

# CHILE 2013 HUMAN RIGHTS REPORT

## EXECUTIVE SUMMARY

*Note: This report was updated 4/10/14; see Appendix H: Errata for more information.*

Chile is a constitutional multi-party democracy. On December 15, in a presidential run-off following congressional, regional council, and a first round of presidential elections on November 17, Chileans elected former president Michelle Bachelet as their next president. All of the elections were considered to be free and fair. The new government will take office in March 2014. Authorities generally maintained effective control over the security forces. Security forces occasionally committed human rights abuses.

The principal human rights problems concerned discrimination against indigenous populations; societal violence and discrimination against women, children, and lesbian, gay, bisexual, and transgender (LGBT) persons; child labor; and harsh prison conditions and treatment.

Additional human rights concerns in the country included use of excessive force and abuse by security forces, isolated reports of government corruption, and anti-Semitism.

The government generally took steps to prosecute officials who committed abuses. Nevertheless, many human rights organizations contended that security officials accused of committing abuses have impunity.

### **Section 1. Respect for the Integrity of the Person, Including Freedom from:**

#### **a. Arbitrary or Unlawful Deprivation of Life**

There were no reports that the government or its agents committed arbitrary or unlawful killings during the year. The external mechanism to investigate abuses by Carabineros is the military justice system, while the regular criminal justice system investigates accusations of abuse by investigative police (PDI) officers.

On January 3, authorities arrested six of eight former army officers indicted for the 1973 torture and subsequent execution of singer Victor Jara in the Estadio Chile in Santiago. On March 28, the Santiago Appellate Court approved bail for four of the

eight. On October 11, the judge indicted and arrested a ninth former army officer. The case remained pending at year's end.

In June 2012 the Santiago Appellate Court ruled that Judge Mario Carroza should investigate the killing of U.S. citizen Ronnie Moffit in a Washington, D.C. car bombing in 1976. The case was pending at year's end.

According to the Diego Portales University (UDP) Law School's 2013 annual report on human rights, as of July the Supreme Court had ruled in 153 criminal cases of dictatorship-era human rights violations and confirmed 140 convictions, while 1,350 cases against more than 800 perpetrators remained under investigation or pending in the courts.

On March 25, a military prosecutor indicted former Carabinero sergeant Miguel Millacura for using unnecessary force and Lieutenant Claudia Iglesias for complicity in covering up Carabinero involvement in the 2011 killing of 16-year-old Manuel Gutierrez. Millacura was free on bail, and Iglesias reportedly continued on active duty. The status of the case in the military justice system against Millacura was unknown at year's end. Cases involving alleged unlawful conduct by Carabineros, including human rights abuses against civilians, were generally tried in the military court system, as were allegations where the accused is a member of the armed forces.

## **b. Disappearance**

There were no reports of politically motivated disappearances.

In August 2012 Judge Jorge Zepeda indicted eight former Carabineros and army patrol members for aggravated kidnapping in the 1985 disappearance case of U.S. citizen Boris Weisfeiler. The case remained pending at year's end; those charged remained free on bail.

## **c. Torture and Other Cruel, Inhuman, or Degrading Treatment or Punishment**

Although the constitution prohibits such practices, credible nongovernmental organizations (NGOs) received multiple reports of excessive force, abuse, and degrading treatment by Carabineros, PDI members, and prison guards, few of which resulted in convictions.

On June 13, Carabineros entered the downtown central campus of the University of Chile, allegedly without authorization and in a violent manner, in search of connections to several violent activities that took place the day before during an authorized student protest. According to local press, police seriously injured two female students resisting the unauthorized entrance. The head of the police unit involved was transferred to another unit after an internal investigation revealed a violation of protocol regarding the use of force. No further disciplinary action was taken.

On December 30, PDI officer Flavio Torres was charged in a Santiago court for unlawful coercion and computer crimes for his alleged role in the beating during the interrogation of a minor following a student protest in May. Torres was accused of participating in a group of approximately 10 officers who struck the minor's neck and face, photographed him in his underwear, and forced him to reveal his Facebook log-in credentials. The prosecutor said she was unable to determine the identities of others alleged to have been involved due to the invocation by the PDI of a provision of the country's National Intelligence Law. The judge, who remanded Torres into custody during the case's investigative phase, called the alleged crimes "among the most serious" contemplated by Chile's laws because they involved a state agent. The case was pending at year's end.

The National Institute of Human Rights (INDH) and media outlets reported on the alleged inappropriate use of force by prison guards in breaking up a protest at a prison in Valdivia in January, resulting in injuries to 21 inmates. The Court of Appeals of Valdivia subsequently made a special order of protection on behalf of the inmates. The Court of Appeals of Antofagasta ruled that prison guards violated constitutional rights of 10 inmates and breached the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment during a violent encounter in July when the guards beat and shot pellets at prisoners, resulting in injuries.

### **Prison and Detention Center Conditions**

Prison conditions were harsh. Human rights organizations reported that violence, including torture, occurred and that prison officials were aware of the problem and worked to address it. Violence among inmates was also common.

Physical Conditions: Prisons were overcrowded. The government reported that at the end of September, 45,510 prisoners were in prisons designed to hold 41,034 inmates. Prisoners included 3,540 women (held in separate sections of the same

facilities as men or in separate facilities). At the end of August, 3,054 minors were in prisons or detention centers (held separately from the adult population). Many prisons were antiquated and offered substandard sanitary conditions, inadequate food, and insufficient medical services. Inadequate heating in some prisons remained a serious problem, and inadequate lighting and ventilation also affected inmates at some prisons. The government reported that access to potable water was limited in several prisons.

