meeting of Ministers of the Interior of MERCOSUR and its Associate Member States.

32. Ibero-American Summit: Within the framework of this international event, which took place in Santiago, Chile, in November 2007, Chile signed the Ibero-American Social Security Convention. This agreement will allow migrant workers residing in any of the signatory countries to transfer their social security funds to their country of origin or residence when they retire. The Convention was signed by: Argentina, Bolivia (Plurinational State of), Brazil, Chile, Costa Rica, El Salvador, Paraguay, Peru, Portugal, Spain, Uruguay and Venezuela (Bolivarian Republic of). The President deposited the instrument of ratification for this convention at the Nineteenth Summit of Heads of State and Government, held in Portugal on 30 November and 1 December 2009.

33. South American Conference on Migration: Chile participates on a permanent basis in this body, which was established for the purpose of analysing the regional and global migration situation. Officials from the Ministries of Foreign Affairs and migration authorities from the countries of the region take part in its work. Through the Conference, participating countries have been able to build a consensus on common positions regarding various aspects of migration, such as respect for the human rights of migrants, the relationship between migration and development, and migration policies in the countries of the region.

34. Free trade agreements and economic complementarity agreements: Representatives of the Ministry of the Interior have been part of the negotiating teams for these agreements, which have addressed the issue of mobility as it relates to business people. Benefits for such persons have been negotiated in the free trade agreements signed with Australia, China, Colombia, Japan, Mexico, Peru and the United States of America and in economic complementarity agreements signed with the European Union and the States of MERCOSUR.

35. Agreements with the Office of the United Nations High Commissioner for Refugees (UNHCR):

- In 1999, the Government of Chile signed the Framework Agreement on Resettlement with UNHCR. This programme is intended to protect refugees who are not able to stay in their host country for security reasons. In an effort to provide resettlement arrangements for particularly vulnerable persons, 16 missions had been carried out as of December 2009 to resettle refugees in various countries. Persons of various nationalities have been resettled; while the vast majority of them have been

Colombian, other nationalities have also been accepted from places as far away as Azerbaijan and Pakistan.

- In the context of this framework agreement and in response to a request made by UNHCR to Government authorities, in September 2007, on the basis of humanitarian considerations, the Government of Chile accepted 116 Palestinian refugees from the Al Tanf camp on the border between Iraq and the Syrian Arab Republic, while at the same time recognizing their right to return to their country of origin. A special two-year programme has been implemented to resettle Palestinians in Chile which provides for the preparation, arrival and sociocultural and labour integration of these refugees in Chile.

36. Bilateral agreements include the following:

- Since 2007, three workshop-seminars have been held with Bolivia on the worst forms of child labour, with an emphasis on the prevention of trafficking of children and adolescents. Government agencies responsible for addressing this issue have participated in the seminars, which have developed a joint plan of action focusing on the protection of child and adolescent victims of all forms of exploitation, particularly the worst forms of child labour, with an emphasis on the prevention of trafficking.
- Bilateral meetings have been held in Colombia and in Chile to identify good practices, legislative advances and media campaigns to address the issue of trafficking in persons.

## **B. Quantitative information on the characteristics and nature of the migration flows (immigration, transit and emigration) in which the State party concerned is involved**

37. In the 1970s and 1980s, Chile was a net sending country, but in the 1990s it became a net receiving country. Nevertheless, figures show that for every immigrant in Chile there are three Chilean emigrants abroad.

*Estimate of foreign citizens residing in Chile as of December 2008*

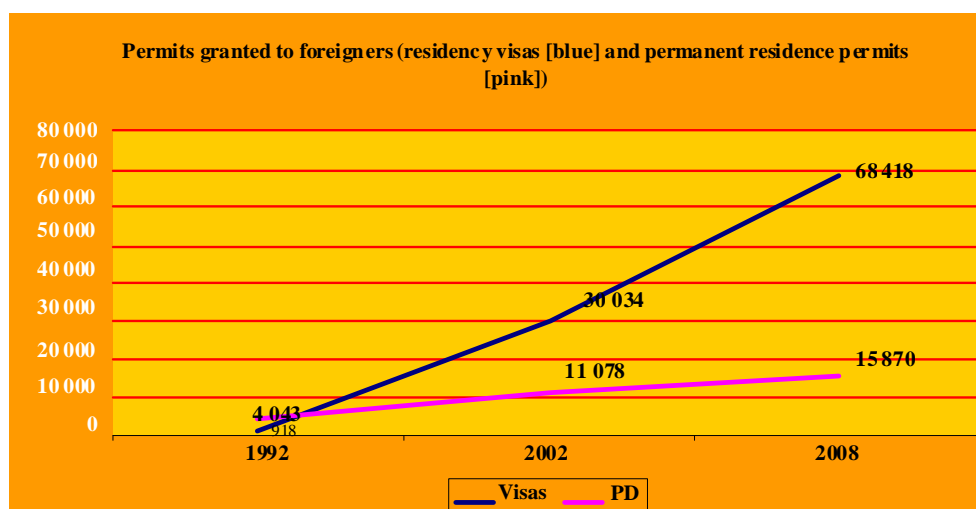
<b>Approximate total number of residents</b>	<b>317 057</b>
<i>Residents, by nationality</i>	
Peru	107 557
Argentina	59 180
Bolivia	22 227
Ecuador	17 471
Spain	10 719
Colombia	10 857
United States of America	9 432
Brazil	9 189
Germany	6 366
China	3 936
Other	60 293

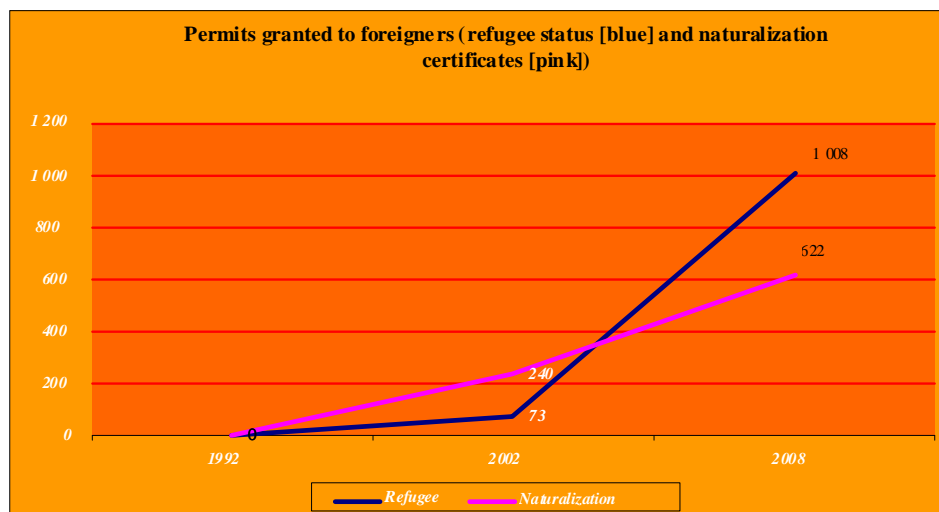
38. An analysis of changes in immigration in Chile over the course of the twentieth century shows that immigration has always been on a small scale compared to other countries in the region, and the foreign population has thus represented a small percentage of the total population of the country.

39. The number of foreigners as a percentage of the total population reached its highest point — 4.1 per cent — at the time of the 1907 census. More recently, historical census data show variations between a low of 84,345 persons in 1982 and a high of 195,320 in 2002, equivalent to approximately 1.3 per cent of the total number of persons residing in the country. At present, considering Chile's population growth, the number of persons born abroad represents about 1.8 per cent of the total population in Chile.

40. Immigration, although small in scale, has nonetheless had a considerable impact on the country's history, and various researchers have underlined the key role that immigration has played in the introduction of new technologies, the modernization of farming, the development of commerce, banking, industry, mining and other activities.

41. Until the 1982 census, most immigrants were Europeans and Arabs, with a smaller migratory flow being received from the Far East. Only in the final decades of the past century did immigration from neighbouring countries, coupled with an increase from Asian countries, come to the fore. That trend emerged largely as a result of the economic growth that the country began to experience in the mid-1980s and became consolidated with the advent of democracy and the recognition in the region of Chile's stability. Year-on-year figures on the issuance of residence permits and naturalization certificates demonstrate this clearly. In total, the number of permits rose more than 700 per cent between 1992 and 2002, and it more than doubled between 2002 and 2008.





42. As early as the 1960 census, a considerable decline was registered, in the proportion of Europeans in the immigrant population, with the percentage dropping to just 17 per cent of all foreigners by 2002. By comparison, the number of immigrants of South American origin made up 67.8 per cent of the total foreign population in Chile at the time that the most recent census was taken.

43. According to the population and housing census of 2002, about 185,000 persons (1.22 per cent of the total population) born abroad were living in Chile. Some 58 per cent of immigrants came from Argentina (26 per cent), Peru (21 per cent), Bolivia (6 per cent) and Ecuador (5 per cent). This information, together with Ministry of the Interior residency records, shows that approximately 317,000 foreigners were residing in Chile as of December 2008.

44. Almost 53 per cent of the immigrant population in Chile are women. In the case of Peruvian citizens, the figure exceeds 57 per cent.

45. The economically active population of foreign origin went from 31 per cent in 1992 to 48 per cent in 2002. Of this group, 45 per cent state that they have professional, technical or similar qualifications, compared with 60 per cent in 1992.

46. The age breakdown of the immigrant population shows that most immigrants, especially those from the Andean countries, are of working age. Fewer than 10 per cent of immigrants of Bolivian or Peruvian origin are under 15 years of age.

47. The make-up of immigration to Chile has changed over time. According to the 2002 census, the new wave of immigrants in the 1990s gathered pace from 1996 on and was made up mainly of people of Andean origin (Colombians, Peruvians and Ecuadorians), who, since that time have represented more than 70 per cent of all arrivals.

48. In short, today Chile is witnessing a new type of immigration pattern in which the bulk of immigrants come from South America and particularly the Andean region. It is characterized by its spontaneity and by the fact that most of the immigrants concerned are in search of work, have urban social and employment backgrounds, and find jobs as labourers and in construction, industry and domestic service. A majority of these immigrants are women.

49. Although the nature of immigration changed a great deal in the course of the final decades of the last century, it should not be forgotten that Chile continues to be a country in which emigration outweighs immigration. This pattern began to take shape in the 1950s,

when large numbers of professionals and technicians began to emigrate to developed countries. Then, in 1973, a wave of emigration began that resulted in a total of 857,781 Chileans<sup>14</sup> remaining out of the country to this day. This outflow was triggered by the political and institutional upheaval that took place that year and the establishment of a military dictatorship that would last 17 years, bringing with it political persecution and the sweeping economic changes seen from the late 1970s on. A comparison of the number of Chileans abroad with that of foreigners living in Chile shows that, for every foreigner in the country, nearly three Chileans reside abroad.

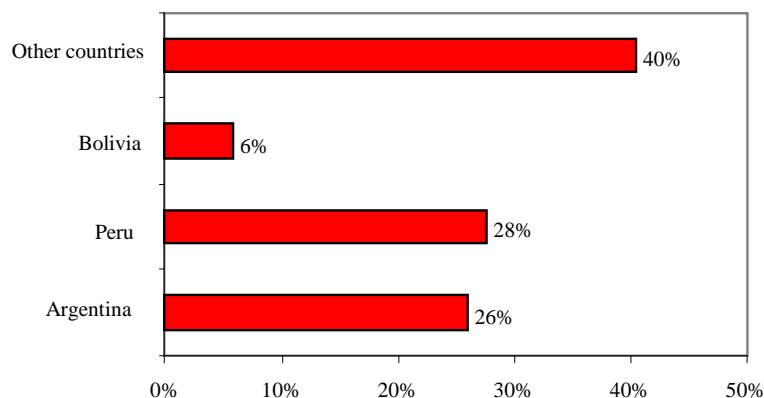
# 1. Sociodemographic characteristics of immigration in Chile according to the CASEN survey

50. In 2006, for the first time, the National Social and Economic Survey (CASEN survey)<sup>15</sup> looked into the socio-economic characteristics of persons residing in Chile but born abroad, including such key aspects as: sociodemographic background; poverty and extreme poverty; income levels; employment situation and social security coverage; and education and health.

51. The survey was carried out between 7 November and 20 December 2006 in 335 municipalities throughout the country; 73,720 households were surveyed (44,854 of them in urban areas and 28,866 in rural areas), for a total of 268,873 people. This is a probabilistic sample having a total sampling error of 0.36 at the household level, given maximum variance and a 95 per cent confidence level. The main findings of the survey are as follows:

## (i) Country of origin

52. Those persons born abroad come mostly from neighbouring countries; the scale of immigration from Peru, is particularly noteworthy and has grown as a percentage of total immigration in the past years.

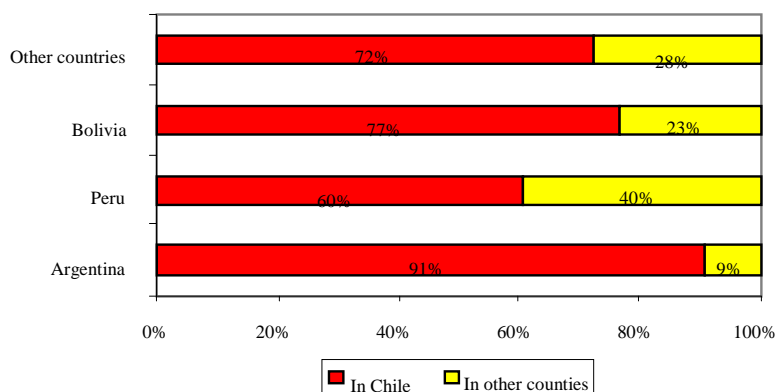


<sup>14</sup> National censuses and the INE-DICOEX register for 2003–2004.

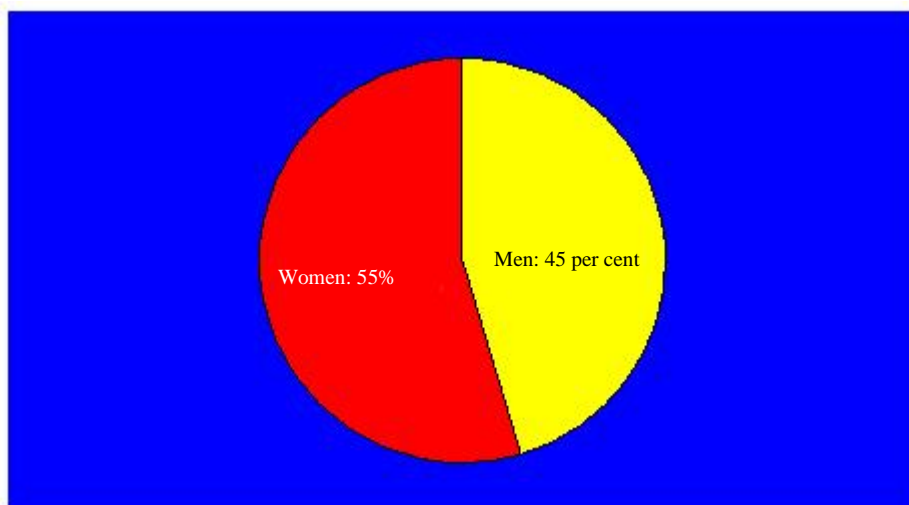
<sup>15</sup> The goal of the National Social and Economic Survey (CASEN survey) is to periodically ascertain the socio-economic situation of households and the population, as well as to assess the degree of targeting and the redistributive impact of social programmes, thus contributing to the framing and evaluation of social policy. It is representative of all the households in the country at national and regional levels and by urban and rural zone. It has been carried out every two years since 1985.

*(i) Arrival period*

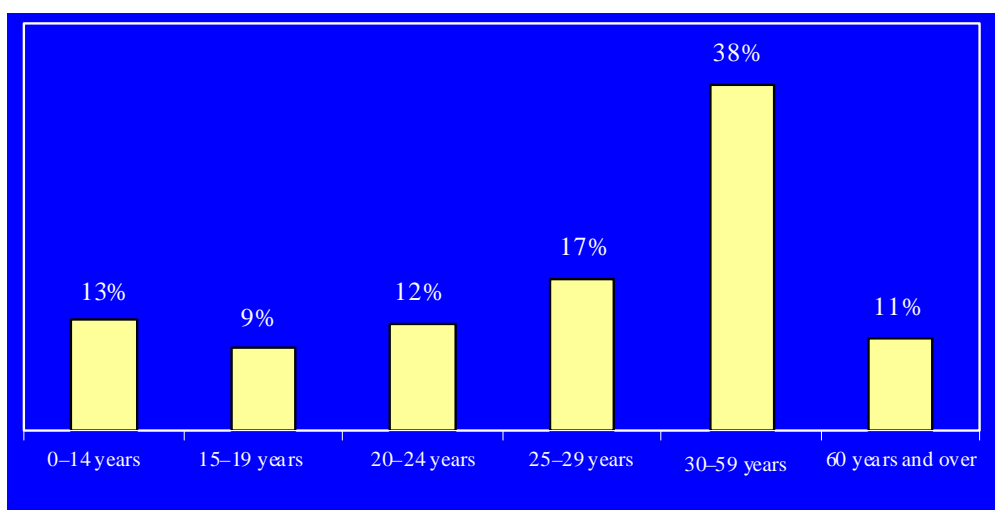
53. The period of arrival varies according to the country of origin. Immigration from Peru, for instance, is a recent phenomenon, with 40 per cent of Peruvians residing in Chile in 2006 having arrived in the country since 2002. In contrast, only 9 per cent of Argentine-born residents arrived in Chile after 2002.

*(iii) Sex*

54. The majority of residents born abroad are women; the growing preponderance of women is one of the hallmarks of immigration in recent years.