Officials reported 186 prisoner deaths during the year. Violence among inmates accounted for 67 deaths, while three inmates died while attempting to escape prison. On August 13, a fire broke out in a prison in Quillota, located near the coastal city of Valparaiso, after two rival gangs started a fight. Although the fire was contained, approximately 24 inmates were injured in the incident, five due to stab wounds that occurred during the intergang violence.

Prisoners with HIV/AIDS and mental and physical disabilities reportedly failed to receive adequate medical attention in some prisons. Adequate accommodations for those prisoners with physical disabilities were made.

According to the rights organization Movement for Homosexual Integration and Liberation (MOVILH) and various media outlets, in November 2012 an official commission reported that in a number of prisons, LGBT prisoners were separated from the general population to prevent possible attacks. The commission noted that these separate facilities were overcrowded and lacked adequate basic hygienic services.

Administration: Recordkeeping on prisoners was generally adequate, and authorities used alternative sentencing for nonviolent offenders, such as conditional release for community service. There were no prison ombudsmen. Prisoners and detainees had reasonable access to visitors and could observe their religious practices. Authorities permitted prisoners and detainees to submit complaints to judicial authorities without censorship and to request investigation of inhumane conditions. Authorities generally investigated credible allegations and documented the results in a publicly accessible manner. The government usually investigated and monitored prison and detention center conditions.

Independent Monitoring: The government permitted prison visits by independent human rights observers, and such visits took place at both government and privately operated facilities. Prisoner and human rights groups continued to

investigate alleged use of abuse or excessive force against detainees, while the media covered some such allegations.

Improvements: Overcrowding decreased by almost 25 percent as of the end of September, compared with levels at the end of 2012. The government transferred inmates between prisons and issued pardons to certain inmates to reduce overcrowding. Two prisons were completely renovated, while several others underwent repairs and upgrades. Improved health measures were also implemented, including increased spending on meals. Nutritionists were hired to advise on healthy meal plans, leading to new nutrition programs in all prisons. The Human Rights division of the Gendarmeria held human rights-focused workshops, seminars, and other training programs at various prisons for current and future prison guards. The government also carried out an exhaustive survey of inmates from 75 prisons throughout the country for the purpose of understanding prisoners' perceptions of shortcomings in the penitentiary system, with the ultimate goal of improving the quality of life for prisoners. Based on those results, the Gendarmeria's human rights division planned to create a subdivision to monitor progress in efforts to address deficiencies and promote training of prison system personnel.

Gendarmeria officials participated in two educational sessions organized by NGOs aimed at instilling in prison employees respect for diversity and skills for handling LGBT-related issues in prisons. The Gendarmeria and MOVILH signed an agreement in December to facilitate the voluntary work of certain prisoners for MOVILH, with the aim of enhancing the quality of life for LGBT prisoners by increasing tolerance in more of the general prison population through education and exposure to LGBT-related matters.

The National Institute of Human Rights noted marked improvement in overall prison conditions.

#### **d. Arbitrary Arrest or Detention**

The constitution prohibits arbitrary arrest and detention, and the government generally observed these prohibitions.

#### **Role of the Police and Security Apparatus**

The Carabineros and the PDI have responsibility in law and practice for law enforcement and maintenance of order within the country. The Ministry of the Interior oversees both forces.

Civilian authorities generally maintained effective control over the Carabineros and the PDI, and the government has mechanisms to investigate and punish abuse and corruption. There were allegations of impunity involving security forces during the year. Cases from prior years remained pending in courts, while rights organizations criticized the security apparatus for failing to carry out sufficient internal reviews of allegations of abuse by their members and to take forceful enough action where wrongdoing was established. The 2012 Human Rights Watch country report noted continued concern that military courts were not fully independent and that investigations and trials of police accused of abuses against civilians continued to be conducted under the military justice system.

The external mechanism to investigate abuses by Carabineros is the military justice system, while accusations of abuses by PDI officers are investigated in the regular criminal justice system. The INDH stated in its 2013 annual report that there were 1,775 complaints against Carabineros in 2012 for “unnecessary violence” but that less than 2 percent of that number ended in convictions in the military justice system during the period. Carabineros accused of use of “unnecessary violence” are often re-assigned within the institution where an internal investigation reveals wrongdoing. The INDH reported that government actions to reform the security forces were lacking.

### **Arrest Procedures and Treatment of Detainees**

Only public officials expressly authorized by law can arrest or detain citizens and generally did so openly with warrants based on sufficient evidence brought before an independent judiciary. Authorities must immediately inform a prosecutor of an arrest and generally did so.

The prosecutor must open an investigation, receive a statement from the detainee, and ensure that the detainee is held at a local police station until the detention control hearing. Detention control hearings are held twice daily, allowing for a judicial determination of the legality of the detention within 24 hours of arrest. Detainees must be informed of their rights, including the right to an attorney and the right to remain silent until an attorney is present. Public defenders are provided to detainees who do not hire their own lawyer. Authorities must expedite notification of the detention to family members. If authorities do not inform the

detainees of their rights upon detention, during the detention control hearing the judge can declare the process unlawful.

The law allows judges to set bail, grant provisional liberty, or order continued detention as necessary for the investigation or the protection of the prisoner or the public.

The law affords detainees 30 minutes of immediate and subsequent daily access to a lawyer (in the presence of a prison guard) and to a doctor to verify their physical condition. Regular visits by family members are allowed.

Pretrial Detention: Through September an average of 150 days passed between the time of arrest and presentation of charges against persons accused of a crime.

#### **e. Denial of Fair Public Trial**

The constitution provides for an independent judiciary, and the government generally respected judicial independence.

#### **Trial Procedures**

The constitution and law provide for the right to a fair trial, and an independent judiciary generally enforced this right.