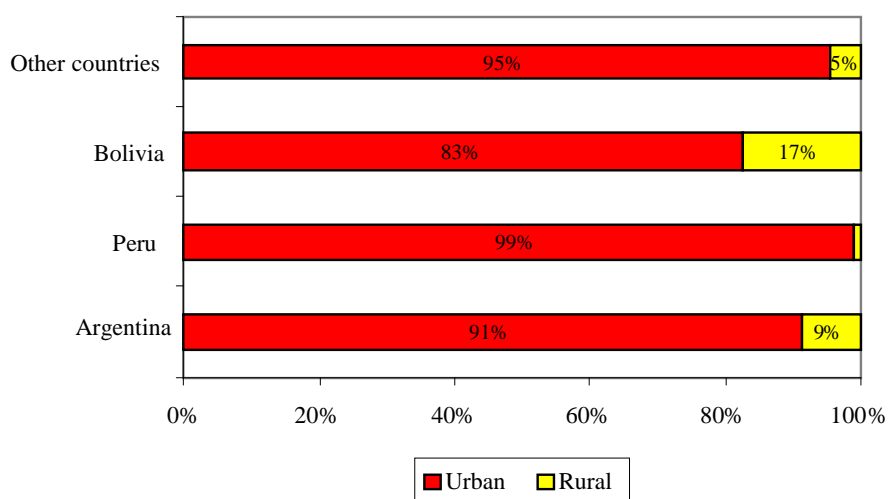
*(iv) Age*

55. The majority of residents born abroad are of working age.



(v) *Areas of origin*

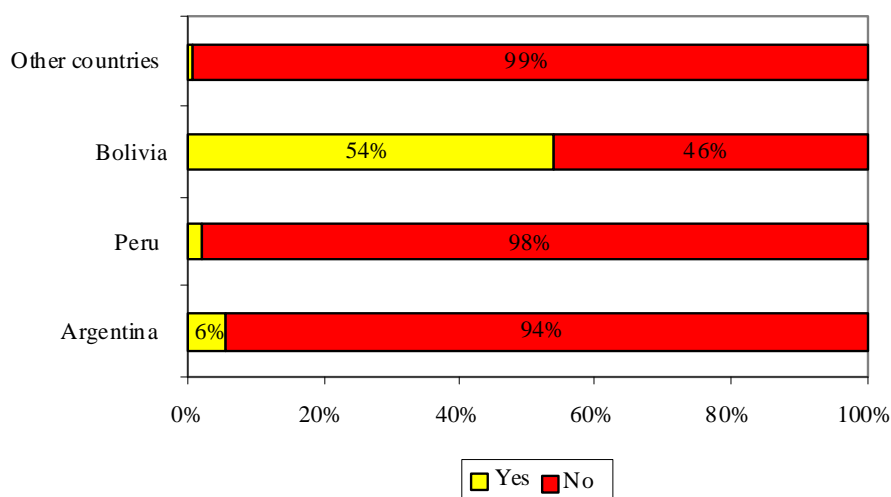
56. Most of the people who were born abroad reside in urban areas, although a sizeable portion of those born in Bolivia live in rural areas.



(vi) *Membership in an indigenous group*

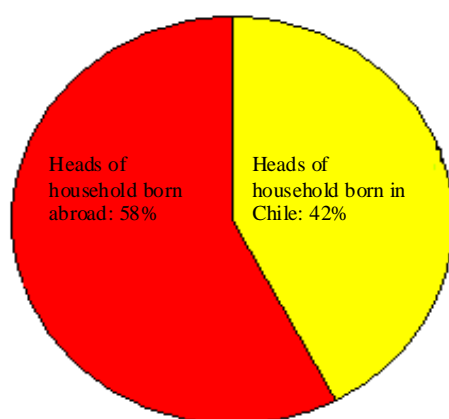
57. The majority of residents born in Bolivia say that they belong to an indigenous group, mainly the Aymara and Quechua peoples. A significant number of residents born in Argentina claim membership in an indigenous group, in this case mainly the Mapuche people.





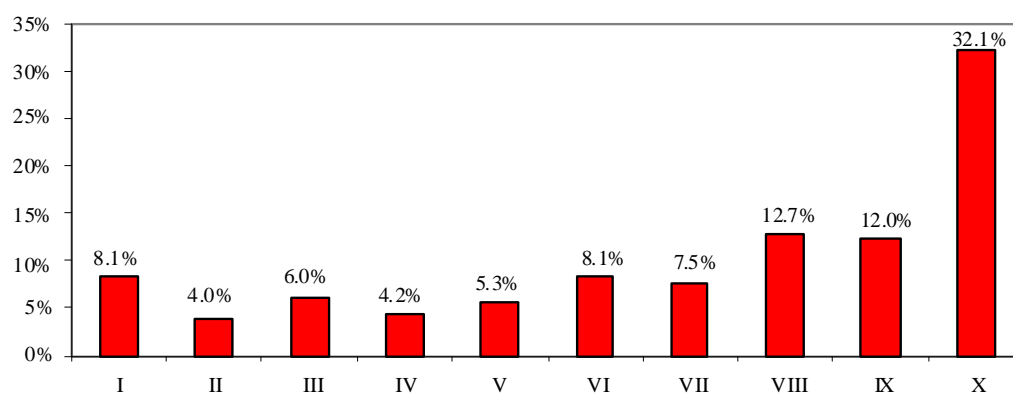
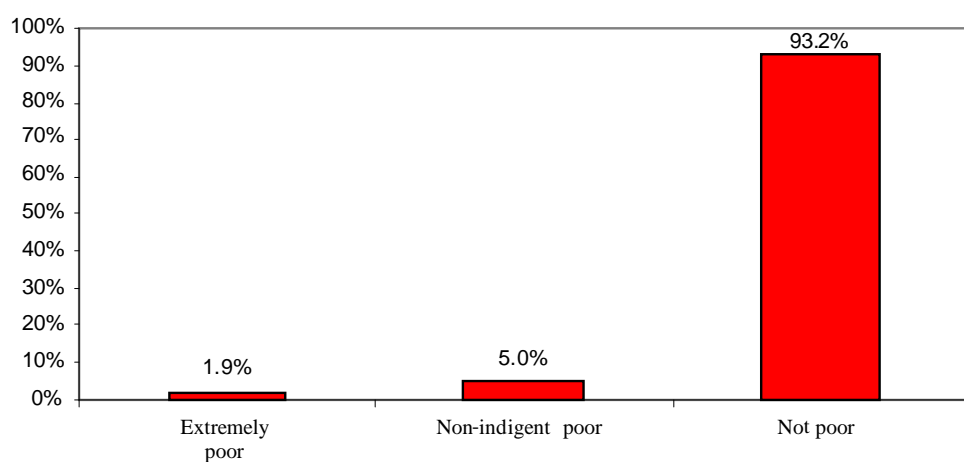
(vii) *Households and heads of household*

58. A majority of residents born abroad live in a household headed by a person who was also born abroad, but a sizeable portion live in households headed by someone born in Chile.



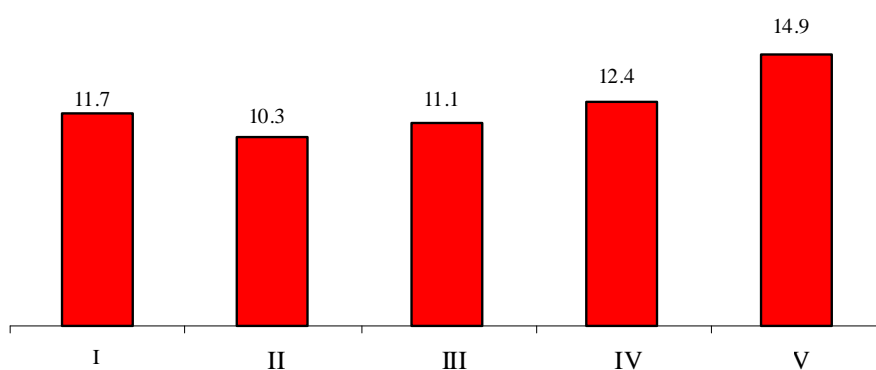
(viii) *Poverty and extreme poverty*

59. The rate of poverty or extreme poverty in households in which the head was born abroad is relatively low. The rate of poverty is comparatively lower in the highest income decile. However, among the five lowest independent income deciles, a larger percentage of these households is concentrated in the first decile.



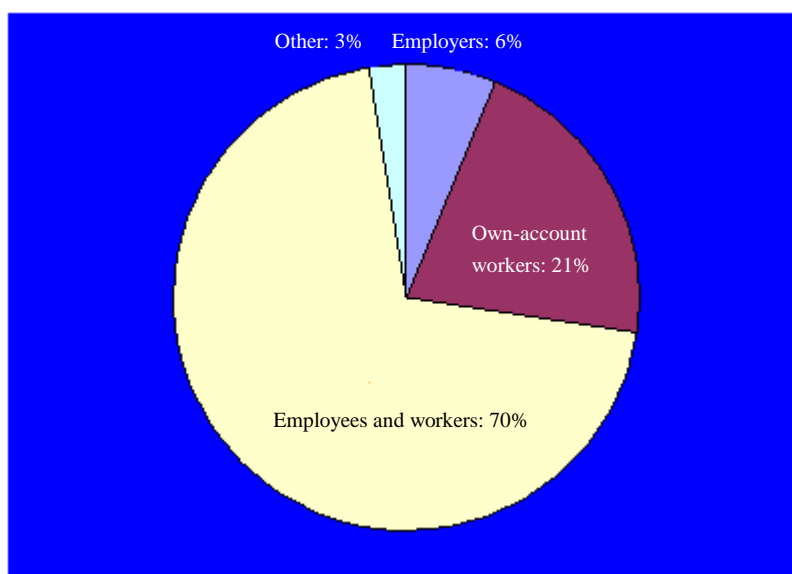
(ix) *Years of schooling completed by persons aged 15 or over, by income level*

60. Persons of working age born abroad have, on average, a high level of schooling. This is so even among persons with lower income levels, such as those in the first and second quintiles of independent income distribution in Chile.



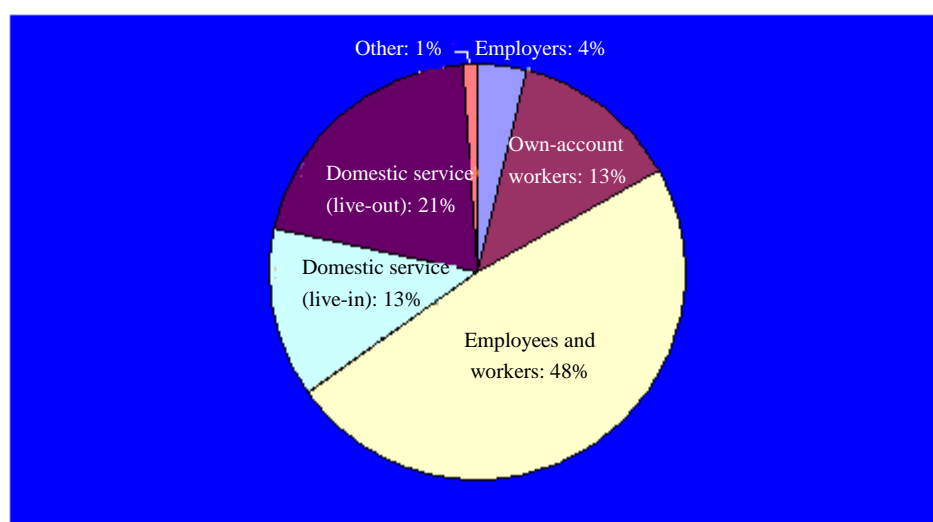
(x) *Male occupational groups*

61. Men of working age born abroad are mainly employees or workers.



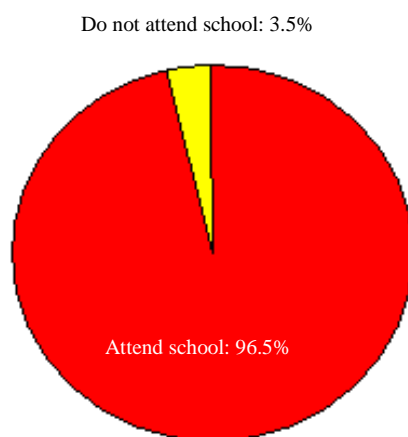
(xi) *Female occupational groups*

62. A large proportion of women of working age born abroad are employees and workers, although fewer than their male counterparts, as many instead work in domestic service.



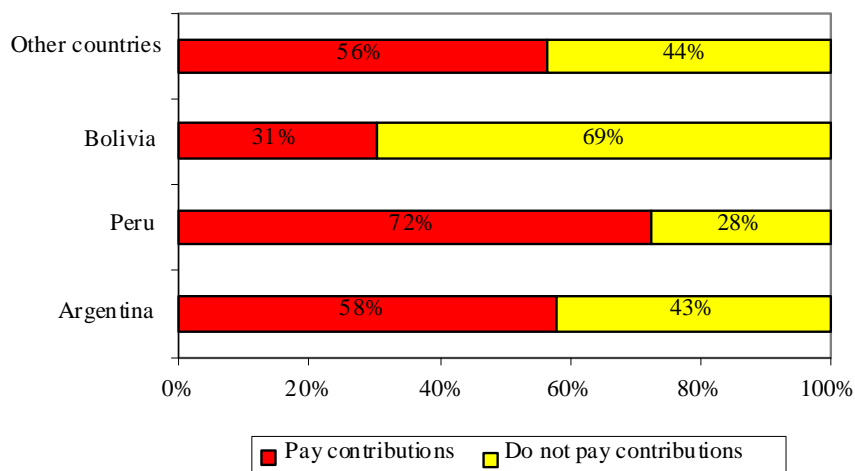
(xii) *Educational coverage of children from 6 to 17 years of age*

63. Coverage by the education system for children aged from 6 to 17 years, that is, the school-age portion of the population, is equal to the national average. This is accounted for by the fact that primary and secondary education are compulsory. Furthermore, the Government of Chile has ordered that children born abroad who do not have the certificates that are normally required must be enrolled provisionally so that they can start school. This measure forms part of Chile's policy on regularizing the status of migrants.



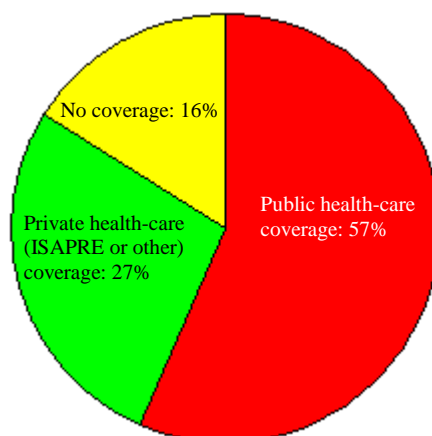
(xiii) *Social security contributions*

64. Many members of the Bolivian-born economically active population (both employed and unemployed) living in Chile do not pay social security contributions and have substandard working conditions. This situation is, however, infrequent among persons born in Peru. The comparatively high overall rate of social security contributions among residents born abroad is attributable to their ability to demand their social security rights. Chile's policy on regularizing the status of migrants, which emphasizes the observance of national labour legislation, has also contributed to this.



(xiv) *Health-care coverage*

65. The majority of persons born abroad are covered by the public health-care (FONASA) system, with a smaller percentage having private ISAPRE health-care or similar plans. A small but significant number have no health-care coverage and must seek treatment privately. Chile's policy on the regularization of the status of migrants and the instructions issued by the Ministry of Health on the protection of socially vulnerable immigrants (children and pregnant women) have encouraged people to join public or private health plans.



## IV. Information in relation to each of the articles of the Convention

### A. General principles

#### 1. Articles 1, paragraph 1, and 7: Applicability of the Convention and non-discrimination

66. Making no distinction between Chileans and foreigners, the Constitution declares that people are born free and equal in dignity and rights; that the State is at the service of the individual and that its goal is to promote the common good. It adds that, to achieve this, the State must help to create social conditions conducive to the greatest possible spiritual and material fulfilment of each and every member of the national community, must fully respect constitutional rights and guarantees and must safeguard the right of all persons to have an equal opportunity to participate in the life of the nation.<sup>16</sup>

67. The Constitution enshrines the general principle of equality before the law,<sup>17</sup> as well as equal protection under the law for the exercise of human rights.<sup>18</sup> Chilean law incorporates this principle and therefore contains no provisions that limit the minimum guarantees established under the Convention insofar as they relate to the employment of migrant workers in the country; those migrants who are authorized to work in Chile are entitled to the same working conditions as those enjoyed by nationals, in accordance with the general principle that the law applies to everyone living in the Republic, including foreigners.<sup>19</sup>

68. The Labour Code states that distinctions, exclusions or preferences based on race, colour, sex, age, marital status, trade union membership, religion, political opinion, nationality or national or social origin which have the effect of nullifying or impairing

<sup>16</sup> Art. 1.

<sup>17</sup> Under Chapter III: Constitutional Rights and Duties, art. 19, para. 2, states: “*Equality before the law. In Chile there are no privileged persons or groups. In Chile there are no slaves, and whoever sets foot on its territory is free. Men and women are equal before the law.*”

<sup>18</sup> Art. 19, para. 3.

<sup>19</sup> Civil Code, art. 14.

equality of opportunity or treatment in employment or occupation, are incompatible with the principles embodied in the nation's labour laws.<sup>20</sup>

69. In the workplace, the principle of equal treatment for immigrants and nationals of the host country applies; this places the former on an equal legal footing with the latter in terms of the regulation of work relations.

70. Nevertheless, in certain cases the law may require that candidates for certain posts hold Chilean nationality as a measure of protection or social defence for nationals, who, for elemental reasons, have the right to be able to work in their own country.

71. This exception is contained in the Labour Code, which establishes that at least 85 per cent of the persons who work for the same employer, in companies with more than 25 employees, should be Chilean nationals.<sup>21</sup> Technical specialists who cannot be replaced by Chilean staff are excluded from this restriction. Moreover, solely for the purposes of this calculation, foreigners are considered to be Chilean if their spouse or children are Chilean, if they are widows or widowers of a Chilean citizen or if they have been resident in the country for more than five years.<sup>22</sup> In addition, the Navigation Act establishes that the captain and crew of the nation's vessels must be Chileans.<sup>23</sup>

72. Domestic legislation makes no provision for any exceptions to the principle of equal treatment with respect to work contracts signed by migrant workers that might work to the detriment of foreigners; as its provisions are mandatory, the minimum rights established therein are irrevocable. The Labour Code thus stipulates that the rights established in the nation's labour laws are inalienable as long as there is an employment contract in force.<sup>24</sup> The parties to the contract may not agree on conditions that diminish workers' basic rights, but may agree to conditions that exceed the minimum requirements guaranteed by law. All workers, whether nationals or foreigners, are bound by these provisions.