Defendants enjoy a presumption of innocence and have a right of appeal. They have the right to be informed promptly of charges, have time to prepare their defense, and not be compelled to testify. The law provides for the right to a fair trial, and an independent judiciary generally enforced this right. National and regional prosecutors investigate crimes, formulate charges, and prosecute cases. Three-judge panels form the court of first instance. The process is oral and adversarial; trials are public; defendants have the right to be present and consult with an attorney in a timely manner; and judges rule on guilt and dictate sentences. Defendants do not enjoy the right to a trial by jury. Court records, rulings, and findings were generally accessible to the public.

The law provides for the right to legal counsel, and public defenders' offices across the country provided professional legal counsel to anyone seeking such assistance. When human rights organizations or family members requested, the NGO Corporation for the Promotion and Defense of the Rights of the People and other lawyers working pro bono assisted detainees during interrogation and trial.

Defendants can confront or question adverse witnesses and present witnesses and evidence on their behalf, although the law provides for secret witnesses in certain circumstances. Defendants and their attorneys generally have access to government-held evidence relevant to their cases.

For crimes committed prior to the implementation of the 2005 judicial reforms, criminal proceedings are inquisitorial rather than adversarial. At year's end one inquisitorial criminal court remained open and had an extensive wait for trials.

### **Political Prisoners and Detainees**

There were no reports of political prisoners or detainees, although some indigenous Mapuche convicted of criminal offenses claimed to be political prisoners.

### **Civil Judicial Procedures and Remedies**

There is an independent and impartial judiciary in civil matters, which permits individuals to seek civil remedies for human rights violations; however, the civil justice system retained antiquated and inefficient procedures. The average civil trial lasted approximately five years, and civil suits could continue for decades. Administrative and judicial remedies are available for alleged wrongs. Cases involving violations of an individual's human rights may be submitted through petitions by individuals or organizations to the Inter-American Commission of Human Rights (IACHR), which in turn may submit the case to the Inter-American Court of Human Rights. The court can order civil remedies including fair compensation to the individual injured.

### **Regional Human Rights Court Decisions**

Chile is subject to the jurisdiction of the Inter-American Court for Human Rights. On August 28, the court determined that the government was guilty of "undue delay" in investigating the exoneration claim of Leopoldo Garcia, who was tortured and exiled under the Pinochet government and submitted his request in 1993. The court ordered Chile to pay \$32,000 in moral damages and to complete his investigation in a reasonable time. This was the first time the court ruled on a case involving the living survivor of human rights abuses from the Pinochet era.

### **f. Arbitrary Interference with Privacy, Family, Home, or Correspondence**

The constitution prohibits such actions, and the government generally respected these prohibitions.

## **Section 2. Respect for Civil Liberties, Including:**

### **a. Freedom of Speech and Press**

The constitution provides for freedom of speech and press, and the government generally respected these rights. An independent press, an effective judiciary, and a functioning democratic political system combined to promote freedom of speech and of the press.

Press Freedoms: Although the independent media were active and expressed a wide variety of views without restriction, the 2013 Freedom House and Reporters Without Borders reports expressed concern with media concentration, whereby most media outlets are in the hands of two major family companies, Copesa and El Mercurio, and the unregulated distribution of government funded advertising. No legal framework exists to guarantee fair distributions of frequencies to different broadcast media.

Libel Laws/National Security: The penal code carries criminal sentences of six months to five years in jail for libel or slander. Press freedom groups called on the government to modify antiterrorism laws to limit their use on Chilean and foreign reporters, for example, on those who covered issues concerning Mapuche communities.

### **Internet Freedom**

There were no government restrictions on access to the internet or credible reports that the government monitored e-mail or internet chat rooms without appropriate legal authority. According to the International Telecommunication Union, approximately 41 percent of households had access to the internet in 2012.

### **Academic Freedom and Cultural Events**

There were no government restrictions on academic freedom or cultural events.

### **b. Freedom of Peaceful Assembly and Association**

#### **Freedom of Assembly**

The government routinely granted permits for marches and demonstrations, occasionally refusing permission for certain routes, citing a concern for public safety. Police used tear gas and water cannons and forcibly removed or detained some protesters when participants vandalized property.

### **Freedom of Association**

The constitution provides for freedom of association, and the government generally respected this right.

### **c. Freedom of Religion**

See the Department of State's *International Religious Freedom Report* at [www.state.gov/j/drl/irf/rpt/](http://www.state.gov/j/drl/irf/rpt/).

### **d. Freedom of Movement, Internally Displaced Persons, Protection of Refugees, and Stateless Persons**

The constitution provides for freedom of internal movement, foreign travel, emigration, and repatriation, and the government generally respected these rights.

The government cooperated with the Office of the UN High Commissioner for Refugees and other humanitarian organizations in providing protection and assistance to internally displaced persons, refugees, returning refugees, asylum seekers, stateless persons, and other persons of concern.

### **Protection of Refugees**

Access to Asylum: The law provides for the granting of asylum or refugee status, and the government has established a system for providing protection to refugees. During the first nine months of the year, six individuals received recognized refugee status, bringing the total number of refugees living in the country to 1,722.

### **Section 3. Respect for Political Rights: The Right of Citizens to Change Their Government**

The law provides citizens the right to change their government peacefully, and citizens exercised this right through periodic, free, and fair elections based on universal suffrage.

## **Elections and Political Participation**

Recent Elections: On December 15, Michele Bachelet was elected president in a free and fair run-off election. On November 17, in elections generally considered free and fair, voters elected 20 of 38 senators and all members of the Chamber of Deputies. A first-round presidential election took place the same day, but no candidate received more than the required 50 percent to win in the first round. For the first time since a June reform law, regional counselors were also elected nationwide. Newly elected officials are to take office in March 2014. In October 2012 mayors and city council members were elected nationwide in free and fair elections, the first following a 2011 change in election laws making voter registration automatic and voting voluntary.

Participation of Women and Minorities: There were 17 women in the 120-seat Chamber of Deputies and five women in the 38-seat Senate. There were six women in the 21-member cabinet. Indigenous people were active at the municipal level. Social, institutional, and cultural barriers limited indigenous participation in national elections, however.

## **Section 4. Corruption and Lack of Transparency in Government**

The law provides criminal penalties for corruption by officials, and the government generally implemented these laws effectively. There were isolated reports of government corruption during the year, which was more prevalent at the local level than the national level.

Corruption: On July 5, authorities disclosed that Carabineros deleted wire-tap logs planned for use as evidence in a 2012 case in which 10 PDI detectives were charged with detaining suspects, giving false testimony, drug trafficking, and extortion. The National Prosecutor's Office began an immediate investigation, which delayed proceedings in the 2012 case against the Carabineros.

On September 5, after a three-year investigation, a court convicted the mayor of Hualpen of tax fraud and bribery and sentenced him to three years' probation, during which he cannot hold public office.

On November 25, four members of the Carabineros were arrested for alleged ties to drug trafficking. In response, the Carabineros named a new counternarcotics chief and announced a plan to restructure the counternarcotics department.

The Transparency Council is an autonomous government entity functioning to promote transparency in the public sector, monitor compliance, publish information on public offices, and guarantee access to information. The institution collaborated with civil society, operated effectively and independently, and had sufficient resources. It regularly published statistics on government compliance with the 2009 transparency law.

Whistleblower Protection: The law provides protection to public and private employees for making disclosures of illegality through the National Public Defender's Office or the local police. Few cases have been brought under the law

Financial Disclosure: A regulation subjects public officials to financial disclosure and assigns responsibility to the comptroller for conducting audits of government agencies and to the Public Prosecutor's Office for initiating criminal investigations of official corruption. The law requires that all declarations be made public, provides sanctions for noncompliance, and clearly identifies which assets must be declared; however, it does not mandate a unit to monitor disclosures.

Public Access to Information: The constitution requires the government and its agencies to make all unclassified information about their activities available to the public. The government granted citizens and noncitizens, including foreign media, access to all unclassified information. The law regulates government transparency and provides public access to information. The law applies to ministries; regional, provincial, and municipal level governments; the armed forces, police, and public security forces; and public enterprises where the state owns more than 50 percent or holds a majority of appointments on the board of directors. The law has a list of five exceptions for nondisclosure. Responses to any requests for information must be delivered within 20 business days, and there is no cost for the request. In cases of noncompliance, the head of the organization is subject to a fine between 20 percent and 50 percent of his or her monthly salary. The autonomous Transparency Council provides for the right of access to information and issues rulings on cases in which information is denied.

## **Section 5. Governmental Attitude Regarding International and Nongovernmental Investigation of Alleged Violations of Human Rights**

A number of domestic and international human rights groups generally operated without government restriction, investigating and publishing their findings on human rights cases. Government officials were generally cooperative and

responsive to their views, although some indigenous rights groups claimed their views were disregarded.

Government Human Rights Bodies: The INDH, an autonomous government entity, operated independently, issued public statements, and proposed changes to government agencies or policies to promote and protect human rights. INDH's 2013 annual report noted concern over several human rights problems, including access to justice; excessive police force; violence against women and children; societal abuses against youth, immigrants, transgender persons, and other minorities; and the continued application of the antiterrorism law, including in cases involving members of indigenous communities. The Senate and Chamber of Deputies also have standing human rights committees responsible for drafting human rights legislation.

## **Section 6. Discrimination, Societal Abuses, and Trafficking in Persons**

The constitution states that all persons are born free and are equal in terms of the law and dignity; however, it does not specifically identify groups protected from discrimination. The 2012 Anti-Discrimination Law provides civil legal remedies to victims of discrimination based on race, ethnicity, nationality, socioeconomic situation, language, ideology or political opinion, religion or belief, association or participation in union organizations or lack thereof, gender, sexual orientation, gender identification, marriage status, age, affiliation, personal appearance, and sickness or physical disability. The law also increases criminal penalties for acts of violence based on discrimination, but such discrimination continued to occur.

### **Women**

Rape and Domestic Violence: The law criminalizes rape, including spousal rape. Penalties for rape range from five to 15 years' imprisonment, and the government generally enforced the law when violations were reported.

The law protects the privacy and safety of the victim making the charge. Between January and November, the Public Prosecutor's Office investigated 4,676 cases of rape, and the courts handed down 469 rape convictions and convicted 431 individuals between January and November. Experts, however, believed that most rape cases went unreported due to fear of further violence, retribution, and social stigma.

The law criminalizes both physical and psychological domestic violence. Nevertheless, it remained a serious problem in the country. From January to June, police filed 66,523 cases of domestic violence. From January to September, there were 32,638 convictions and 140 sentences. Family courts handle cases of domestic violence and penalize offenders with fines up to 556,680 pesos (\$1,145). Additional sanctions include eviction of the offender from the residence shared with the victim, restraining orders, confiscation of firearms, and court-ordered counseling. Cases of habitual psychological abuse and physical abuse cases in which there are physical injuries are prosecuted in the criminal justice system. Penalties are based on the gravity of injuries and range from 61 to 540 days' imprisonment.

Authorities generally enforced the law in cases reported to them, and there was no indication of police or judicial reluctance to act. Experts believed that most domestic violence cases went unreported due to fear of further violence, retribution, and social stigma. The *National Survey of Domestic Violence 2012* revealed that 32 percent of women suffered some kind of domestic violence from their family members, partners, or former partners during their lifetime. Of these aggressions, women reported only 36 percent to authorities, citing fear as the main reason for not reporting.