73. Domestic legislation does not provide for restrictions on the rights of foreigners or for the loss of such rights by reason of any irregularity associated with a foreigner's stay in the country, although serious and repeated offences may lead to the imposition of fines or expulsion to the country of origin. Employers are not relieved of their duty to comply with employment contracts signed with foreign personnel by reason of any such irregularity.

74. Chile makes no distinctions with respect to the protection of the rights of children and adolescents on the basis of social, economic, ethnic, geographic or religious origin, gender or any other characteristic. Therefore, the relevant policies and programmes apply equally to foreign migrant children and adolescents, in keeping with the commitments assumed by Chile, particularly with regard to the promotion of and respect for equality and non-discrimination as established in the Convention on the Rights of the Child. The programmes and specialized strategies for children whose rights have been violated, which are designed and implemented by the National Service for Minors (SENAME), are therefore also available to all migrant children and adolescents.

## **2. Article 84: Duty to implement the Convention**

75. As explained above, the country's authorities enforce the Convention, which forms part of the domestic legal system.

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<sup>20</sup> Labour Code, art. 2.

<sup>21</sup> Ibid., art. 19.

<sup>22</sup> Ibid., art. 20.

<sup>23</sup> Decree Law No. 2222 of 1978, arts. 49 and 65.

<sup>24</sup> Art. 5.

76. In addition, Presidential Instruction No. 9, of September 2008, on national migration policy, sets out a number of principles that, as is clearly stated, have as their basis the principles, rules and rights enshrined in a series of international human rights instruments, among them the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families.

77. This instruction states that national migration policy is intended to safeguard the following rights: the right of residence and freedom of movement; freedom of thought and conscience; informed access to residence on equal terms; access to justice; the right to integration and social protection for immigrants, with special emphasis on education, health and employment; the labour rights accruing to foreign workers; the right to non-discrimination; the regularization of migrant status; family reunification; and involvement of the public in migration management.

78. It then details the tasks incumbent upon public agencies that deal with migration and establishes guidelines for government action in this area; it also defines an institutional structure for putting policy into practice. The core component of this structure is the Council on Migration Policy, which has been assigned a multisectoral coordinating role in the proposal of initiatives for the regulation of immigration in Chile based on the fundamental rights of migrant workers. These initiatives are to be carried out within the framework of a national migration policy strategy.

79. The Council on Migration Policy, an advisory body to the nation's highest authorities, analyses the phenomenon of migration in Chile, updates information on migration trends, makes proposals on how to regulate the effects of migration in other areas of public policy, coordinates State and civil society migration agencies, and suggests special regulations for migrants.

80. The Council is headed by the Under-Secretary of the Interior, and its members include ministries and public service departments involved in migration issues. Its technical secretariat is based in the Aliens and Migration Department of the Ministry of the Interior. As an intersectoral body, the Council seeks to ensure that, when commitments are assumed by the various sectors of the government, they take into account migration policy, in addition to the relevant sector's own public policies.

81. Each of the ministries and public service departments represented on the Council has a technical expert who works with the Council's technical secretariat to develop proposals for inclusion in the national migration policy strategy and to define indicators for monitoring the strategy's progress and implementation.

82. As of December 2009, the technical experts had been designated, the strategy was being prepared and the Government had begun discussions with civil society on how to approach one component of that strategy — the issue of asylum — and the preparation of the corresponding workplan.

### **3. Article 2**

83. In Chile, the specific categories of migrant workers enumerated in this article do not exist. Under the laws in force, immigrants are divided into two groups: (a) those with temporary residence permits, whose duration is limited to one or two years; and (b) those with permanent residence permits, which allow their holders to reside for an indefinite period in the country subject only to those restrictions provided for by law. Under the Aliens Act, a visa is the permit placed by the competent authorities in the valid passport of a foreigner entering the country which allows its holder to remain in the country for the period of time specified by the authorities.

84. This act and the Regulation on Aliens establish that foreigners in Chile may be categorized either as: (a) official residents, who are persons, together with their families and administrative and service staff, who are attached to the diplomatic and consular corps and to international organizations recognized by Chile; or (b) ordinary residents, who are subdivided into resident students, temporary residents, asylum-seekers and refugees, crew members and residents bound by contract.

85. The category of “resident bound by contract” corresponds to foreigners, along with their family members, who enter the country to fulfil an employment contract. This visa or permit is valid for two years and may be renewed for equal periods. After two years of residence, it is possible to apply for permanent residence.

#### **4. Article 4**

86. Under the Constitution, the family is defined as the basic unit of society, and it is the duty of the State to protect it and to help to strengthen it.<sup>25</sup>

87. Under the Regulation on Aliens, the family group is defined as being composed of a migrant worker’s spouse and parents or children of the migrant worker, the spouse or both who are financially dependent upon the primary residence permit holder. Residence permits granted to dependants do not authorize them to engage in remunerated activity in Chile.

88. In practice, immigration authorities have expanded the definition of family members, particularly with regard to spouses, in recognition of the fact that the situation, for example, of two people who are living together is effectively equivalent to marriage. For the purpose of family reunification, residence permits may also be granted to children and adolescents in the custody of an immigrant, provided that their relationship has been formalized before the appropriate family court and that evidence of this is presented to immigration officials.

#### **5. Article 5**

89. Under Chilean law, foreigners with a permit (visa) authorizing them to enter the country and remain for a period fixed by the authorities are considered to be documented or in a regular situation. As mentioned earlier in the section relating to article 2 of the Convention, one of the categories of migrants listed under the Aliens Act and the Regulation on Aliens is that of a resident bound by contract, which applies to foreigners, along with their family members, who enter the country to fulfil an employment contract. This visa or permit is valid for two years and is renewable for equal periods. After two years of residence, it is possible to apply for permanent residence.

#### **6. Article 7**

90. Please refer to paragraph 66 above.

### **B. Human rights of all migrant workers and members of their families**

#### **1. Article 8: Right to leave any country, including one’s own, and to return**

91. The right of everyone, without distinction on the grounds of nationality, to enter and leave Chilean territory in accordance with applicable laws and without prejudice to third parties is enshrined in the Constitution.<sup>26</sup>

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<sup>25</sup> Art. 1.



92. Among the responsibilities of the Investigative Police Force in immigration matters is the task of “monitoring arrivals to and departures from the national territory” and of “overseeing the presence of foreign nationals in the country”. This police force monitors about 99 per cent of all foreigners who cross the country’s borders. The regular police force (Carabineros de Chile) carries out these tasks in locations where no Investigative Police Unit is stationed, as do the maritime authorities in ports without such police units.<sup>27</sup>

93. Under national migration legislation, foreigners who enter or leave Chilean territory must abide by the applicable rules and regulations. Only persons subject to a judicial or administrative restriction on entry into or departure from the country imposed by a court ruling or a decision taken by the immigration authorities of the Ministry of the Interior may have their freedom of movement curtailed. Where no such restriction exists, foreigners may cross the country’s borders freely.

94. In practical terms, from an administrative point of view, any migrant worker with a valid residence permit may freely cross the country’s borders without let or hindrance. Border officials may stop foreigners from leaving the country only if their residence permits have expired, if they are found to be engaged in activities that are not authorized by their residence permits, or if they face administrative penalties for immigration irregularities. In such cases, the persons in question must resolve the legal matter in question before departing.

95. The Aliens Act and the Regulation on Aliens set out the grounds that may be invoked to prevent the entry of foreigners into Chilean territory.<sup>28</sup> The Ministry of the Interior, which may compile information from various State agencies, is empowered to decide whether or not to authorize entry. Decisions on restricting an individual’s entry into Chile are enforced by border officials and may be suspended or revoked by the authorities of their own motion or on the application of the interested party.

## **2. Articles 9 and 10: Right to life and prohibition of torture and other cruel, inhuman or degrading treatment or punishment**

96. The Chilean Constitution protects all persons’ right to life and to physical and mental integrity; it also prohibits any unlawful coercion.<sup>29</sup>

97. The death penalty was removed from all ordinary criminal legislation in 2001 and has been maintained solely for certain criminal offences under the Code of Military Justice committed during a state of war or in the presence of the enemy.

98. The Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment and the Inter-American Convention to Prevent and Punish Torture have been in force since 1988. More recently, in January 2009, the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment also entered into force. In 1998, the Criminal Code was amended to include the crime of torture. Steps are being taken to introduce a further amendment in order to bring this provision more closely into line with the definition contained in the Convention against Torture. The Code of Military Justice provides for the punishment of members of the armed forces and the police force who employ unnecessary violence in the course of their performance of their duties.

<sup>26</sup> Constitution, art. 19, para. 7 (a).

<sup>27</sup> Aliens Act and Regulation on Aliens.

<sup>28</sup> Aliens Act, arts. 15 and 16, and Regulation on Aliens, arts. 26 and 27.

<sup>29</sup> Art. 19, para. 1.

99. The Forensic Medical Service, which is responsible for providing technical and scientific advisory services to courts and investigative bodies throughout Chile regarding forensic medicine, forensic science and other areas within its competence, has been working on the application of the Manual on Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (Istanbul Protocol) since 2008 as part of its Human Rights Programme.

100. The Investigative Police Force treats nationals and immigrants equally when monitoring arrivals into and departures from the country in accordance with internal instructions that clarify or incorporate procedures in this field or that supplement those already provided for in migration laws.

101. The regulations that govern the Investigative Police Force prohibit the infliction of inhuman, cruel or degrading treatment by its officials on anyone they may arrest or search. Senior authorities and the National Office of Overseas Affairs and International Police provide members of this police force with regular training on the proper treatment of people (whether nationals or foreigners) so as to maintain respect for their dignity and to avoid at all times any punishable actions that contravene the basic standards established for the protection of the rights of persons.

102. The National Office works closely with the Aliens and Migration Department of the Ministry of the Interior to resolve problems that arise which are not covered by the legislation or about which its text is unclear or imprecise. Both of these units participate actively in meetings of the Specialized Forum on Migration of MERCOSUR and Associate Member States, which have led to the implementation of several agreements on migration that directly benefit migrants throughout the region.

103. The National Office of Overseas Affairs and International Police has outlined a strategy for using the latest-generation technology to step up migration controls and security. Combined with constant training and specialization, this technology has made it possible to optimize control of the country's borders and to meld the concepts of security, facilitation and integration through increasingly efficient procedures. These innovations will ensure that nationals and immigrants alike may live in a country in which security and equality before the law constitute basic rights in national society.

### **3. Article 11: Prohibition of slavery and forced labour**

104. Under the Constitution, in Chile there are no privileged persons or groups; there are no slaves, and whoever sets foot on its territory is free; neither the law nor any authority may establish arbitrary distinctions.<sup>30</sup> Since 1995, Chile has been a party to the Slavery Convention, the Protocol amending the Slavery Convention and the Supplementary Convention on the Abolition of Slavery, the Slave Trade and Institutions and Practices Similar to Slavery. Chile ratified the International Labour Organization (ILO) Forced Labour Convention (No. 29) on 31 May 1933 and the ILO Abolition of Forced Labour Convention (No. 105) on 1 February 1999.

105. The Ministry of Labour and the Labour Directorate investigate cases of forced labour, regardless of the victims' nationality or migration status. There are no specific ordinances dealing with servitude or enslavement of migrant workers, and there is no specific classification of penalties relating to such cases. Nevertheless, with regard to foreign workers employed in Chile, the Labour Directorate is authorized by Ordinance No. 5848/386 to make inspections to ensure that the employment and social security obligations applying to foreign employees are met, regardless of whether they are legally entitled to

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<sup>30</sup> Art. 19, para. 2.

work in the country or not. Another provision of the same ordinance, which could be regarded as a tool for the detection of slavery or forced labour, states that Labour Directorate inspectors may also visit any workplace at any time of the day or night.<sup>31</sup>

#### 4. Articles 12, 13 and 26

##### (i) *Freedom of expression*

106. The Constitution states that no distinction is to be made between nationals and foreigners in the exercise of the freedom to express their opinions and to provide information, without prior censorship, in any form and by any means that they see fit, although this does not exempt them from answering for any offences or abuses which they may commit in the exercise of these freedoms.<sup>32</sup> Under no circumstances may a State monopoly of the mass media be established. Natural or legal persons offended or unjustly mentioned by any of the media have the right to have their statement or correction published free of charge, under the terms set forth in the law, by the media outlet concerned. The State and those universities and other individuals or entities that are specified by law may establish, operate and maintain television stations. The law establishes a rating system for films.

107. All natural or legal persons have the right to found, publish and own newspapers, magazines and periodicals, subject to the conditions laid down by law. In 2006, a prize was awarded to *Solonoticias*, a periodical owned by the Impresos Gotelli firm which publishes information on cultural events in the migrant Peruvian community, in the competition entitled “Good practices: We Are All Chile”, an initiative launched under the Plan of Action against Racism and Discrimination (see paragraphs 21 and 23 above). In the year in which it was awarded the prize, this monthly periodical had a print run of 7,000 copies, which were distributed free of charge in Santiago, and in Concepción, in the Eighth Region.

108. According to information available from the Aliens and Migration Department of the Ministry of the Interior, the core readership of at least one publication, *Contigo Perú* (With You, Peru), consists of the Peruvian migrant community living in Chile. As of October 2009, 82 issues of this publication had been produced in Chile. It was also one of the organizers of the Fifth Meeting of Migrants in Chile, held with the support of the Chilean Government.

##### (ii) *Freedom of religion*

109. Foreigners may profess any religion without hindrance or restriction. Freedom of conscience, freedom of expression of any belief and freedom to exercise any form of worship not inconsistent with public morals, customs or order are enshrined in the Constitution and apply to nationals and foreigners alike. The Constitution also guarantees the right to build and maintain places of worship and related facilities in accordance with the safety and hygiene standards as set out in relevant laws and ordinances. These buildings are exempt from all forms of taxation.<sup>33</sup> In 1999, this constitutional safeguard was reaffirmed in a specific law on the legal constitution of churches and religious organizations and on non-discrimination against persons by reason of their religious beliefs.<sup>34</sup>

<sup>31</sup> Ordinance No. 5848/386 of 26 November 1998.

<sup>32</sup> Art. 19, para. 12.

<sup>33</sup> Art. 19, para. 6.

<sup>34</sup> Act No. 19638 of 14 October 1999 states that, by virtue of the freedom of religion and worship, all persons may, as a minimum, freely practise the religion of their choice or practise no religion; express that religion freely or refrain from doing so; change religions or abandon the religion that they once

110. In upholding the freedom of migrant workers to manifest their religion or beliefs, particular importance is attached in Chile to the Day of the Lord of Miracles, a religious event associated mainly with the Peruvian community resident in Chile, which considers him to be the patron of Peruvian emigrants. This feast day has been on the calendar of the Chilean church for more than a decade now.

111. Religious celebrations in which migrants of Peruvian origin and members of the national community are the main participants and which are open to all the various migrant communities in Chile, also take place in the cities of Valparaíso and Iquique. On 25 October 2009, a religious ceremony led by the Cardinal-Archbishop of Chile and the Bishop of Callao (Peru) was heavily attended by Peruvian immigrants.

(iii) *Right to join a trade union*

112. The right to join a trade union is acknowledged in the Constitution,<sup>35</sup> and the Labour Code,<sup>36</sup> as well as in international instruments ratified by Chile, such as the International Covenant on Economic, Social and Cultural Rights, the ILO Freedom of Association and Protection of the Right to Organise (No. 87) and the ILO Application of the Principles of the Right to Organise and Collective Bargaining Convention (No. 98). None of these instruments makes any distinction between workers who are migrants and those who are not, and practice confirms that in Chile no restrictions on the right to join a trade union apply to migrant workers.

113. There are no specific statistics on trade union membership among migrant workers, but national legislation provides for penalties for anti-trade union practices, that is, practices which undermine the freedom of association. Firms found guilty of anti-trade union activities are placed on a list that is published every six months by the Labour Directorate. Since the first of these reports was published in 2001, when they became legally mandatory, no conviction for anti-trade union activities has been linked to cases involving migrant workers.

## 5. Articles 14 and 15

(i) *Prohibition of arbitrary or unlawful interference with privacy, family, home, correspondence or other communications*

114. The principles of respect for and protection for the privacy and honour of the individual and of his or her family are enshrined in the Constitution,<sup>37</sup> without distinction between Chileans and foreigners. The Constitution neither defines “privacy” nor provides a

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practised; pray or worship in public or in private, individually or collectively; celebrate religious festivals; conduct religious rites; receive religious ministrations in the faith of their choice regardless of location; observe their weekly day of rest; receive decent burial, without discrimination on religious grounds, at the time of their death; be free of any obligation to practise acts of worship or to receive religious ministrations that run counter to their personal beliefs and to be undisturbed in the exercise of these rights; receive and impart religious teachings or information by any means; choose for themselves (this choice devolves upon the parents in the case of unemancipated minors and upon guardians in the case of incapacitated persons under their responsibility and care) the religious or moral instruction that is in keeping with their own beliefs; gather or engage in public demonstrations for religious purposes; and assemble for the purpose of collectively engaging in religious activities in accordance with the general legal order and this act.

<sup>35</sup> Art. 19, paras. 16 and 19.

<sup>36</sup> Art. 212.

<sup>37</sup> Art. 19, para. 4.

detailed description of what the right to privacy entails, as is done in various other national Constitutions. Rather, this has been left to case law.