In its 2012 country report, the UN Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) expressed concern at the lack of measures taken by the government to address other forms of violence against women, including femicide outside the family sphere and sexual violence. CEDAW also expressed concern at the disproportionate use of violence by police, including sexual abuse against female students during social protests and against women during Mapuche protests, an absence of prosecution of perpetrators, and the government's failure to provide access to justice to women victims of such violence.

The government added social media to the domestic violence media campaign launched in 2010. The National Women's Service (SERNAM) operated 96 assistance centers or "Women's Centers" and 23 women's shelters, and it maintained partnerships with NGOs to provide training sessions for police officers and judicial and municipal authorities on the legal and psychological aspects of domestic violence. The Ministry of Justice and the PDI operated several offices specifically dedicated to providing counseling and assistance in rape cases. SERNAM also operated a 24-hour hotline for victims of violence, including domestic abuse and rape. In October SERNAM launched a new awareness

campaign, “Violence Against Women Angers Me,” to address this abuse. Data was not available to assess the effectiveness of government campaigns against domestic and sexual violence.

Sexual Harassment: Sexual harassment is not a criminal offense but is classified as a misdemeanor, with penalties outlined exclusively in the labor code. By law, sexual harassment is cause for immediate dismissal from employment. The law requires employers to define internal procedures for investigating sexual harassment, and employers may face fines and additional financial compensation to victims if internal procedures are not met. The law provides protection to victims of sexual harassment by employers and coworkers. It also provides severance pay to victims who resign due to sexual harassment if they have completed at least one year with the employer. Authorities generally enforced the law in cases reported to them, and there was no evidence of police or judicial reluctance to act. From January to August, the Labor Directorate received 111 complaints of sexual harassment reported by individuals and companies, and companies were sanctioned for procedural noncompliance.

Reproductive Rights: Couples and individuals had the right to decide freely and responsibly the number, spacing, and timing of their children and had the information and means to do so free from discrimination, coercion, and violence. Government policy did not interfere with access to contraception, skilled attendance during childbirth, prenatal care, or essential obstetric and postpartum care. Despite the fact that emergency contraception is legal and that the law provides for the free distribution of emergency contraception in the public health system, many hospitals and clinics continued to refuse to prescribe it.

Discrimination: Although women possess most of the same legal rights as men, discrimination in employment, pay, owning and managing businesses, and education persisted. There were no known reports of discrimination in credit or housing. The default and most common marital arrangement is “conjugal society,” which gives a husband the right to administer joint property, including his wife’s property. As a result, women who were married under the conjugal society arrangement were usually required to obtain permission from their husbands to apply for housing subsidies and take out loans or mortgages, while men had unrestricted access to these and other services. Legislation remained pending six years after a 2007 agreement with the IACHR to modify the “conjugal society law” to give women and men equal rights and responsibilities in marriage. The commercial code provides that, unless a woman is married under the separate estate regime, she may not enter into a commercial partnership agreement without

permission from her husband, while a man may enter into such an agreement without permission from his wife.

Despite a law providing for equal pay for equal work, the average woman's annual income was 49 percent that of men, according to the World Economic Forum's *2013 Global Gender Gap Report*. Fifty-two percent of women participated in the labor force during the year (compared with 79 percent of men), but 74 percent of women enrolled in tertiary education, compared with 67 percent of men.

SERNAM is in charge of protecting women's legal rights and is the only government office that deals specifically with discrimination against women. There are 96 "women's centers" throughout the country to help establish equal rights for women by offering services such as training, counseling, and legal advice.

## **Children**

Birth Registration: Citizenship is derived by birth within the country's territory and from one's parents or grandparents. Births are registered immediately.

Child Abuse: Violence against children remained a significant problem. From January to September, the Public Prosecutor's Office initiated investigations into 17,636 cases of child sexual abuse, some including domestic violence. The trial of Juan Romeo Gomez, a schoolteacher indicted in 2012 for 77 cases of sexual abuse of children, remained in progress in November.

The National Children's Service (SENAME) reported 9,220 cases of sex abuse of children under age 14. A 2012 law makes those convicted of child sexual abuse permanently ineligible for any position, job, career, or profession in educational settings requiring direct and habitual contact with children under age 18. This law also includes a public registry of these sex offenders. Educational and other establishments that work with children are obligated to consult the registry as part of the hiring process.

In July national and international media reported the case of an 11-year-old girl who was raped and impregnated by her mother's partner. At year's end the accused was in pretrial detention while a criminal case continued. SENAME also launched a protective case in family court on behalf of the girl, who was living with other family members.

On December 31, two former school employees were sentenced to 10 and 15 years in prison for rape and sexual abuse towards three students from 2012.

Forced and Early Marriage: The legal minimum age of marriage is 18 (16 with parental consent). According to the National Statistics Institute, 0.7 percent of females and 2.9 percent of males between the ages of 15 and 19 got married in 2011. There were no reported cases of marriage under the age of 15.

Sexual Exploitation of Children: The penalties for commercial sexual exploitation of children range from three to five years in prison. The range increases from five years and a day to 20 years and a fine of 31 to 35 UTM or 1.264 million pesos to 1.427 million pesos (\$2,400 to \$2,715) in cases where exploitation is habitual, or if there was deceit or abuse of authority or trust. (The monthly tax unit, or UTM, is a legally defined currency unit, indexed to inflation, equivalent to 40,772 pesos (\$78). The legal age for consensual sex is 18. Sex with a girl between ages 14 and 18 may be considered statutory rape, and sex with a child under age 14 is considered rape, regardless of consent or the victim's gender. Penalties for statutory rape range from five to 20 years in prison. Child pornography is a crime. Penalties for producing child pornography range from 541 days to five years in prison.