115. Violation of these rights by the media is an offence, so those rights need to be balanced by the freedom to inform without censorship. A media outlet that violates these rights may attempt to prove in court that the statements or broadcast in question are true, unless this in itself would constitute injurious behaviour directed against a private individual. The owners, publishers, directors and managers of an offending media outlet are jointly liable to pay any compensation awarded in such cases.

116. Nor is any distinction made between nationals and foreigners with regard to constitutional safeguards of the inviolability of the home and of all forms of private communication.<sup>38</sup> Homes may be searched and private communications and documents intercepted, opened and registered, in those cases and manners determined by law.

117. One point to be noted regarding the inviolability of the home is that, under the Aliens Act,<sup>39</sup> the regional or provincial governor of the territory in which a foreigner who is subject to an expulsion order is present may authorize the search of a specific home. A warrant must be issued in order for a raid of this sort to be conducted.

(ii) *Prohibition of arbitrary deprivation of property*

118. The Constitution guarantees the right of nationals and foreigners to ownership, in its different forms, over all classes of tangible and intangible property.<sup>40</sup> Only the law may establish the manner in which property may be acquired, used, enjoyed and disposed of, as well as the limitations and obligations deriving from its social function. No one may, under any circumstance, be deprived of his or her property except by virtue of general or special legislation that authorizes its expropriation for the public benefit or the national interest. The party subject to an expropriation order may challenge its legality before the courts and always has the right to compensation for the loss.

119. Generally speaking, no restrictions apply to migrants for the acquisition of real estate or real rights. On an extremely exceptional basis, nationals of neighbouring countries may not acquire control or other real rights over, or possess or hold, real estate — whether State-owned or private — that is located wholly or partly in border areas. This prohibition applies to natural and legal persons from those countries whose principal domicile is in the neighbouring country, to cases in which an ownership interest of 40 per cent or more is held by nationals of the same country and to cases in which management and effective control are in the hands of nationals of those countries.<sup>41</sup> Nevertheless, the President may, by a supreme decree based on reasons of national interest, expressly exempt nationals of neighbouring countries from the aforementioned prohibition and allow them to acquire or transfer the control and other real rights over one or more particular properties located in border areas or to possess or hold those properties. Authorization decrees of this sort are countersigned by the Minister for Foreign Affairs and the Minister of Defence.

<sup>38</sup> Art. 19, para. 5.

<sup>39</sup> Art. 86.

<sup>40</sup> Art. 19, para. 24.

<sup>41</sup> This provision does not apply to the real estate referred to in article 19 of Act No. 19.420, which includes certain areas in the municipality of Arica that are expressly identified in that article.

**6. Article 16, paragraphs 1 to 4***(i) Paragraph 1*

120. The Constitution establishes the right of personal freedom and individual security in general terms and then lists various related rights<sup>42</sup> which will be discussed below.

*(ii) Paragraph 2*

121. These rights are protected under the Constitution, without distinction on the basis of nationality or legal situation, as the rights in question are fundamental rights and are a State priority. In the case of persons who are deprived of freedom of movement, this protection is ensured by bringing an action for *amparo*, or habeas corpus; in addition, Chileans and migrant workers alike may bring a constitutional action for the protection of the integrity of their person. Importantly, these actions are dealt with in summary proceedings, with very short deadlines, before a high-level court, such as an appeal court, and, where possible, are put to the top of the list of cases to be dealt with.

122. In addition, these rights are upheld by the State and are rigorously protected by existing legislation on the offences of kidnapping (Criminal Code, art. 141), threats (art. 296), homicide (art. 391) and injuries (arts. 395 et seq.) when the person committing the offence is an individual and by laws on the offences of torture (arts. 150 et seq.), unlawful detention (art. 148) and ill-treatment of private individuals (arts. 255 et seq.) when the person committing the offence is a public official. These provisions protect both Chileans and foreign nationals alike, including migrant workers.

*(iii) Paragraph 3*

123. The Investigative Police Force, as one of the forces responsible for maintaining order and security, is mandated by the Constitution to enforce the law and guarantee public order and internal security. As mandated by its organization act and the legislation on aliens, the Investigative Police Force monitors the residency status of foreign nationals in the country, ensuring that they comply with the requirements, conditions and prohibitions laid down in these laws.

124. Generally speaking, when an immigrant's identity needs to be checked, regardless of his or her residency status, procedures authorized by the above-mentioned legislation are used to rapidly identify the person in question. Direct sources of information such as institutional databases, which include biometric fingerprint data, are employed for this purpose or, if such databases are not available, information is obtained from the central national INTERPOL office in Santiago.

*(iv) Paragraph 4*

125. With regard to the right to liberty and security of persons, the following specific provisions of the Constitution guard against any arbitrary imprisonment or detention: nobody shall be deprived of their personal liberty or have their liberty restricted by means of arrest or detention, save in the cases provided for by the Constitution and legislation and in the manner prescribed therein; if a person is detained or arrested, a competent judge must be informed within 48 hours; a person caught in flagrante may be detained but must be brought before a judge within 24 hours; detentions or arrests must be made at the home of the person concerned or in a designated public place; prison officials must record, in a public register, orders for arrest or imprisonment issued by a legally competent authority;

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<sup>42</sup> Art. 19, para. 7.

the issuance of an incommunicado detention order does not prevent the official in charge of a place of detention from visiting any arrested or detained person, defendant or convicted prisoner being held there; this official must, if the arrested or detained person so requests, supply the competent judge with a copy of the detention order, ask for a copy of the order, or give the judge a certificate stating that the individual has been detained if, at the time of the detention, this requirement was not met; provisional release shall ensue, unless the judge considers preventive detention or imprisonment to be necessary for the investigation, or for the security of the victim or society; the necessary requirements for a person to be released are established by law.

## **7. Article 17**

### *(i) Paragraph 1*

126. Prisons come under the responsibility of the Chilean Prison Service, which is attached to the Ministry of Justice and is responsible for enforcing pretrial detention orders and sentences of imprisonment or restriction of liberty handed down by a court. The prison service ensures that prisoners' basic needs are met and that they are able to exercise those rights not restricted by their sentence. Programmes and projects are also run for prisoners with the aim of changing situations and behaviours that play a role in the commission of offences; the ultimate goal of such programmes is to successfully reintegrate prisoners into society.

127. In general terms, migrant workers deprived of their liberty are treated humanely and with due respect for their human dignity. They are treated in the same way as Chilean nationals; no special treatment is given based on the migrant's cultural identity. The rules governing Chilean Prison Service officials are very clear in this respect (see paragraphs 138 and 139 of this report).

128. As described earlier (see paragraphs 21 to 23 of this report), the Division of Social Organizations of the Office of the Minister and Secretary-General of Government is responsible for implementing the Plan of Action against Racism and Discrimination, the main aim of which is to combat discrimination in Chile; as part of the Plan of Action, an inter-ministerial network has been established in which the Chilean Prison Service participates.

129. In connection with this plan and the Plan for the Institutional Restructuring of the Chilean Prison Service, a document setting out the foundations for an institutional policy of tolerance and non-discrimination in the Chilean Prison System was published in January 2004. Within this framework, steps have been taken to improve the support networks of foreign nationals held in prisons, whether arrested or accused persons, defendants, or convicted prisoners, as this is one of the main problems that they face, particularly in the case of convicted prisoners.

130. Importantly, the Chilean Prison Service trained 600 people in 2007 and 2008 at seminars on tolerance and non-discrimination. Some 80 per cent of participants were civil servants and 20 per cent were professionals invited from local bodies with whom the institution works. In 2008 a cooperation agreement was signed between the Chilean Prison Service and the International Organization for Migration (IOM).

131. In recent years, coordination has been improved and increasingly flexible and expeditious procedures have been established with neighbouring countries that have entered into bilateral agreements on the exchange of convicted persons (Argentina and Bolivia). Steps have been taken to increase the awareness of foreign nationals of international instruments containing information on good practice (through for example, dissemination

of manuals with examples of good practice in the transfer of prisoners among the member countries of MERCOSUR, information seminars, etc.).

132. One of the main areas of difficulty in connection with foreign prisoners is that of establishing the exact identity of migrants who have no identity papers so that Chilean national identity cards can be issued to them. The absence of such cards restricts their access to benefits, especially work-related arrangements, during their time in prison. In 2009, an intersectoral committee on migration policy was established by the Ministry of the Interior in order to develop improved responses and solutions for migration-related issues.

(ii) *Paragraph 2*

133. Migrant workers who are accused of having committed an offence and deprived of their liberty are, in the same way as Chilean nationals, separated from convicted prisoners. Adolescent detainees (between 14 and 18 years of age), whether Chileans or foreign nationals, are always separated from adults.<sup>43</sup>

(iii) *Paragraph 3*

134. The persons referred to in this paragraph are housed separately from prisoners; they are not placed in the custody of Chilean Prison Service officials but remain under the authority of the Investigative Police Force or, in exceptional cases, the regular police force (Carabineros de Chile).

(iv) *Paragraph 4*

135. Generally speaking, in the case of both Chileans and migrant workers, the essential aim of a prison sentence is the person's reformation and reintegration. The aim of preventive detention, on the other hand, is to ensure that the accused person (whether a national or a migrant worker) appears in court. As indicated earlier, adolescents (between 14 and 18 years of age) are separated from adults.

(v) *Paragraph 5*

136. During any period when a person is held in custody, regardless of whether this takes the form of pretrial detention or a prison sentence, all detainees — whether Chilean nationals or migrant workers — have the same rights to visits, including conjugal visits in suitable quarters.

(vi) *Paragraph 6*

137. There are no provisions in current criminal legislation or laws on criminal procedure specifying that the State shall pay attention to the problems that may be posed for family members of accused persons who are deprived of their liberty, whether Chilean nationals or migrant workers, or, in particular, for their spouses or children. This fact notwithstanding, under existing rules, detained breastfeeding mothers (whether Chileans or foreign nationals) are allowed to keep their children with them, and prison nursery facilities are provided for that purpose. In practice, when court officials carry out the prison inspections provided for by law, they may learn of personal, practical or family problems experienced by Chileans or migrant workers and may refer such cases to other institutions.

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<sup>43</sup> Act No. 20084 of 7 December 2005.



*(vii) Paragraph 7*

138. Officials of the Chilean Prison Service are governed by the Prison Service Regulations,<sup>44</sup> which provide that prison duties must be carried out in accordance with the guarantees and limits established in the Chilean Constitution, international treaties ratified and in force in Chile, legislation and regulations, and court decisions. Staff who do not respect these limits are punished accordingly. The regulations also establish the principle of non-discrimination by specifying that the rules must be implemented impartially, without differential treatment on the basis of nationality, race, political opinion, religious beliefs, social status or any other ground.

139. The above provisions are in line with the Chilean Prison Service Organization Act, which establishes that there shall be no privileges or arbitrary discrimination in the prison system and allows for differential treatment only when it is necessary for the application of separation policies aimed at facilitating social rehabilitation and protecting a defendant, convicted prisoner, or society. Prison staff are under the obligation to treat all prisoners with respect for the dignity of the human person; any harassment or abuse of authority is duly punished in conformity with the laws and regulations in force, which lay down penalties for prison staff who infringe prisoners' rights.

140. The only specific rule concerning the Chilean Prison Service's dealings with foreign prisoners is a provision in the Prison Service Regulations that refers to cases in which a foreign national has been convicted of an offence and is subject to an expulsion order. In such cases, the Investigative Police Force must be informed of the day, time and duration of any prison leave, if such leave is granted; if it is not known whether the prisoner is subject to an expulsion order or not, this must be ascertained before leave is granted.

*(viii) Paragraph 8*

141. The legislation on aliens does not include any reference to payment by foreign nationals of costs arising from detention for the purposes of verifying any infraction of provisions related to migration. The legislation refers solely to the payment of fines when a foreign national breaches certain migration rules; such offences are subject to the fines provided for by law. The cost of expelling a foreign national is met by the Government of Chile; if a foreign national attempts to enter Chile via an official transit area when there is an entry ban in force or when entry is denied because of insufficient or irregular documents, he or she is sent back immediately, with responsibility for the related costs falling to the transport firm that brought the person to Chilean territory.<sup>45</sup>

**8. Article 24: recognition as a person before the law**

142. Under the Chilean legal system, the possession of legal personality means that a person is recognized as a subject of law and therefore has certain rights and obligations. Individuals are granted such recognition simply by virtue of the fact that they are entitled to the fundamental rights established in the Constitution.<sup>46</sup>

<sup>44</sup> Supreme Decree No. 518 of 1998, as amended by Supreme Decree No. 1248 of 2006 of the Ministry of Justice.

<sup>45</sup> Articles 18 and 19 of the Regulation on Aliens.

<sup>46</sup> Articles 1 and 19 of the Constitution.

## 9. Article 16, paragraphs 5 to 9

### (i) Paragraph 5

143. The right of arrested persons to be informed of the charges against them is specifically recognized in domestic legislation.<sup>47</sup>

144. With regard to migration control, the Code of Criminal Procedure states that the Investigative Police Force must provide information on the rights and guarantees of arrested or accused persons and must post this information in a visible place at police stations.<sup>48</sup> In addition, the Investigative Police Force ensures that the rights of foreign nationals who are arrested in Chile are respected and that their case is brought to the attention of a consular official, if they so wish.

145. The Act on Juvenile Criminal Responsibility<sup>49</sup> establishes specific procedural guarantees for all adolescents, including adolescent migrants, between the ages of 14 years and 17 years, 11 months, who have been accused of committing an offence. It also guarantees the full exercise of their rights for the duration of the investigative proceedings and of any resulting measures or penalties.

146. The regulations governing the implementation and enforcement of the measures and penalties established in this law specifically state that when penalties or other measures are to be imposed upon foreign adolescents, they must be informed of their rights and obligations in their mother tongue if they do not speak Spanish. In such cases, the consular officials of the country of origin must be informed whenever a foreign adolescent is enrolled in a centre or programme if his or her usual place of residence is outside Chile.

147. In order to give effect to the provisions described above, the National Service for Minors (SENAME)<sup>50</sup> issued a resolution<sup>51</sup> concerning the procedures to be followed when foreign adolescents become subject to a given measure or penalty following the commission of a criminal offence. The resolution states that such adolescents have the right to be treated with dignity, which entails respecting: (a) their right to equality and non-discrimination, which means that they must not be subjected to differential treatment on the basis of birth, ethnic origin, nationality, sex, sexual orientation, political opinion, religious belief, economic status, or personal circumstances of their parents, relatives or guardians or of any other kind that would impair the exercise of the adolescents' rights on an equal footing; (b) the right to be informed of their rights and obligations, with the help of an interpreter if they do not understand the official language (Spanish); (c) the right to confidentiality and discretion regarding any personal information they submit and to have the assistance of an interpreter if they do not understand Spanish; and (d) the obligation, in the case of Chileans and foreign nationals alike, are required to have identity papers; if they do not, they must apply for them.

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<sup>47</sup> Code of Criminal Procedure, art. 98, last paragraph, together with art. 291, third and fourth paragraphs.

<sup>48</sup> Code of Criminal Procedure, book I, title IV, art. 93, para. 4.

<sup>49</sup> Act No. 20084 of June 2007.

<sup>50</sup> The role of the National Service for Minors (SENAME), which is attached to the Ministry of Justice, is to lead, promote and strengthen the national system for the protection of the rights of child and adolescent victims of abuse and child and adolescent offenders through comprehensive quality programmes that use an intersectoral, on-site approach to ensure their appropriate rehabilitation and reintegration into society.

<sup>51</sup> Exempt resolution No. 0225/B of 23 May 2007.

(ii) *Paragraph 6*

148. By law, once a person (Chilean national or migrant worker) has been arrested, he or she must be brought before the judge responsible for procedural safeguards, who shall determine whether the arrest is lawful within the required 24-hour time limit. Among the different precautionary measures, pretrial detention is considered as a last resort on the basis of the legal principle of proportionality. One of the established alternatives to pretrial detention is bail, which is another means of guaranteeing a person's appearance in court or in other proceedings. When the Public Prosecutor's Office lodges formal charges, the defence — or the judge responsible for procedural safeguards — can set a time limit for carrying out the investigation. Failing this, the legal time limit applies (two years for adults and six months for adolescents aged between 14 years and 17 years and 11 months).<sup>52</sup>

(iii) *Paragraph 7*

## Subparagraph (a)

149. This provision is applied in practice in the everyday work of the courts. In hearings held to verify the lawfulness of an arrest, the judge responsible for procedural safeguards takes steps to inform the appropriate consular and/or diplomatic officials. Since 2004, the Chilean Prison Service has also made it a practice to contact consulates so that they can monitor the exercise of their nationals' rights.

## Subparagraph (b)

150. All persons who are deprived of their liberty have the right to be visited in private by their lawyer, relatives and consular or diplomatic authorities at the times scheduled and under the conditions established for such visits by each prison managed by the Chilean Prison Service and each place of detention managed by the Investigative Police Force or the regular police force (Carabineros de Chile).

## Subparagraph (c)

151. The relevant information has already been provided in the sections on subparagraphs (a) and (b).

(iv) *Paragraph 8*

152. All persons who are arrested or detained in violation of the Constitution or the law or who suffer any unlawful deprivation of, interference with or threats to the right to liberty and security of persons may file an application for *amparo*, which must be ruled upon within 24 hours. Without prejudice to this habeas corpus remedy, the new criminal procedure in force provides for an obligatory check on detainees within 24 hours of any arrest made by the police in order to determine the lawfulness of the grounds for the measure and its application. These checks constitute a quasi-preventive system of *amparo* which enters into operation even before the initiation of proceedings or a remedy. Counsel or another person may initiate this form of *amparo* proceedings before the local judge responsible for procedural safeguards or the judge who is hearing the case. When deprivation of liberty is the result of a court order, its lawfulness may be challenged only through the appropriate procedures in the court which issued the order.<sup>53</sup>

<sup>52</sup> Articles 122, 130, 132, 139, 140, 146, 234 and 247 of the Code of Criminal Procedure.

<sup>53</sup> Code of Criminal Procedure, art. 95.

(v) *Paragraph 9*

153. The Constitution provides for the possibility of bringing proceedings to obtain compensation for judicial error<sup>54</sup> following an acquittal or dismissal of proceedings if the Supreme Court has ruled that a committal order or conviction was “unjustifiably erroneous or arbitrary”.

154. Proceedings can also be brought to obtain compensation for unjustifiably erroneous or arbitrary acts on the part of the Public Prosecutor’s Office.<sup>55</sup> Cases of the “arbitrary lodging of charges”<sup>56</sup> are one example of this.

**10. Article 18**

(i) *Paragraph 1*

155. The Constitution<sup>57</sup> provides that nobody shall be tried by a special commission, and that all trials shall be conducted by a court that has been lawfully established for that purpose prior to the commission of the offence in question. Any judgement must be reached on the basis of prior proceedings conducted in accordance with the law. It will be the task of the legislature to establish guarantees for rational and fair proceedings and investigations in all cases. The new Code of Criminal procedure, which entered into force in June 2005, reflects the considerable progress made in this area.

(ii) *Paragraph 2*

156. The principle of presumption of innocence is upheld throughout the system of criminal procedure, and the Constitution<sup>58</sup> provides that the law cannot presume criminal responsibility as a matter of course. The Code of Criminal Procedure establishes the principle of the presumption of innocence by providing that nobody shall be presumed guilty, nor treated as such, until sentenced by means of a final and binding judgement.

(iii) *Paragraph 3*

Subparagraph (a)

157. Under the Code of Criminal Procedure, which sets out their rights and guarantees<sup>59</sup> enjoyed by accused persons, such persons have the right to be informed specifically and clearly of the charges against them and of their constitutional and legal rights.

158. The Code provides that accused persons have the right to be informed of the charges against them in a language they understand;<sup>60</sup> this guarantee also applies when they first appear before the court.

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<sup>54</sup> Art. 19, para. 7 (i).

<sup>55</sup> Act No. 19640, art. 5.

<sup>56</sup> Code of Criminal Procedure, art. 232, para. 3.

<sup>57</sup> Art. 19, para. 3, (4) and (5).

<sup>58</sup> Art. 19, para. 3 (6).

<sup>59</sup> Arts. 93 and 94.

<sup>60</sup> Code of Criminal Procedure, art. 98, final subparagraph, together with third and fourth subparagraphs of art. 291.

## Subparagraph (b)

159. The Constitution<sup>61</sup> establishes the right to a legal defence and states that legal defence and counsel are to be made available to those who cannot afford them. Time is provided for the preparation of a defence at the different stages in the proceedings. The Code of Criminal Procedure<sup>62</sup> states that, from the moment proceedings have started until the sentence has been served in full, accused persons are free to designate one or more defence lawyers of their own choosing. If they prefer to defend themselves, the court may authorize them to do so only if it does not undermine the effectiveness of their defence.

## Subparagraph (c)

160. The requirement for “prompt and proper administration of justice” is established in the Constitution.<sup>63</sup> Following the reform of criminal procedure, cases are now being dealt with much more quickly; for example, one of the new grounds for the dismissal of evidence is that the evidence was submitted for the sole purpose of delaying the proceedings.

## Subparagraph (d)

161. These procedural reforms have also brought about a qualitative leap in the provision of sound, professional defence services by the newly created Office of the Public Defender.<sup>64</sup> The Office has provided legal defence services for all accused persons who have requested them and has established a system of sliding scale fees based on income.

## Subparagraph (e)

162. In view of the fact that oral proceedings have been introduced under the new system of criminal procedure, the Code now provides that any person who is unable to speak, or who does not speak Spanish, may communicate in writing or via an interpreter.

## Subparagraph (f)

163. Under the Code of Criminal Procedure,<sup>65</sup> accused persons have the right to remain silent or, if they agree to make a statement, not to make it under oath. Nor can their progenitors, descendants, spouse or any other person who, in certain cases and under certain circumstances, may be so designated be made to testify against them.

(iv) *Paragraph 4*

164. June 2007 saw the introduction of a new system concerning juvenile criminal responsibility for adolescents aged between 14 years and 17 years, 11 months, in which the rehabilitative nature of the system’s measures and penalties is emphasized.

(v) *Paragraph 5*

165. One of the improvements brought about by the reform of criminal procedure is that accused persons now have the right to a legal remedy. An appeal is not the proper remedy against a final judgement, since this would amount to a violation of the principle of immediacy by the second-instance court. The proper remedy against final judgements in ordinary proceedings is a petition for annulment. Annulments invalidate the oral

<sup>61</sup> Art. 19, para. 3 (2) and (3).

<sup>62</sup> Art. 102.

<sup>63</sup> Art. 77.

<sup>64</sup> Established by Act No. 19718 of 10 March 2001.

<sup>65</sup> Code of Criminal Procedure, art. 93, para. (g).

proceedings and the final judgement, or the latter alone, on grounds specifically provided for by law that have to do with irregularities in the proceedings or in the way the judgement was handed down.

(vi) *Paragraph 6*

166. The Constitution<sup>66</sup> provides for the possibility of bringing proceedings to obtain compensation in the event that a person's conviction is unjustifiably erroneous or arbitrary. Such proceedings must be brought before the ordinary civil courts.

(vii) *Paragraph 7*

167. Under the Code of Criminal Procedure,<sup>67</sup> foreign criminal judgements are valid in Chile. Consequently, no person can be tried or punished for a crime in respect of which they have already been convicted or acquitted, by means of a final and binding judgement, in accordance with the law and procedures of a foreign country. This applies unless the proceedings in the other country were held for the purpose of shielding the person concerned from criminal responsibility for crimes within the jurisdiction of the national courts or when a retrial is specifically requested by the accused on the grounds that the respective proceedings were not conducted in accordance with the norms of due process or were conducted in such a way that there was clearly no intention to try the accused in a proper manner. In such cases, any sentence that the person has served abroad is deducted from the sentence to be served in Chile if he or she is convicted.

## 11. Article 19

(i) *Paragraph 1*

168. This principle is established in the Constitution<sup>68</sup> in the same terms as in the Convention. The Constitution states that no penalty other than the one applicable at the time that an offence was committed shall be imposed, unless a new law is passed from which the offender may benefit.

(ii) *Paragraph 2*

169. Chile is party to various conventions dealing with the transfer of convicted persons, including the Council of Europe Convention on the Transfer of Sentenced Persons (Strasbourg, 1983), which entered into force for Chile in 1998; the Inter-American Convention on Serving Criminal Sentences Abroad, which was adopted on 9 June 1993 by the Organization of American States and entered into force for Chile in 1999; a treaty between Chile and Brazil on the transfer of convicted prisoners, which was signed on 29 April 1998 and entered into force in March 1999; a treaty between Chile and Bolivia on the transfer of convicted persons, which was signed on 22 February 2001 and entered into force for Chile in December 2004 and a treaty between Chile and Argentina on the transfer of convicted nationals and the serving of criminal sentences, which was signed on 29 October 2002 and entered into force for Chile in June 2005.

170. The main purpose of these international instruments is to improve international cooperation in the realm of criminal law with a view to securing justice and promoting the social rehabilitation of convicted persons. Accordingly, foreign nationals should be able to

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<sup>66</sup> Art. 19, para. 7 (i).

<sup>67</sup> Art. 13.

<sup>68</sup> Art. 19, para. 3 (7).

serve their sentence in their social environment of origin, and the best way to ensure this is to transfer them to their own countries.

## 12. Article 20

### (i) Paragraph 1

171. Considerable progress has been made in the development of case law in this area in the last 20 years. The courts have found that the right to liberty and security of persons established in the Constitution is in line with article 7, paragraph 7, of the American Convention on Human Rights, which establishes the right to liberty of persons, in providing that no one shall be detained for debt. This principle does not limit the orders of a competent judicial authority issued for non-fulfilment of duties of support.

### (ii) Paragraph 2

172. The legislation on migration<sup>69</sup> provides that the termination of a work contract that had served as the basis for a visa shall cause that visa to expire, along with those of the members of the foreign worker's family. The person may, however, apply for a new visa or for permanent residence. Employers must inform the migration authorities within 15 days of the termination of a work contract.

173. In order to provide greater leeway for migrant workers, the above rule<sup>70</sup> was amended in 2000 to allow migrant workers 30 days following the termination of their work contract to apply for a new visa or for permanent residence. The administrative authorities have thus attempted to relax a rule that could potentially have a detrimental effect on the working conditions of migrant workers.

174. In any event, the issue addressed in this article of the Convention is addressed in a bill on migration now being drawn up by the Chilean Government, which provides that, in the event of the termination of a work contract that has served as the basis for a visa, that visa will not expire.

175. In addition, under a special procedure for regularizing the status of migrants introduced by the Government of Chile in November 2007, 47,665 temporary residence permits were granted. The aim of this procedure was to facilitate the integration of immigrants by providing them with access to identify documents and social services and enabling them to compete for jobs on an equal footing. The important point — from the standpoint of the rights of migrant workers — is that the type of residence permit granted under this procedure places no restrictions on the kind of work they can perform and enables them to apply for permanent residence in Chile after one year.

176. This regularization procedure enabled approximately 18,000 foreign citizens to obtain a Chilean residence permit for the first time. A large percentage of the other beneficiaries opted to change over from the ordinary residence permit system to the special procedure because of the advantages offered by this type of residence permit, the fact that it cost less and took less time to process, and the fact that holders of this permit could obtain a permanent residence visa in a shorter time.

<sup>69</sup> Article 25 of Decree-Law No. 1094 of 1975 and article 39 of Supreme Decree No. 597 of 1984.

<sup>70</sup> Regulation on Aliens.

**13. Article 21: Protection from confiscation and/or destruction of identity and other documents**

177. The procedure followed by the Investigative Police Force in cases where foreign nationals violate migration laws is that a statement is taken and the foreign national's identity documents are confiscated and replaced with an Alien Offender Card<sup>71</sup> until such time as the Ministry of the Interior rules on the offence.

**14. Article 22: Protection against collective expulsion**

178. Under the legislation on migration, expulsions must be ordered by the Ministry of the Interior by means of a supreme decree. The legislation provides that the expulsion of foreigners who hold a tourist permit or who have stayed on in Chile once their tourist permit has expired may be ordered by the regional intendant by means of a resolution which is not subject to constitutional review proceedings.

179. The legislation on aliens<sup>72</sup> provides that foreigners whose expulsion has been ordered by a supreme decree of the Ministry of the Interior can apply to the Supreme Court to have the order reversed. The law also provides that lodging the appeal has the effect of suspending the expulsion order and that the person concerned must be informed in writing of the order and of the possibility of appealing against it.<sup>73</sup>

180. The Regulation on Aliens specifies that foreigners may be expelled from Chile on the following grounds:

(a) When they have entered the country with forged or adulterated documents or documents issued in another person's name, or have tried to enter the country via an unauthorized or clandestine entry point;<sup>74</sup>

(b) When they have stayed on in the country after their residence permit has expired and have not applied to extend or renew the residence permit;<sup>75</sup>

(c) When they obtain a visa on the basis of a work contract that has been entered into by means of fraud or simulation;

(d) When they are fined for failure to comply with migration laws and do not pay the fine;

(e) When they fail to comply with the provisions of the Aliens Act and thus elude the control measures to which foreigners are subject.

181. The Regulation on Aliens<sup>76</sup> provides that up to 50 per cent of the general income from fines can be used to pay the travel costs of foreign nationals who are expelled.

182. As can be seen from information provided on the above-mentioned articles, the migration authorities do not take collective expulsion measures; each case is examined and settled on an individual basis.

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<sup>71</sup> Aliens Act, art. 82.

<sup>72</sup> Ibid., art. 89.

<sup>73</sup> Ibid., art. 90.

<sup>74</sup> Regulation on Aliens, arts. 145 and 146.

<sup>75</sup> Ibid., art. 148.

<sup>76</sup> Art. 160.



**15. Article 25: Principle of equality of treatment in respect of remuneration and other conditions of work and terms of employment**

183. The Constitution prohibits any form of differentiation not based on personal skills or ability, although the possession of Chilean nationality may be required or age limits may be established by law for certain positions.<sup>77</sup> The Labour Code provides that at least 85 per cent of the persons who work for a given employer must be Chilean nationals unless the employer has 25 or fewer workers. The following rules are applied to calculate these ratios: it is the total number of workers employed in Chile by the same employer that is taken into account, not the number employed at each of the employer's separate offices or establishments; specialist technical staff who cannot be replaced by Chilean nationals are not subject to this provision; a foreign national with a Chilean spouse or children — or a widow(er) whose spouse was Chilean — shall be considered a Chilean national, as will foreigners who have been residents in Chile for more than five years.

184. While it is true that the law sets these restrictions with regard to nationality, which can affect migrant workers, it also limits the power of employers by establishing the right of migrant workers not to be discriminated against on the basis of nationality. Acts of discrimination are incompatible with the principles of labour law, with acts of discrimination being defined as any distinction, exclusion or preference made on the basis of race, colour, sex, age, civil status, trade union membership, religion, political opinion, nationality, national extraction or social origin which has the effect of nullifying or impairing equality of opportunity or treatment in employment or occupation. Any distinction, exclusion or preference based on the qualifications required for a post is not considered to be discrimination.

**16. Article 28: Right to receive any medical care that is urgently required**

185. Foreign nationals with an irregular migration status who are living in Chile have access to emergency medical care, free of charge, in public hospitals. Chile is therefore meeting its commitment to provide urgent medical care to all migrant workers, regardless of their migration status. This provision is laid down in instructions issued by the Ministry of Health concerning the care to be provided to at-risk immigrants having an irregular migration status.<sup>78</sup> The directive containing these instructions lists a series of initiatives agreed upon by the Ministry of Health, the National Health Fund and the Aliens and Migration Department of the Ministry of the Interior with a view to providing a solution for a number of health issues faced by certain immigrant groups in Chile, which are described below.

186. *Pregnant women:* Since 2003, women with irregular migration status who become pregnant while residing in Chile are eligible for fast-track regularization on the sole ground of their pregnancy, so that they will have access to the public health-care network. Since 2003, an average of approximately 300 residence permits have been granted each year under this procedure, in the vast majority of cases to Peruvian women. The Government's focus has been on registering pregnant migrant women at local health clinics which can then monitor their pregnancies and provide suitable antenatal care.

187. *Children and adolescents under 18 years of age:* In line with the national policy on children, United Nations conventions concerning children and the Migrant Workers Convention, the Ministry of Health has signed an inter-ministerial agreement with the Aliens and Migration Department of the Ministry of the Interior; the nature of that

<sup>77</sup> Art. 19, para. 3, third subpara.

<sup>78</sup> Official communication No. 3229 of 11 June 2008.

agreement is reflected in the directive issued by the Ministry of Health. Under this agreement, all foreign children and adolescents under 18 years of age, regardless of their migration status or that of their parents or legal representatives, can seek medical attention at any public health establishment and will be treated in the same way as their Chilean peers. As soon as they have been treated for the first time by the public health-care network, they become eligible for the regularization of their migration status simply by virtue of the fact that they are a minor.

188. *Refugees and asylum-seekers:* Refugees in Chile have access to health care on an equal footing with Chilean nationals. In order to broaden this measure, there is now a special arrangement between the Aliens and Migration Department of the Ministry of the Interior and the National Health Fund whereby health care is also provided to asylum-seekers, pending a decision on their status by the migration authorities. The new arrangement was deemed necessary because of the length of time that it takes to process applications for asylum.

**17. Article 29: Right of a child of a migrant worker to a name, registration of birth and nationality**

189. The Chilean Civil Status and Identification Service maintains special registers in which it records the births abroad of children of immigrants with regular migration status and certifies these births upon request.

190. There is no discrimination between Chileans and foreign nationals, or between migrants with regular status and those with irregular status, when it comes to registering the birth of their children, which is performed by the Civil Status and Identification Service. Foreign nationals and Chileans alike are free to choose the first names of their children.

191. The children of foreign residents with regular status who are born in Chile are considered to be Chilean, and their births are included in the official birth figures for Chile, which are available on the Civil Status and Identification Service web page: [www.registrocivil.cl](http://www.registrocivil.cl).

192. Under the Constitution, children born in Chile to migrants with regular status are granted Chilean nationality, as stated above. In the case of foreign nationals with irregular status, their children's births are recorded in the official register, but a note is added to indicate that they are "children of foreign nationals in transit". These children have the right to opt for Chilean nationality within a period of one year immediately following their twenty-first birthday. The number of children born and registered in Chile whose foreign parents were classified as being in transit at the time are as follows: 202 in 2004; 225 in 2005; 258 in 2006; and 309 in 2007.

193. The Civil Status and Identification Service grants travel documents to stateless persons and refugees resident in Chile which are valid for two years. This special passport enables them to enter and leave Chilean territory. The document can also be granted to children of foreign nationals who are in transit so long as they are under 22 years of age.

**18. Article 30: Right of migrant workers' children to have access to education on the basis of equality of treatment**

194. The Government is implementing measures designed to promote the integration of immigrants, especially more vulnerable women and children. The following initiatives in the field of education are either in operation or about to be implemented:

(a) Regularization of the migration status of any child enrolled in an educational establishment recognized by the State. The numbers of children benefiting from this

initiative are as follows: 147 cases in 2004; 291 cases in 2005; 268 cases in 2006; 190 cases in 2007; and 143 cases in 2008;

(b) Access to preschool education for immigrant and refugee children. The National Kindergartens Board and the Ministry of the Interior signed a cooperation agreement on this matter which entered into force on 20 November 2007;

(c) In 2005, in order to ensure equality before the law and freedom from discrimination for everyone, the Ministry of Education issued instructions concerning the enrolment and presence of immigrant children in educational establishments and their rights in this respect.<sup>79</sup> The communication instructs educational establishments to allow immigrant children to enrol on a provisional basis. The only requirement is authorization by the appropriate provincial education department, which must be granted promptly upon presentation of documents attesting to the child's identity, age and most recent courses studied in his or her country of origin. The documents do not need to be authenticated or notarized. In the event that such children do not have school transcripts or other such documents, their placement in a given course or grade is determined on the basis of their age and the information provided by their parents or guardians. Any person who is temporarily enrolled must be regarded as a regular pupil for academic, curricular and legal purposes, although he or she is required to obtain a residence permit, as a regular student, as soon as possible. Educational establishments must ensure that immigrant pupils change over to a definitive enrolment status within three months from the date on which provisional enrolment status is granted. Beyond this time limit, the educational establishment must initiate an assessment procedure with a view to regularizing the situation;

(d) The instructions also suggest that the heads of educational establishments should grant immigrant pupils facilities such as fee-remission arrangements and more flexible requirements regarding attendance and school uniforms. They also state that school rules should foster integration between Chilean and foreign pupils and warns members of the school community that discriminatory actions or words regarding such aspects as nationality, race or skin colour are unacceptable.