Commercial sexual exploitation of children and adolescents was a problem, and children were exploited in prostitution with and without third-party involvement. From January to September, the Public Prosecutor's Office initiated 186 investigations into commercial sexual exploitation of children, and the courts handed down 65 convictions. In 2012 SENAME, the Ministry of Justice, and civil society organizations launched a Second Plan of Action against the Commercial Sexual Exploitation of Children for 2012 to 2014.

Institutionalized Children: In June SENAME published a *Guide to Prevention of Sexual Abuse in Residences* and distributed copies to all residences.

International Child Abductions: The country is a party to the 1980 Hague Convention on the Civil Aspects of International Child Abduction. For more information see the Department of State's country-specific information at [www.travel.state.gov/abduction/country/country\\_3781.html](http://www.travel.state.gov/abduction/country/country_3781.html).

## **Anti-Semitism**

The Jewish community numbered approximately 20,500. There were reports of societal abuses or discrimination based on religious affiliation, belief, or practice. Anti-Semitic incidents included verbal slurs, online harassment, and vandalism. Authorities and Jewish community groups noted anti-Semitic comments, including via social media and e-mail correspondence.

On May 20, comedian Elias Escobedo on the national “Hazme Reir” television program made anti-Semitic jokes when referring to the Holocaust. The Jewish Community of Chile condemned the remarks, reported an increase in anti-Semitic e-mails received through its website, and noted anti-Semitic comments made to online articles published about the incident. In response the television station dismissed Escobedo, and the National Television Council fined the station.

### **Trafficking in Persons**

See the Department of State’s *Trafficking in Persons Report* at [www.state.gov/j/tip/](http://www.state.gov/j/tip/).

### **Persons with Disabilities**

The law prohibits discrimination against persons with physical, sensory, intellectual, and mental disabilities in employment, education, air travel and other transportation, access to health care, and the provision of other state services, and the government effectively enforced these provisions. Nevertheless, persons with disabilities suffered forms of de facto discrimination. The law provides for universal and equal access to buildings, information, and communications. Most public buildings did not comply with legal accessibility mandates. The public transportation system, particularly outside Santiago, did not adequately provide accessibility for persons with disabilities. In recent years, however, TranSantiago, the main system of public transportation within Santiago, instituted changes to improve compliance with the law, including new ramp systems and elevators at certain metro stations.

The National Service for the Disabled (SENADIS) reported that children with disabilities attended school (primary and secondary) but noted that there were difficulties in ensuring these children received equal access to schooling at private institutions. SENADIS also reported that those with disabilities had fewer opportunities to continue with their education following secondary school. Persons with disabilities often faced discrimination in hiring; they constituted approximately 7.6 percent of the population but only 0.5 percent of the workforce.

Although there is an active program, Sello Chile Inclusivo, to promote the integration of persons with disabilities into the workforce, its effectiveness was questioned due to reports of discrepancies in wages and benefits between those with and without disabilities in the same office and a lack of connections to small businesses.

SENADIS operates under the jurisdiction of the Ministry of Planning, has responsibility for protecting the rights of persons with disabilities, and advocates and promotes integration and protection policies throughout all government agencies. In preparation for the 2013 presidential and congressional elections, SENADIS published a guide outlining the rights when at the polls and voting for persons with disabilities. These rights include assistance gaining access to a ballot and in the polling booth, as needed. Persons with disabilities were provided assistance, as needed, at polling stations.

### **National/Racial/Ethnic Minorities**

On October 19, approximately 150 citizens of the northern city of Antofagasta protested against the presence of Colombians in their city, accusing the approximately 27,000 Colombians living legally in Antofagasta of taking jobs and bringing drugs into the city.

### **Indigenous People**

Indigenous people (approximately 5 percent of the total population) have the right to participate in decisions affecting their lands, cultures, and traditions, including the exploitation of energy, minerals, timber, or other natural resources on indigenous lands. Of the indigenous population, 80 percent belong to the Mapuche people. The 2013 INDH annual report noted again that, despite government policies designed to address the situation of social and political exclusion of indigenous peoples, systematic inequities persisted. Indigenous people also experienced societal discrimination, including in employment, and there were reports of incidents in which they were attacked and harassed. Indigenous women faced triple discrimination on the basis of their gender, indigenous background, and reduced economic status, and they were especially vulnerable to violence, poverty, and illness. The constitution does not specifically protect indigenous groups. The government's National Indigenous Development Corporation has an annual budget of 91.17 billion pesos (\$200 million) to fund programs for indigenous communities.

Instances of violence between Mapuche and landowners, logging companies, and police in the southern part of the country continued throughout the year. The actions usually took the form of protests, including the use of violence, regarding historic Mapuche concerns about their rights to ancestral lands. Mapuche activists and police forces stationed in the area to guard private lands sometimes engaged in violent skirmishes. On January 3, several individuals allegedly linked to Mapuche activist groups set fire to the home of the Luchsinger-Mackay family in Vilcun, resulting in the death of two people. One Mapuche individual, Celestino Cordova, was arrested and charged under the antiterrorism law with the crime of terrorist arson. After four postponements, trial preparations began on October 22. Cordova remained in pretrial detention at year's end.

There were numerous reports of police abuse against Mapuche individuals and communities, including against children. In April PDI officers carried out aggressive raids in the Mapuche community of Freire in search of illegal arms. A case was subsequently brought in court against the officers due to the aggressive tactics used in the presence of a number of indigenous youth. In July the Appeals Court of Temuco ruled that the officers "infringed the right of personal liberty and individual security" in carrying out the raids.

The Equitas Foundation noted that sentences by the military justice system against police convicted of crimes against Mapuche were noticeably more lenient than sentences for Mapuche individuals. There was very little publicly available information on cases tried in the military system. This lack of transparency led to questions regarding justice for victims of abuse by police and military personnel.