195. The fact that the Citizens Assistance Department at the Ministry of Education receives very few complaints concerning immigrant pupils' right to education (only 10 in the last three years) would suggest that these instructions are being successfully implemented.

#### **19. Article 31: Respect for the cultural identity of migrant workers and members of their families**

196. As part of the Plan of Action against Racism and Discrimination launched by the Department of Diversity and Non-Discrimination of the Division of Social Organizations of the Office of the Minister and Secretary-General of Government (see paragraphs 21 to 23 of this report), the following measures are being taken to develop and promote respect for the cultural identity of migrant workers:

(a) Training seminars are designed and held for civilian staff and uniformed officers of the Chilean Prison Service. In 2009, seminars took place in six cities and were attended not only by officials from the Department of Diversity and Non-Discrimination of the Division of Social Organizations of the Office of the Minister and Secretary-General of Government, but also by staff from the International Organization for Migration (IOM), who gave presentations on issues such as xenophobia and trafficking in persons;

<sup>79</sup> Communication No. 07/1008 (1531) of 2005.

(b) The competition “Good practices: We are all Chile” is held every year, and awards are given in recognition of practices by public institutions, civil society organizations and businesses that foster and promote respect for, and inclusion of, persons and groups at risk of discrimination and intolerance. Initiatives focusing on the migrant community have included those described here. In 2008, one of the awards went to the Institute for Women Foundation for its psychosocial support programme for migrant women, which aims to boost the skills, personal development and self-esteem of migrant women and facilitate their integration into social networks that can provide them with services such as legal support and access to health care. In 2007, an award went to the República de Alemania school in Santiago for its project on fostering the integration of Peruvian children (of the 304 children at the school, 105 were foreign nationals);

(c) A pilot project entitled “Study and understanding of South American society” is being undertaken. This project focuses on making thematic changes in the curricula of three public schools in Santiago whose student bodies include a high percentage of at-risk migrant children. Technical assistance is being provided by an inter-institutional committee comprising representatives of both the public sector and civil society with a view to improving integration, cultural diversity and the general atmosphere at these schools. The idea for this initiative was introduced at the Fourth National Conference on Migration in Chile, held in Santiago in 2008. In December of the same year, on International Migrants Day, a meeting was held at the República de Alemania school at which a formal project agreement was signed.<sup>80</sup> The meeting was attended by approximately 30 representatives of consulates, international bodies, academic bodies, the Chilean Government and civil society, plus directors and teachers from the three schools in Santiago in question.

## **20. Article 33: Right of migrant workers to be informed about the rights arising out of the Convention and to the dissemination of such information**

### *(i) Work of the Aliens and Migration Department of the Ministry of the Interior*

197. A key feature of migration management in Chile, as a destination country, is the modernization of public service systems, including the dissemination of information on rights and entry requirements and the creation of new information channels. As part of the ongoing modernization of the various public services, Chile is developing the Information, Complaints and Suggestions Office, which will provide migration-related information services.

198. A number of legal provisions and instructions govern the way in which migration authorities manage the provision of services and information to users of migration services.<sup>81</sup> In accordance with this regulatory context, the Information, Complaints and

<sup>80</sup> The agreement was signed by the following bodies: the Francisco Miranda Department of South American Integration – Southern Cone Citizens Assembly; Corporación AYUN; Citizens’ Secretariat for Migrants; International Organization for Migration (IOM); the Central Santiago Provincial Education Department, Ministry of Education; the Division of Social Organizations of the Office of the Minister and Secretary-General of Government; República de Alemania School; República de Panamá School; República de Israel School; the Embassy of Peru in Chile; the Peruvian, Ecuadorian and Bolivian Consulates in Chile; the Centre for Pedagogical Research, Arturo Prat University; Audio-visual Ethnographic Archive Centre, University of Chile; the Centro Ecuatoriano Association; the Migrant Workers’ Association (SIATRAM); the Andean Programme for Human Dignity (PROANDES); the Institute for Women; Radio Arcoiris; Grito de Los Excluidos — Chile Branch; Espacio Sin Fronteras (ESF) — Chile Branch.

<sup>81</sup> Act No. 19880 of 29 May 2003, which establishes the basic administrative procedures of State administrative bodies, and Act No. 20285 of 11 August 2008, in force since 20 April 2009, on access

Suggestions Offices in Chile's provincial governments supply information on immigrants' requirements, rights and obligations on a regular basis.

199. With regard to management in the Metropolitan Region, where 64 per cent of Chile's residents live, a plan was drawn up in 2003 to develop the Information, Complaints and Suggestions Office for the Aliens and Migration Department of the Ministry of the Interior. This office mainly serves foreign users of migration services at the central level and reports directly to the National Office of Overseas Affairs. In 2004 the Information, Complaints and Suggestions Office introduced a comprehensive model for providing services to users based on an appropriate methodology. The creation of the Information, Complaints and Suggestions Office has permitted the requirements of the Aliens and Migration Department's users to be centralized in a systematic manner.

200. In 2004 the Aliens and Migration Department set up its own web page, which provides information on eligibility requirements for obtaining the different types of residence permits in Chile. The web page also provides information about the rights of foreign users, in accordance with Presidential Instruction No. 9 on national migration policy (see paragraphs 26 to 29 of this report), about simplified procedures and about the charter of citizens' rights. In addition, information is provided on migration legislation and statistics and on various initiatives of the Aliens and Migration Department in the area of migration management in Chile.

201. In June 2005 the virtual Information, Complaints and Suggestions Office, which includes a system for online queries, was introduced, thereby constituting a new channel for providing services to users. In order to deal with the increasing number of queries made in person (an average of 7,458 queries per month in 2005), more staff were hired. A questionnaire system was also introduced in order to better identify user requirements. By the end of 2005, some 89,500 queries had been made in person, and 2,019 requests had been made online.

202. In 2006 a study was carried out on the feasibility of setting up a telephone service. This came into effect in March 2007, when a call centre was set up. In August 2007 the centre's English web page was created.

203. In October 2007, the Under-Secretary of the Interior issued a resolution to regularize all foreign nationals from the following countries: Peru, Argentina, Bolivia, Brazil, Ecuador, Uruguay, Paraguay, Colombia, Venezuela, Panama, Costa Rica, Nicaragua, El Salvador, Honduras, Guatemala, Mexico, Dominican Republic, Cuba, Cayman Islands and Haiti. As a result, the number of requests for information rose considerably. Some 125,249 queries were dealt with in person at local Information, Complaints and Suggestions Offices (up by 26.6 per cent from the previous year) and 18,647 were dealt with online (up by 42.64 per cent). In that same year, more staff were hired and services began to be offered in English as well (both written and spoken).

204. In January 2008, an information campaign was conducted in order to publicize the existence of the call centre established in 2007. Information on the call centre was posted on the web page of the Aliens and Migration Department and was placed in newspapers and broadcast on radio stations catering to the Peruvian community. Meetings were also held

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to public information, which establishes the right to access information held by State administrative bodies; Presidential Instruction No. 14 of 1 December 1998 on simplified procedures and charters of citizens' rights; Presidential Instruction No. 8 of 4 December 2006 on proactive transparency and the disclosure of information held by State administrative bodies; Presidential Instruction No. 9 of 2 September 2008 on national migration policy; PMG-SIAC Methodology Guide, Division of Social Organizations of the Office of the Minister and Secretary-General of Government.

with consulates and civil society organizations for this purpose. Statistics compiled using the computer system for tracking the number of incoming calls and the number of answered calls indicates that, in 2008, some 32,538 people requested information using the call centre and that the number rose to 55,345 between January and October 2009.

205. The Information, Complaints and Suggestions Office of the Aliens and Migration Department employs a comprehensive, non-discriminatory public service system which provides transparent management tools and is specifically designed to ensure respect for the dignity of users.

(ii) *Work of the Department of Diversity and Non-Discrimination of the Division of Social Organizations of the Office of the Minister and Secretary-General of Government*

206. As part of the Plan of Action against Racism and Discrimination (see paragraphs 21 to 23 of this report), the following measures are being taken to inform migrant workers about their rights:

(a) In early 2009, the Minister and Secretary-General of Government signed a cooperation agreement with IOM aimed at providing officials with further training on migration issues and supplying relevant and timely information to immigrants in need of/advisory assistance from institutions and professionals with expertise in this field;

(b) The Department of Diversity and Non-Discrimination of the Division of Social Organizations of the Office of the Minister and Secretary-General of Government and the Aliens and Migration Department of the Ministry of the Interior are working together to implement Presidential Instruction No. 9 on national migration policy. The Ministry of Health, the Ministry of Education, the Ministry of Housing and Town Planning and the Ministry of Justice are also working in coordination with one another. In the civil society sector, there is ongoing cooperation with organizations that work with migrants and refugees;<sup>82</sup>

(c) Leaflets and posters are used to inform the public about the main points covered in Presidential Instruction No. 9 on national migration policy and about residency issues and public institutions of interest to migrants. Also, in Santiago subway stations, posters with the heading "I am a migrant" have been put up. These posters contain information on the rights of migrants and members of their families, along with a general outline of Presidential Instruction No. 9;

(d) In August 2009, a seminar on national migration policy was sponsored by the Division of Social Organizations of the Office of the Minister and Secretary-General of Government. At the seminar, which took place at the seat of Government, the Palacio de La Moneda, the main points of Presidential Instruction No. 9 on national migration policy were presented. Representatives from national and international organizations working with immigrants<sup>83</sup> attended the event;

(e) Five annual national meetings of migrants have been held, the most recent one in October 2009. These meetings are organized jointly by the Citizens' Secretariat for Migrants in Chile and the Ministry of the Interior. The 2009 event was attended by more than 140 people, including immigrants from Germany, Peru, Mexico, Colombia, Italy,

<sup>82</sup> Including: Citizens' Secretariat for Migrants; Corporación AYUN; Migrant Workers' Association; Agrupación de Refugiados Colombianos Siglo XXI; PROANDES; Colectivo Sin Fronteras; and the Institute for Women Foundation.

<sup>83</sup> Organization for Migration (IOM); Chilean Catholic Institute for Migration (INCAMI); Economic Commission for Latin America and the Caribbean (ECLAC); Institute for Women Foundation; Fundación IDEAS; Corporación AYUN; Diego Portales University.

Argentina, Venezuela, Bolivia, Brazil, Ecuador, Syria, Belgium, the Congo and Costa Rica. Also present were officials from the Office of the Minister and Secretary-General of Government, the National Prison Service, the Office of IOM in Chile, and the Aliens and Migration Department of the Ministry of the Interior. These meetings are attended by the entire range of stakeholders, including migrants, public authorities, diplomatic and consular officials, academics, leaders of voluntary organizations that work with migrants, and all others interested in this field. The proceedings of the third and fourth meetings have been published in digital format. These publications reproduce the information presented by Chilean officials on such subjects as the right to health, education and housing; they also present the opinions, areas of concern and proposals of migrants, refugees, members of their families and representatives of organizations working with migrants. The publications are distributed in Government offices and among representatives of social organizations and research centres that work in this field or carry out volunteer work designed to benefit the immigrant community;

(f) On 16 November of each year the International Day for Tolerance is commemorated. This event is coordinated with other public and civil society institutions, including migrant organizations and representatives of voluntary organizations working with migrants. An information fair is held, along with cultural and artistic events, at the Plaza de Armas in Santiago. In 2008, participants included artistic groups from Bolivia, Peru, Colombia, Ecuador and Mexico. In addition, representatives of the Civil Status and Identification Service, the Aliens and Migration Department of the Ministry of the Interior, the National Service for Women, the Mobile Citizens' Information Centre (Infobus) and the Department of Diversity and Non-Discrimination of the Office of the Minister and Secretary-General of Government provided information that was of interest to migrants and answered questions from participants;

(g) Steps have been taken to disseminate the main provisions of the anti-discrimination bill currently being considered by Congress.

### **C. Other rights of migrant workers and their families who are documented or in a regular situation**

#### **1. Article 37: Right to be informed before departure of the conditions of admission to the State of employment and those pertaining to remunerated activity**

207. Consular offices have procedures for providing information to persons who will be arriving in Chile with a temporary residence permit approved by a Chilean consulate in their country of origin or previous place of residence. This information covers the length of time for which their permits will be valid, the requirements that must be met in order for their residence permits to remain valid and the procedures to be followed once they arrive in Chile in order to comply with their obligations under prevailing immigration laws.

208. All provincial immigration offices throughout the country have specialized staff to advise foreign nationals residing in Chile who hold a valid residence permit about the provisions of immigration law concerning the requirements for engaging in remunerated activities. Holders of residence permits may obtain information either in person or from the relevant web page about how to apply for extensions or changes in their residence permits, without having to leave the country, if the basis upon which their residence permit was issued has changed since that time.

**2. Article 38: Right to be temporarily absent without effect upon authorization to stay or work in the country**

209. As mentioned earlier, the Constitution states that all persons, without distinction on the basis of nationality, have the right to reside and remain in any location within Chile and to enter and depart from Chilean territory provided that they do so in accordance with applicable laws and without prejudice to third parties.<sup>84</sup> From an administrative standpoint, this means that any migrant worker who has a valid residence permit may freely cross the country's borders. Border officials are instructed to stop foreign nationals from leaving the country only in cases in which they must first resolve a legal matter about which they have previously been informed relating to immigration irregularities.<sup>85</sup> In accordance with the Aliens Act and the Regulation on Aliens, the only persons whose freedom of movement may be curtailed are those who are subject to a judicial or administrative restriction on their entry into or departure from the country that has been imposed by a court ruling or a decision taken by the immigration authorities of the Ministry of the Interior.

210. The immigration laws set out the requirements for issuance of temporary and permanent residence permits.<sup>86</sup> The law also defines the various types of residency status and establishes the duration of their validity. Permit holders may be absent from the country without their absence having any effect upon their authorization to stay or work in the country so long as their permits remain valid.

211. When leaving the country, foreign nationals must demonstrate, at the authorized exit point, that they have a valid visa by displaying an identity card issued by the Civil Registry and Identification Service or a stamped visa in their passport.<sup>87</sup> Holders of permanent residence permits must show the certificate attesting to their possession of this permit. Even persons who do not hold a residence permit but have applied for one may leave Chilean territory by showing the Receipt of Application Certificate to the immigration authorities.

212. When persons holding temporary or permanent residence permits wish to enter the country, they may simply show their valid permit or the valid identity card issued to them by the Civil Registry and Identification Service. The law authorizes border officials to verify the validity of permanent residence permits, since the Aliens Act provides for the tacit revocation of such permits if foreign nationals are absent from the country for a continuous period of over one year. If this occurs, the person loses his or her residence permit but may still enter the country as a tourist.

213. All of the above information is given to foreign citizens every time that they are granted a temporary or permanent residence permit. Each time people go to any of the Immigration Offices in the country to obtain a residence permit, they are informed of the steps that they should take once they are in possession of the permit, the type of permit that they have been given and the deadline for applying for a new permit. They are also told that any of the immigration offices throughout the country can answer any questions that they may have.

**3. Article 39: Right to liberty of movement and to choose the residence in the territory of the State of employment**

214. As noted earlier, the Constitution states that all persons, without distinction on the basis of nationality, have the right to live and stay in any location within the country and to

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<sup>84</sup> Constitution, art. 19, para. 7 (a).

<sup>85</sup> Aliens Act, title I, para. 9, and Regulation on Aliens, title V.

<sup>86</sup> Aliens Act, title I, paras. 4–7.

<sup>87</sup> Regulation on Aliens, art. 113.



enter and depart from Chilean territory, provided that they do so in accordance with the law and without prejudice to third parties. This provision establishes the right of residence as a constitutional guarantee, while the requirements and conditions for the exercise of that right are regulated by the laws of the nation.

215. This freedom of movement within Chilean territory is subject to restrictions only under exceptional circumstances. The law provides that, if a government official becomes aware that a foreign national is in violation of an immigration law, the official must submit the relevant information to the Ministry of the Interior. The Ministry will then determine what course of action will be taken. The official is required to take the person's statement, take away the corresponding documents and replace those documents with another document attesting to the person's identity. As a precaution, the person in question may be required to stay at a certain address and to report on a regular basis to a given police station until such time as the Ministry of the Interior reaches a determination regarding the offender's migration status.<sup>88</sup>

#### **4. Article 40: Right of migrants to form associations and trade unions**

216. In keeping with the principles set forth in ILO Convention No. 87 and ILO Convention No. 98, Chilean law guarantees the right to form trade unions, and documented migrant workers may therefore form an association or union to defend their rights so long as they follow the procedures established by law for that purpose.<sup>89</sup>

217. Presidential Instruction No. 9 of September 2008 on national migration policy recognizes "migrant workers' right to participate in meetings, trade unions, associations or other groups established in accordance with the law whose purpose is to protect their cultural, social, economic or other interests". In point of fact, the Migrant Workers' Association (SIATRAM) has been established and holds legal status in Chile.

#### **5. Article 41: Right of migrants to participate in public affairs of their State of origin and to vote and be elected at elections of that State**

218. On various occasions the Government has proposed legislation to permit Chileans who are outside the country to vote. Recently, in March 2009, a new bill was sent to the Senate on automatic registration, voluntary voting and absentee balloting which is now pending approval. The Directorate for Chilean Communities Abroad (see paragraphs 24 and 25 of this report) has designed and implemented a series of initiatives for the analysis of the proposed legislation and for its dissemination among the Chilean community abroad.

#### **6. Article 42: Procedures or institutions taking account of the needs of migrant workers and the possible enjoyment of political rights**

219. As mentioned earlier, Presidential Instruction No. 9 of September 2008 on national migration policy recognizes the need for a dialogue between the government agencies responsible for migration management and civil society organizations representing the interests of immigrants in Chile.

220. Civil society participation has an important role to play both in the definition of the principles of migration policy and in proposals concerning the organizational structure for implementing that policy. The Government is currently working with such organizations as the Catholic Institute for Migration (INCAMI) to look at the assistance available for immigrants and refugees, as well as with the Social Pastoral Vicariate and the Social

<sup>88</sup> Aliens Act, title II, para. 3, art. 82.

<sup>89</sup> Labour Code, book III.

Assistance Foundation of Christian Churches. The work being done with the non-governmental Raíces (“roots”) Foundation on the subject of human trafficking has made a valuable contribution to the definition of public policies on migration-related issues.

221. The subject of asylum-seekers and refugees is also being addressed. Civil society organizations have formed standing task forces to deal with cases involving persons in vulnerable situations. The Ministry of the Interior also provides funding to civil society organizations for projects that will contribute to the integration of refugees and asylum-seekers in Chile. In 2009, it furnished approximately US\$ 500,000 in such funding.

222. In furthering the Civil Society Participation Agenda, the Ministry of the Interior has set up the Participatory Panel of the Aliens and Migration Department. This consultative body will provide a means of acting upon policy commitments relating to migration and will seek to supplement migration and asylum management.<sup>90</sup> One example of the work being done in this connection is the announcement issued by the Ministry of the Interior on 5 June 2009 concerning discussions by civil society organizations on the formulation of the Government of Chile’s National Human Rights Action Plan, in which migration- and asylum-related issues figure prominently.

223. On the subject of the enjoyment of political rights, the Constitution establishes that foreign nationals over 18 years of age who have lived in Chile for five years or more, who hold permanent resident visas and who have not been sentenced to a prison term in excess of three years in length have the right to vote as provided for by law.<sup>91</sup> The Constitutional Electoral Registration and Electoral Service Organization Act establishes that “... foreign nationals who are 18 years of age or older and have resided in Chile for more than five years” may register to vote. It goes on to say that: “The constitutional requirement of residence in Chile shall be substantiated by means of a certificate issued by the Ministry of the Interior which attests to that circumstance ... .”

**7. Article 43: Equality of treatment with nationals of the State of employment in relation to access to educational services, vocational guidance and placement services, vocational training and retraining institutions, housing, social and health services, cooperatives and self-managed enterprises, and participation in cultural life**

224. Foreign nationals in Chile who are in a regular situation and have their documents up-to-date have the same right to health services as nationals do. Depending on their level of income, they, just like Chilean nationals, may choose the public National Health Fund (FONASA) plan or one of the various private health insurance plans (known as ISAPRES). People who have no income and fall into one of the high-risk categories (children, pregnant women, asylum-seekers) may opt for FONASA Plan “A”, which is for indigent persons.

225. Whether immigrants are in a regular or irregular situation, their right to educational services at the elementary and secondary levels is guaranteed by regulations, procedures and good practices that permit any child, young person or adult to enrol in and attend school in the country. The General Education Act makes no distinction between Chileans and foreign nationals.

226. The following table gives enrolment figures for 2008, disaggregated by level of instruction and nationality.<sup>92</sup>

<sup>90</sup> Exempt Resolution No. 3682 of 5 June 2009.

<sup>91</sup> Articles 13 and 14 of the Constitution.

<sup>92</sup> *Source:* Statistics Unit, Department of Studies and Development, Planning and Budget Division, Ministry of Education. Note: These enrolment figures are as of 30 April 2008. The figures for nursery schools do not include the preschools administered by the National Kindergartens Board (JUNJI) or

<i>Level of instruction</i>	<i>Nationality</i>			<i>Total</i>
	<i>Chilean</i>	<i>Foreign</i>	<i>Naturalized</i>	
Nursery school	324 484	1 847	0	<b>326 331</b>
Elementary – children	2 091 882	13 094	0	<b>2 104 976</b>
Elementary – adults	21 692	527	5	<b>22 224</b>
Special	121 346	469	0	<b>121 815</b>
Secondary (liberal arts) – children	636 470	3 270	0	<b>639 740</b>
Secondary (liberal arts) – adults	97 365	392	0	<b>97 757</b>
Secondary (technical) – children	377 263	1 852	0	<b>379 115</b>
Secondary (technical) – adults	10 298	127	4	<b>10 429</b>
<b>Total</b>	<b>3 680 800</b>	<b>21 578</b>	<b>9</b>	<b>3 702 387</b>

227. All children and young people who enrol in a municipal school or a private subsidized school are entitled to scholarships, school meals and use of the materials and equipment provided by the Ministry of Education. No distinction is drawn between Chileans and foreign nationals.

228. The Government undertakes various sorts of measures to assist immigrants when they arrive, especially in the case of women and children, who are the most vulnerable groups. Treaties, agreements and bilateral protocols have been concluded with some Latin American countries under which elementary and non-technical secondary school studies in those countries are recognized and credit is given for them. There are also multilateral instruments such as the Andrés Bello Convention and the agreement existing among the member countries of MERCOSUR, Chile and Bolivia. These arrangements apply to the cases of Chileans and foreign nationals who study abroad and need to have their credentials recognized in Chile. Elementary and secondary school courses taken abroad by the children of Chileans are automatically recognized and credited,<sup>93</sup> and this is also the case for the children of foreign officials accredited in Chile.<sup>94</sup>

229. The official recognition of courses of study is the responsibility of the Accreditation Unit of the General Education Division of the Ministry of Education and the Directorates of Education in each province of the country. Elementary and secondary school studies of foreign nationals were credited in 3,421 cases in 2007, 3,497 in 2008 and 3,420 in 2009, for a total of 10,338 in 2007–2009.<sup>95</sup>

230. In the case of higher education, treaties providing for the recognition of professional degrees are in effect with some Latin American countries (Ecuador, Peru, Bolivia), and an arrangement of this sort is now being negotiated with Argentina. The University of Chile establishes the procedure to be used for the recognition of degrees not covered by any such agreement.

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by the INTEGRA Foundation. The figures for adults do not include enrolment in courses administered by the Education for All (EFA), Basic Technical Education for Adults (ETEA) or Chile Califica (“Chile makes the grade”) programmes. The “foreign” category includes students with and without National Identification Numbers.

<sup>93</sup> Act No. 17073 of 1968, art. 31.

<sup>94</sup> Act No. 13933 of 1960.

<sup>95</sup> This figure includes people whose elementary and secondary school diplomas have been recognized.

231. Higher education in Chile is not free of charge. In order to ensure access to institutions of higher learning, the Government of Chile administers a nationwide system of scholarships and education loans. Foreign nationals with permanent residence permits may apply for scholarships as provided for in the regulation on scholarships for higher education.<sup>96</sup> Government-guaranteed loans are available for students of proven academic merit who need financial assistance in order to begin or continue their studies at an accredited institution of higher learning that belongs to the Government-Guaranteed Loan System. Foreign nationals with permanent residence permits have access to such loans on an equal footing with Chileans.

232. Nationals of other Latin American countries who do not have a permanent residence permit and whose financial need has been documented can apply for the Juan Gómez Milla Scholarship, on an equal footing with Chilean nationals, if they are enrolled in an institution administered by the Council of Rectors of Public Universities or in accredited private universities. This scholarship, which can be used to cover tuition and enrolment fees, is designed for students who graduate from subsidized secondary schools. A student who obtains this scholarship can also apply for other, supplementary scholarships awarded by the National School Support and Scholarships Board (JUNAEB) to cover room and board.

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

234. Foreign nationals may apply for government housing subsidies if they have Chilean residence permits (the applicant or spouse), are of legal age, have not received such a subsidy before and have a housing savings account. Under this system, families that wish to build or buy a home can receive a non-reimbursable cash subsidy. Low-income and middle-income persons are eligible for this benefit. There are three different programmes for low-income sectors: the Solidarity Housing Fund, for the most vulnerable groups; the Rural Subsidy Programme; and the Household Assets Protection Subsidy, a home-improvement subsidy which is provided to people who already own a dwelling.

**8. Article 54: Equality of treatment with nationals for documented migrant workers or migrant workers in a regular situation as to protection against dismissal, unemployment benefits, and access to public work schemes and to alternative employment subject to article 52 of the Convention**

235. Equality of treatment in this regard is guaranteed by the Labour Code,<sup>97</sup> which also sets out a rights protection procedure that is fully applicable to cases in which a migrant worker's exercise of such rights has been impaired.

**9. Article 55: Equality of treatment with nationals for documented migrant workers or migrant workers in a regular situation in the exercise of a remunerated activity**

236. Equality of treatment in this regard is guaranteed by the Labour Code in accordance with ILO Convention No. 111, which has been ratified by Chile.

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<sup>96</sup> Decree No. 29.12.2008\*663, Legal Division of the Ministry of Education.

<sup>97</sup> Labour Code, arts. 485 et seq.

**10. Article 44: Protection of the unity of the families of migrant workers and reunification of migrant workers with their families**

237. Immigration laws and regulations reflect a recognition of how important migrant workers' families are to them. In order to promote the unity of the family group, residence permits can be issued to a migrant worker's dependent family members. The family group is defined for these purposes as being composed of a migrant worker's spouse and parents or children of the migrant worker, the spouse or both who are financially dependent upon the primary residence permit holder. Residence permits granted to dependants do not authorize them to engage in remunerated activity in Chile.<sup>98</sup>

238. Family members of immigrants (as defined as above) may obtain an identity card within 30 days of the date on which they are granted a visa. They are also entitled to a special certificate that is specifically for such family members (the First Identification Certificate). This document gives the date on which the person obtained his or her first identity card and other information, such as the person's country of origin.

239. If a person wishes to apply for a permanent residence permit, the dependants of the applicant who hold a residence permit are also eligible for permanent residence status under the prevailing immigration laws.

240. Family members of persons who already hold a permanent residence permit may apply for a one-year temporary residence permit (called a "temporary visa") when they enter Chile. At the end of that year, they may apply for permanent residence permits.

**11. Article 50: Consequences of the death of a migrant worker or dissolution of a migrant worker's marriage**

241. Immigration laws in Chile do not contain any specific provision governing the migration status of a migrant worker's accompanying family members in the event of his or her death or the dissolution of the marriage. From the standpoint of the application of immigration laws, there has been no case in which an application for a residence permit has been based on such events.

242. Immigration regulations do allow for the issuance of temporary residence visas to foreign nationals whose applications have been duly approved by the Ministry of the Interior and the Ministry of Foreign Affairs, however, so it would be possible to issue residence permits to family members who find themselves in the circumstances described in this article of the Convention.

**12. Article 51: Right of documented migrant workers or migrant workers in a regular situation who are not authorized to freely choose their remunerated activity to seek retraining and alternative employment in the event of the termination of their remunerated activity prior to the expiration of their employment contract**

243. Although documented migrant workers have the option of applying for a new visa if the remunerated activity on which their work permit was based has been terminated, such workers do not have the right to freely choose their remunerated activity, to seek retraining or to seek other employment in the event of the termination of their remunerated activity prior to the expiration of their employment contract.

<sup>98</sup> Aliens Act, title I, para. 4, and Regulation on Aliens, title II.

**13. Article 52: Conditions and restrictions for documented migrant workers or migrant workers in a regular situation who can freely choose their remunerated activity**

244. Under prevailing immigration laws, the only case in which a person is barred from being hired by an employer other than the one named on his or her residence permit application is when the person holds a Subject to Contract Visa. There are no restrictions on hirings of holders of temporary visas or permanent residence permits, who may engage in more than one activity and have one or more employers.

245. As noted earlier in the section concerning article 20 of the Convention, the introduction of the Subject to Contract Visa is one of the main steps that has been taken towards modernizing the immigration laws and aligning immigration requirements with the commitments assumed under the Convention. As part of this endeavour, changes have also been made in the regulations concerning the 30-day deadline for presenting a new contract and those governing migration status regularization procedures.

**14. Article 49: Authorization of residence and authorization to engage in a remunerated activity**

246. Under Chile's immigration laws, residence permits and work permits are not separate authorizations, except in the case of residence permits for students, which do not authorize them to engage in remunerated activities. Holders of such residence permits may apply for a special permit so that they can work while studying, however. In the case of all other temporary visas, it is understood that the holder is authorized to engage in a remunerated activity as soon as the visa is stamped in his or her passport.

247. Temporary residence visas, refugee visas and permanent residence permits allow their holders to freely choose their remunerated activity.

248. Only in the case of the Subject to Contract Visa<sup>99</sup> does the termination of the contract that has served as the basis for the issuance of the visa constitute grounds for the termination of that visa and any visas issued to family members of the foreign national in question. Such persons may, however, apply for a new visa or a permanent residence permit. Employers are required to advise immigration authorities of the termination of such contracts within 15 days.

**15. Article 56: General prohibition and conditions of expulsion for migrant workers**

249. As mentioned in the section concerning article 22, which protects immigrants from collective expulsion, Chile's immigration laws define the grounds on which a foreign national may be expelled from the country and specify which public authorities are authorized to take decisions regarding such expulsions.

250. Migrant workers who are documented or in a regular situation may be expelled only by a decision of the Ministry of the Interior which has been officially issued in the form of a supreme decree.<sup>100</sup> The same law also provides for recourse to a judicial remedy before the Supreme Court within 24 hours of the migrant worker's notification of such a decision. The submission of such an appeal, which must be in writing, suspends the expulsion order.

251. Expulsion orders are not used as a means of depriving a migrant worker of the rights arising out of the authorization of residence and the work permit in Chile. Presidential Instruction No. 9 of September 2008 on national migration policy states that: "The State shall ensure the harmonious integration of foreign nationals legally residing in Chile into

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<sup>99</sup> Article 25 of Decree Law No. 1094 of 1975 and article 39 of Supreme Decree No. 597 of 1984.

<sup>100</sup> Aliens Act, art. 84.

the national community and shall promote equality of treatment with regard to employment, social security, cultural rights and individual freedoms ...”

252. It is the duty of the State to guarantee the exercise of the right to work and to take all necessary steps to punish and, insofar as possible, put a halt to the recruitment of immigrants in an irregular situation. The establishment of an employment relationship with a person whose residence status is irregular does not diminish the labour rights of the immigrant in question vis-à-vis his or her employer.<sup>101</sup>

#### **D. Provisions applicable to particular categories of migrant workers and members of their families**

253. No such system of categorization exists in Chile.

#### **E. Promotion of sound, equitable, humane and lawful conditions in connection with international migration of workers and members of their families**

##### **1. Article 65: Establishment of appropriate services to deal with questions concerning international migration of workers and members of their families**

##### *(i) Steps taken by the Aliens and Migration Department of the Ministry of the Interior to improve migration and asylum management*

254. Presidential Instruction No. 9 of September 2008 on national migration policy seeks to ensure that immigrants residing in Chile are identified as a specific group of users of public services and defines coordination mechanisms to make certain that their needs are fully met.

255. This presidential instruction consolidates established practice in various areas relating to services for the most vulnerable sectors of the migrant population in Chile. In 2006, based on the commitments set forth in the Government Programme of the President of the Republic, the Ministry of the Interior, as the government body responsible for migration management in Chile, defined the development of a national policy on migration and asylum as one of its strategic objectives. On that basis, migration management has focused on improving the analysis of applications for temporary and permanent residence permits and asylum and on the promotion of reception arrangements that will help the migrant population integrate into society.

256. The following steps have been taken with regard to the analysis of applications for asylum and for temporary and permanent residence permits:

- In 2006, the core managerial unit of the Aliens and Migration Department conducted training sessions<sup>102</sup> and service monitoring programmes.<sup>103</sup>

<sup>101</sup> See section No. 7, on principles of national migration policy, and specifically No. 7 (v), on integration and social protection of immigrants, and No. 7 (vi), on respect for the labour rights of foreign workers in Chile.

<sup>102</sup> In 2006, six training sessions were held in order to improve staff members' knowledge of immigration laws, the guidelines for their application and administrative procedures and to upgrade their public service skills. The workshops were held in the Tarapacá, Coquimbo, Valparaíso, Metropolitan, Maule and Los Lagos regions. They were attended by 83 staff members who work in immigration units in provincial offices and regional intendancies, 21 officers from the National Office

- Since 2006, a system has been in place for the submission of temporary residence permits in the Metropolitan Region, as well as a system for mailing in applications for permanent residence permits from anywhere in the country. The creation of these two tools has made it possible to reduce the response time for users of immigration services and represents a milestone achievement in the processing of applications.
- Provincial and regional immigration offices perform migration management functions at those levels. In addition to supplying staff at those offices with training on migration and asylum procedures, steps have been taken to improve the service they provide to the public by analysing the situation on the ground in order to determine staffing needs<sup>104</sup> and by constructing management and efficiency indicators.<sup>105</sup>
- In order to supplement the training and ongoing support provided to provincial immigration offices, the handbook on policies and regulations and the handbook on administrative procedures have both been updated. These management tools are now available to staff in the provincial government offices.
- As asylum-related issues are an increasingly important component of migration management, efforts have been made to modernize asylum procedures with a view, in particular, to cutting down on application response times. The first step was to increase the rank of the office within the Ministry of the Interior that is responsible for this area. This office was therefore converted into the Asylum and Resettlement Section, which is attached to the Central Office of the Aliens and Migration Department.
- The Aliens and Migration Department has also trained agents in the provincial offices that receive asylum applications and officers from the National Office of Overseas Affairs and International Police. The latter staff border crossings and are therefore the first persons to come into contact with asylum-seekers at border checkpoints.<sup>106</sup>
- Another measure to improve asylum management has been the decentralization of operations. Applications can now be submitted in the northern Chilean cities of Arica and Iquique, and there are plans to expand this decentralization process to include other areas of the country. This is a step towards the creation of “solidarity cities” as defined in the Mexico Plan of Action.