The NGO Citizens' Observatory reported police searches of Mapuche homes without a warrant, arrest and release of Mapuche individuals without a detention control hearing, and police use of intimidation and discriminatory statements against Mapuche individuals, including minors.

In his July visit, the UN special rapporteur on counterterrorism and human rights found examples of legal discrimination against the Mapuche. He recommended that authorities adopt a comprehensive national strategy to address the Mapuche question, refrain from applying antiterrorism legislation in connection with Mapuche indigenous peoples' land protests, and end de facto impunity for crimes committed by law enforcement officials against members of the Mapuche community over the past decade. In August the UN Committee on the Elimination of Racial Discrimination recommended that the country quicken the process of returning lands to indigenous peoples throughout the country; improve indigenous

consultation, particularly with respect to natural resource development; and clearly define crimes that fall under the antiterrorism law while ensuring the law is not used inappropriately against the Mapuche people. Both the 2013 UDP annual report on human rights and the 2013 INDH annual report also criticized the use of the antiterrorism law in the context of intercultural conflict.

On August 12, the Supreme Court reversed the August 2012 military court acquittal of special operations police corporal Miguel Patricio Jara for the use of unnecessary force resulting in the 2009 death of Mapuche protester Jaime Mendoza. A lower military court had convicted Jara in 2011. The Supreme Court sentenced Jara to three years but let him serve his sentence on parole.

The exploitation of energy, minerals, and timber occurred near indigenous communities, including mining projects in the northern regions where Aymara, Atacameño, and Diaguita peoples live, and timber exploitation in the south where the Mapuche live. Indigenous lands are effectively demarcated, but some indigenous Mapuche communities demanded restitution of privately and publicly owned traditional lands. Mining projects in the north generated judicial actions by indigenous communities due to concerns regarding potential contamination of the water supply and environment as well as project demands for water in desert environments. Timber plantations in the south also generated concerns regarding their effects on the water table due to the introduction of nonnative species. An INDH report released in May stated that negative externalities associated with the large-scale forestry industry affected 70 percent of Mapuche communities between Arauco to Chiloe in the southern area of the country.

On July 1, the courts rejected a Mapuche family's appeal objecting to a hydroelectric project in Futrono. Mapuche and NGO actors asserted that indigenous communities affected by the negative externalities associated with major development projects were not considered in the planning of such projects or in extending compensatory benefits. The 2013 INDH annual report and the 2013 UDP annual report on human rights emphasized the need to improve consultation mechanisms for indigenous peoples in the planning process of projects near indigenous communities.

### **Societal Abuses, Discrimination, and Acts of Violence Based on Sexual Orientation and Gender Identity**

MOVILH reported 148 cases of discrimination due to sexual orientation and gender identity during the year, compared with 186 reported cases in 2011.

MOVILH noted a worsening in the acts of violence against LGBT individuals between 2011 and 2012, including three killings, 20 acts of physical or verbal aggression, six incidents involving aggression and/or arbitrary police arrest, nine incidents of employment discrimination, 10 incidents of education discrimination, and 12 acts of violence or forced community segregation by family or friendship circles.

During the year there were a number of brutal attacks. On February 5, unknown assailants attacked Nicole Vicuna, a transgender female, while she was walking in Valparaiso; observers attributed the attack to Vicuna's sexual identity. Her attackers specifically targeted her face, and due to injuries, she lost sight in her right eye. According to the Organization for Transgender Dignity and Diversity, the Carabineros opened an investigation but did little to pursue the case.

Authorities also appeared reluctant to investigate and prosecute other cases, such as the June 23 attack on Esteban Navarro and the October 29 attack on Vladimir Supelveda, both of whom were assaulted due to their sexual orientation and suffered serious physical injuries.

On December 26, while walking down the street with friends in Santiago, Arturo Lomboi was verbally assaulted and fatally shot in an attack observers attributed to Lomboi's sexual orientation. Authorities issued a warrant for the arrest of the assailant, but by year's end, no arrest had been made.

On December 26, the Appellate Court upheld the convictions of four alleged neo-Nazis of first-degree murder in the 2012 torture and death of Daniel Zamudio because of his sexual orientation. The group leader, Patricio Ahumada, received life in prison; Alejandro Angulo and Raul Lopez both received 15 years; and the fourth member, Fabian Mora, received eight years since he first confessed to the attack. Laws prevent transgender persons from changing gender markers on government-issued identity documents, including national identity cards and university diplomas, to match their outward appearance or chosen expression. On May 22, Valentina Verbal, the country's first transgender congressional candidate, abandoned her campaign for the Chamber of Deputies after the Electoral Commission mandated that she use her birth gender and name on the official ballot instead of her gender-identified name of Valentina. Verbal filed a complaint with the IACHR, which was pending in November.

### **Other Societal Violence or Discrimination**

Social and cultural barriers in terms of reproductive rights existed in some cases. The law on surgical sterilizations requires voluntary informed consent; however, in its 2012 report, CEDAW recognized continued cases of health-care workers pressuring or forcing HIV-positive women into surgical sterilization and urged the government to ensure that medical personnel seek fully informed consent before performing sterilizations and that those who perform unauthorized sterilization are sanctioned under the law.

Women faced significant obstacles to preventing HIV infection, including social and cultural norms; gender-based violence; and limited public-health awareness, outreach, and education. The law prohibits discrimination against persons on the basis of their HIV status, and in the area of health care, the law provides that neither public nor private health institutions can deny access to health-care services on the basis of a person's serological status. In 2012, however, CEDAW reported that HIV-positive women received discriminatory health-care treatment, especially in reproductive health services. Problems included delayed care, verbal abuse, pressure not to have children, and refusal of treatment. In 2012 the Ministry of Health launched a national campaign to encourage citizens to be tested for HIV.