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of Overseas Affairs and International Police, 4 staff members from other regional public service offices and 2 persons from non-governmental organizations.

<sup>103</sup> Six monitoring, evaluation and training exercises were conducted in the provincial immigration offices of Arica, Iquique, Cachapoal, Valparaíso, Concepción and Magallanes. The resident permit application submission and issuance process was evaluated, along with the immigration offices’ physical infrastructure, facilities for waiting on the public, computer equipment, use of the B3000 data processing system and staffing tables.

<sup>104</sup> During 2007, an operational analysis of the provincial immigration offices was carried out and the levels of demand in each office were determined. They were then grouped into high-, medium- and low-demand categories. In 2008, a budget allocation was established for 10 additional professional staff members in the high-demand offices (Arica, Iquique, Antofagasta, El Loa, Valparaíso and Concepción), and in 2009 funds were budgeted for the implementation of a staff selection process with a view to adding 10 new staff members in the medium-demand provincial offices.

<sup>105</sup> Management indicators were established for the regional intendancies and provincial offices in an effort to shorten user response times.

<sup>106</sup> Training has been provided to a total of 45 staff members of provincial offices and 35 members of the National Immigration and International Police Force, which is part of the Investigative Police Force of Chile. In 2009, 20 staff members from central and provincial offices were trained.



- In order to respond to the growing number of asylum applications being submitted in Chile, the Government, through the Ministry of the Interior, has signed an agreement with UNHCR under which both institutions will work to improve procedures for arriving at a determination of refugee status and will seek lasting solutions that will facilitate integration.
- In 2007, Chile hosted the Fifth Regional Course on International Refugee Law, which dealt with substantive and procedural aspects of the determination of refugee status. Participants in the course came from a number of different countries in the region.
- Since late 2007, as part of the effort to upgrade facilities for waiting on users of these services, the offices and public service areas of the offices in the Metropolitan Region (where 64 per cent of all Chilean residents live) have been refurbished, and total office space has been increased from 1,800 to 3,500 square metres.

257. The following steps have been taken to foster the integration of the migrant population:

- *Intersectoral cooperation agreements:* (a) a cooperation agreement between the Ministry of the Interior and the Ministry of Health which establishes access to the public health system for all children of immigrants; (b) an agreement between the Ministry of the Interior and FONASA concerning services for refugees which makes asylum-seekers eligible for the services of the public health system; (c) a cooperation agreement between the Ministry of the Interior and JUNJI under which immigrant and refugee children have access to preschools.
- *Study on migration, gender and public security:* This study, which was conducted in 2008, takes a gender equity approach to the description and analysis of factors contributing to the migrant population's social vulnerability, in general, and to its vulnerability from the standpoint of public security, in particular. Based on this study, the Ministry of the Interior organized the Seminar on Immigration and Public Policy: Inroads and Challenges, which was attended by over 150 guests from the public sector, civil society, international agencies and researchers concerned with migration issues. The attendance at this event of such a wide range of stakeholders provided an opportunity to launch a first debate concerning the migration policy and management of the Government of Chile.
- *Financial assistance for refugees and asylum-seekers in Chile:* The Ministry of the Interior administers a fund from which resources can be transferred to civil society organizations to cover basic needs, lodging, meals, medical care, vocational training and language instruction and to provide microcredits. Approximately US\$ 500,000 in such funding is provided annually.
- *Creation of the Panel on Human Trafficking:*<sup>107</sup> This inter-agency panel coordinates the work of governmental agencies on the prevention, suppression and punishment of human trafficking.

(ii) *Directorate for Chilean Communities Abroad of the Ministry of Foreign Affairs*

258. This government institution is responsible for fully addressing the needs and rights of Chileans abroad. Its work has included the following measures (see paragraphs 24 and 25 of this report).

<sup>107</sup> Exempt Decree No. 2821 of 31 July 2008.

- In order to establish closer contact with Chileans abroad, in 2006 the Directorate for Chilean Communities Abroad (DICOEX) created a website: [www.chilesomostodos.gov.cl](http://www.chilesomostodos.gov.cl). In March 2007, it officially launched the interactive portal *Chile Somos Todos* (“Chile is all of us”), which received 89,104 visits that year. In 2008, it had nearly 80,000 visitors and, as of October 2009, it had had over 79,000 visitors for the year. This portal contains various pages for Chileans abroad, such as a “press room” that offers information of interest to Chileans living abroad, a forum in which visitors can share information and their opinions, a page providing information on all of the different programmes that DICOEX offers and another that contains information on consular procedures and frequently asked questions.
- DICOEX, together with the Social Organizations Division of the Office of the Minister and Secretary-General of Government and Chile’s consulates in Argentina, has been conducting the “Governments in the field” initiative in order to familiarize the large Chilean community in Argentina (half of all Chileans residing abroad live in Argentina) with the benefits available to them in Chile. This initiative is carried out using the “Citizens’ Infobus”, a vehicle that is equipped with the necessary materials to provide services to people in remote areas far from Chile’s consular offices. The services that are requested the most frequently by Chileans residing in Argentina are the renewal of identity cards, information about retirement and other pensions, the recognition and crediting of degrees and courses of study, civil matters (inheritance, nationality, divorce, alimony payments), information about the State pensions awarded to persons who lost their jobs for political reasons during the dictatorship, health insurance cards and assistance in locating family members in Chile. The different government offices that handle these matters send personnel on these visits and provide the necessary support. Between 2005 and 2009, the Infobus has made nine such visits to remote areas in Argentina in which it has provided information to over 40,000 Chileans.
- In 2002, DICOEX and the Banco del Estado signed an agreement under which Chileans residing abroad can access the various banking services which the Banco del Estado offers quickly and efficiently via its website. This has greatly expedited various operations that involve sending and receiving different documents.
- As another way of informing Chileans residing abroad about the benefits available to them, DICOEX publishes a monthly bulletin that is sent to all of Chile’s diplomatic offices and Chilean organizations in other countries.

**2. Article 66: Authorized operations and bodies for the recruitment of workers in another State**

259. Chile’s immigration laws do not provide for the recruitment of workers in another State by the Government, either directly or through private intermediaries.

**3. Article 67: Measures regarding the orderly return of migrant workers and members of their families to the State of origin, their resettlement and cultural reintegration**

260. DICOEX has noted that the largest number of consultations and questions that it receives from Chileans living abroad have to do with public policies (regarding education, social security, housing and customs duty exemptions) designed to ease their return to Chile.

261. Chileans who have resided outside the country for over a year can import their household goods and work equipment tax-free; they do not pay customs duty.

262. The Ministry of Housing and Town Planning makes a number of the benefits it provides under the Housing Subsidy System<sup>108</sup> available to Chileans living abroad. These benefits do not, however, include those for which possession of the Social Protection Card (cards that are issued only to families in vulnerable positions) is one of the eligibility requirements. Chileans who settle permanently with their families in the country are eligible for other types of subsidies.

263. An effort has been made to negotiate and sign agreements for the accreditation of degrees and diplomas with other countries. Such agreements have already been signed with Brazil, Colombia, Ecuador, Spain, Uruguay, Bolivia, Costa Rica, El Salvador, Guatemala, Honduras, Nicaragua, Peru and Argentina.

264. In the past two decades, the Government of Chile has ratified a greater number of international social security agreements concerning such matters as benefits for persons who were political exiles (1973–1989), trade, employment opportunities abroad and migration.

265. There is no government programme or State-run job exchange to facilitate returning migrants' reintegration into the workforce.

#### **4. Article 68: Measures aimed at the prevention and elimination of illegal or clandestine movements and employment of migrant workers in an irregular situation**

##### *(i) Immigration laws*

266. The country's immigration laws establish penalties for failure to observe those laws. These penalties are imposed upon transport companies that bring foreign nationals who do not have the proper documents into the country and employers who hire foreign nationals who do not have residence permits that authorize them to engage in remunerated activity.

267. Presidential Instruction No. 9 of September 2008 on national migration policy, specifies that one of the principles of migration management is respect for the rights of immigrant workers, regardless of their migration status. It further states that every effort will be made to punish and, insofar as possible, put an end to irregular immigration by means of a standing policy on the regularization of migration flows and the establishment of penalties for employers who hire migrant workers who are in an irregular situation.

268. Accordingly, the Ministry of the Interior has laid down guidelines for the imposition of penalties on immigrants and employers who violate immigration laws or regulations. Employers who breach immigration laws are subject to significantly higher fines; in the case of migrant workers, the emphasis is on facilitating access to means of regularizing their status.

269. The penalties established in the immigration laws now in force for immigrants who violate those laws are an official warning (a written warning but no fine), a fine or expulsion from the country.

270. Official warnings do not entail the payment of any fine. The minimum fine is approximately US\$ 43 and the maximum is US\$ 439; the maximum fine is imposed when a foreign national has been residing in the country in an irregular situation for more than one year, is found by the authorities to have been working without the proper permit and has committed this violation more than once.

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<sup>108</sup> The State-run Housing Subsidy System provides benefits to families who cannot afford to buy a home on their own. The subsidy is supplemented by recipients' savings and bank mortgages.

271. For employers, the penalties range from a fine to expulsion (in the case of an employer who is a foreign national).<sup>109</sup> A distinction is drawn between natural persons, who generally employ domestic service workers, and legal persons, i.e., companies with an organized structure that have human resource units with expertise in personnel recruitment.

272. Fines for employers range from approximately US\$ 43 up to US\$ 2,195. The amount of the fine to be imposed depends on how long the violation has been going on, whether the violator reports to immigration authorities voluntarily or not, whether the office or authority that apprehended the violator lodges a complaint and whether or not the employer is a repeat offender.

273. For employers who are natural persons, the minimum fine is approximately US\$ 43 and the maximum is US\$ 827. For employers who are legal persons, the minimum fine is approximately US\$ 827, while the maximum fine can be as high as US\$ 2,195.

(ii) *Labour laws*

274. Based on the principle of non-discrimination by reason of nationality, the instructions issued by the Compliance Department<sup>110</sup> of the Labour Directorate include a special chapter on enforcement procedures that covers compliance in respect of work performed by foreign nationals. There is no differentiation between the cases of foreign nationals who are authorized to work and those who are not; the instructions state that: *“Although illegal foreign workers — those not authorized to work — are in breach of immigration law, the general rule is that they are accorded the same labour rights, even though they lack authorization to work.”* It is, at all events, noted that: *“Some practical difficulties are encountered in this rule’s application, especially with regard to social security benefits, since such workers do not, as a general rule, have a national identity card or tax card and their social security contributions can therefore not be paid into a pension fund.”* Given the delicate nature of this issue, the instructions also note that good judgement should be exercised in such cases and that the official in question should request instructions and suggestions concerning possible courses of action from the Legal Office and his or her supervisor within the regional or national Labour Inspection Office, as the case may be.

275. It follows that a migrant worker’s illegal status is not an impediment to the initiation of compliance procedures, which indirectly deters employers from hiring illegal migrant workers.

(iii) *Human trafficking*

276. Chile does not have a law in which the offence of trafficking in persons is defined as precisely as provided for in article 3 (a) of the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime.

277. Chilean law<sup>111</sup> provides for the punishment of human trafficking that is engaged in for purposes of sexual exploitation. In respect of the other forms of conduct included in the definition set forth in article 3 of the Protocol, Chilean law applies only the general offences of kidnapping, abduction of minors, the infliction of bodily harm (this would relate to the removal of organs), trafficking in minors for purposes of sexual exploitation,

<sup>109</sup> A list of the penalties is provided at [www.extranjeria.gov.cl](http://www.extranjeria.gov.cl).

<sup>110</sup> Circular No. 88 of 2001.

<sup>111</sup> Criminal Code, art. 367 bis.

production of pornographic material involving minor participants and the act of obtaining sexual services of minors between the ages of 14 and 18 years.

278. In view of the absence of a law that specifically defines the offence of trafficking in persons, the Government of Chile has advocated passage of legislation to do so. It has also advocated legislation on the offence of migrant smuggling. A bill defining the offence of trafficking in children and adults which contains provisions for its prevention and more effective criminal prosecution has been passed by the Chamber of Deputies and is currently in its second reading in the Senate.

279. This legislation: (a) defines the offences of migrant smuggling and trafficking in persons; (b) provides for the consideration of effective cooperation as an extenuating circumstance, for new investigative tools and protection measures for victims, including measures to protect their identity, and for the application for residence permits by foreign nationals who have been victims of these offences; (c) grants greater authority to the agency responsible for administering border checkpoints to control border crossings in both directions.

280. In addition to advocating this legislation, the Government of Chile, in partnership with international and civil society organizations, has been promoting the following initiatives to inform and sensitize the population and to prevent trafficking in persons:

- Establishment of the Intersectoral Panel on Trafficking in Persons. This inter-ministerial panel will be in charge of coordinating the actions, plans and programmes of the various institutions involved in preventing, suppressing and punishing the offence of trafficking in persons, especially women and children.<sup>112</sup>
- Implementation of a campaign to prevent trafficking in women, entitled “In Chile We Respect All Women”. This campaign was launched in October 2008 by the National Service for Women (SERNAM), the Aliens and Migration Department of the Ministry of the Interior and the Ministry of Public Works at Arturo Merino Benítez International Airport. Pamphlets on the high-risk situations that immigrant women may face and how to avoid them continue to be distributed.
- Production of two geographic and social maps of Chile in 2006 and 2007 for use in detecting possible human trafficking routes. This initiative was organized by Save the Children and the non-governmental Raíces (“roots”) Foundation in cooperation with the Investigative Police Force of Chile, the regular police force (Carabineros de Chile) and the units of the Ministry of the Interior concerned with immigration matters. The results of this effort were provided to the senior authorities of the Ministry of the Interior for use as inputs in the definition of policies and actions aimed at preventing, suppressing and punishing the offence of trafficking in persons.
- Provision of training in 2007 to the Investigative Police Force, the regular police force (Carabineros de Chile) and various State agencies on the subject of the worst forms of child labour, including commercial sexual exploitation. Trainers were provided by the National Service for Minors (SENAME) in conjunction with ILO and Alberto Hurtado University.
- Fifteen small-scale projects were begun in 2007 by SENAME to assist children at risk of commercial sexual exploitation and to prevent such exploitation. The focus is on involving the family unit in preventive action.

<sup>112</sup> Exempt Decree No. 2821 of 31 July 2008.

- Provision of advanced training on commercial sexual exploitation, migrant smuggling and human trafficking to 200 officers of the Investigative Police Force in 2006 by SENAME with support from IOM.
- Protection of trafficking victims who cooperate in the trials of the corresponding cases and issuance of residence permits to them.
- Signature of a cooperation protocol by the Ministry of the Interior and SENAME in December 2009 for the review of all residence permit applications submitted in Chile by children and adolescents who are not accompanied by their parents. This agreement formalizes a cooperative effort that has been yielding positive results since 2006.
- Organization of the First Summit of Ibero-American Public Prosecutors' Offices on Human Trafficking, in conjunction with the German Cooperation Agency (GTZ) and the Chilean International Cooperation Agency (AGCI). This summit, held in December 2008, has served as a basis for coordinated efforts to ensure the effective criminal prosecution of the offence of human trafficking.
- Approval of a document entitled "Santiago Guidelines on Victims and Witness Protection", which establishes the minimum standards of conduct for Ibero-American prosecutors' offices in dealing with victims of human trafficking and trial witnesses. This document, which had been finalized at a meeting of Ibero-American public prosecutors' offices held in Santiago, Chile, in April 2008, was approved unanimously at the Sixteenth General Assembly of the Ibero-American Association of Public Prosecutors (AIAMP), held in July 2008 in the Dominican Republic.

**5. Article 69: Measures taken to ensure that migrant workers in an irregular situation do not persist in this condition within the territory of the State party and circumstances to take into account in regularization procedures**

281. Since the return of a democratic system of government in the country in the early 1990s, Chile has devoted close attention to the subject of immigration flows from other South American countries.

282. The Government has taken a series of steps to foster immigrants' integration in Chile. The Government of former President Patricio Aylwin updated the immigration laws, and the Government of former President Eduardo Frei developed the first system for the regularization of migration status. It also began to modernize the migration management system by introducing new technologies and establishing the main lines of migration policy. The Government of former President Ricardo Lagos carried the modernization process further and set up a committee on migration policy that produced a green paper outlining the Government's approach to this issue. This paper then served as a platform for dialogue with civil society.

283. In a landmark move, President Bachelet, building on the advances achieved by her predecessors, referred explicitly to migration issues in her Government Programme and issued a presidential instruction to all public services attached to the Office of the President in which the regularization of migration is established as one of the cross-cutting elements in public policies dealing with the status of foreign nationals living in Chile.

284. Since the first special regularization programme was instituted during the term of President Frei in 1998, a public policy focusing on the regularization of immigrant workers has taken shape. This approach was consolidated during the Government of President Lagos and has remained one of the pillars of national policy on migration under President Bachelet.

285. The second special regularization programme, undertaken in 2007, attests to this approach. Under this programme, some 47,665 foreign nationals obtained a residence permit in Chile. Under the second stage of this programme, which is now under way, over 33,000 applications for permanent residence permits have been received.

286. According to estimates prepared by the Ministry of the Interior, prior to the 1998 regularization programme, there were approximately 150,000 foreign nationals residing in Chile, of whom an estimated 40,000 (27 per cent) were in an irregular situation. In 2007, after 10 years of management efforts in this connection (a time during which the total number of immigrants residing in Chile jumped by over 70 per cent), the percentage of the total foreign resident population that was in an irregular situation was about 10 per cent and, by late 2008, that number had fallen to 3 per cent.

287. In conjunction with this ongoing regularization policy and the special regularization programmes that have been carried out, a number of integration measures, primarily in the areas of health and education, have been adopted in which regularization figures as a core element. These initiatives are discussed elsewhere in this report.

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