## **Section 7. Worker Rights**

### **a. Freedom of Association and the Right to Collective Bargaining**

The law, including related regulations and statutory instruments, provides for the right of workers to form and join independent unions of their choice without previous authorization, with the exception of police and military personnel. Union leaders are restricted from being members of political parties, and the Directorate of Labor has broad powers to monitor unions' financial accounts and financial transactions.

With some limitations, the law also provides for the right to strike, protects the right of collective bargaining, and prohibits antiunion practices. The law prohibits public employees from striking. While employees in the private sector have the right to strike, the law places some restrictions on this right. For instance an absolute majority of workers must approve strikes. Strikes by agricultural workers during the harvest season are prohibited. The law also prohibits employees of 101 private-sector companies, largely providers of services such as water and electricity, from striking and stipulates compulsory arbitration to resolve disputes in these companies. The law does not specifically prohibit employers from

dismissing striking workers, but employers must show cause and pay severance benefits if they dismiss strikers.

The law protects collective bargaining, with exceptions for some companies regulated in the labor code, such as public institutions, private and public institutions whose budget is dependent upon the Defense Ministry, companies that are unable to negotiate at certain times of the year, and companies in which employees are unable to strike, such as health care and public utilities. The law guarantees collective bargaining rights only at the company level. Collective bargaining in the agricultural sector remained dependent on employers' agreeing to negotiate, since most of these workers were temporary and not automatically eligible for collective bargaining. Intercompany unions are permitted to bargain collectively only when the individual employers all agree to negotiate under such terms.

The government generally enforced labor laws effectively. Nevertheless, the Labor Directorate under the Ministry of Labor commented on the need for more inspectors and noted that financial penalties did not always deter companies from repeating offenses. Companies are generally subject to sanctions for violations to the labor code of one to 10 UTM (\$78 to \$780) for micro and small businesses, two to 40 UTM (\$144 to \$2,880) for medium businesses and three to 60 UTM (\$216 to \$4,230) for large businesses according to the severity of each case. Companies may receive "special sanctions" for infractions such as causing irreversible injuries to an employee, antiunion practices or denying maternity leave. NGOs reported that cases in labor tribunals system took approximately three months. Cases regarding fundamental rights of the worker often took closer to six months. NGOs continued to report that it was difficult for judges to enforce decisions in favor of workers for various reasons, including when the company's assets were in a different name or juridical entity that could not be located.

Freedom of association was generally respected. Employers sometimes did not respect the right to collective bargaining. Between January and August, the Labor Directorate received 1,284 complaints of violations to collective-bargaining regulations. The government protected the right to strike. Despite being prohibited by law, public-sector and health-care worker strikes occurred throughout the year. Worker organizations operated independent of the government and political parties. According to Freedom House and the International Trade Union Confederation, antiunion practices, such as replacing workers on strike and illegal separation of union members, continued to occur. Both NGOs and unions reported companies also used sub- and temporary contracts

as well as obtaining several fiscal registration/tax identification numbers as a form of antiunion discrimination and to increase the size of the workforce without granting collective bargaining rights.

### **b. Prohibition of Forced or Compulsory Labor**

The law prohibits all forms of forced or compulsory labor. In general the government effectively enforced applicable laws. Penalties of five to 15 years for violations were sufficiently stringent to deter violations. In June the Labor Directorate together with the Public Prosecutor's Office and the Ministry of Interior held training for inspectors on identifying labor trafficking. Despite increases in the number of inspectors and improved training, finding and identifying both perpetrators and victims of forced labor continued to be a challenge.

Forced labor continued to occur. Foreign citizens, including men, women, and children, were subjected to forced labor in the mining, agriculture, domestic service, and hospitality sectors. Some children were forcibly employed in the drug trade (see 7. c.).

Also see the Department of State's *Trafficking in Persons Report* at [www.state.gov/j/tip/](http://www.state.gov/j/tip/).

### **c. Prohibition of Child Labor and Minimum Age for Employment**

The law sets the minimum age for employment at 18, although it provides that children between ages 15 and 18 may work with the express permission of their parents or guardians as long as they attend school. They may perform only light work that does not require hard physical labor or constitute a threat to health or the child's development. When attending school, children may not work more than 30 hours a week and in no case more than eight hours a day or between the hours of 10 p.m. and 7 a.m. Employers must register their work contracts at the local Ministry of Labor inspector's office.

Ministry of Labor inspectors effectively enforced regulations in the formal economy but did not inspect or enforce such regulations in the informal economy. From January to August, the Ministry of Labor imposed some form of sanction in 808 cases involving violations of child labor laws. Sectors in which higher numbers of violations occurred included construction, industrial manufacturing, hotels and restaurants, and agriculture. Infractions included contracting a minor

under 18 without the authorization of the minor's legal representative, failure to register a minor's contract with the Ministry of Labor, and contracting a minor under 15 for activities not permitted by law.

Penalties, which were fines levied against the companies, came to a total of 962.4 million pesos (\$1.83 million). Penalties and inspections were not generally seen as sufficient to deter grave violations that mostly occurred clandestinely or in the informal economy.

The government devoted considerable resources and oversight to child labor policies. With accredited NGOs, SENAME ran programs throughout the country to protect children in vulnerable situations. SENAME, in coordination with labor inspectors, identified and assisted children in abusive or dangerous situations. SENAME continued to work with international institutions, such as the International Labor Organization, and other ministries to conduct training on identifying and preventing the worst forms of child labor. SENAME also implemented public education programs to raise awareness and worked with the International Labor Organization to operate rehabilitation programs for children withdrawn from child labor.

Multi-sector government agencies continued to participate in the National Advisory Committee to Eradicate Child Labor. The committee met regularly throughout the year and brought together civil society organizations and government agencies in a coordinated effort to raise awareness, provide services to victims, and protect victims' rights. The Worst Forms of Child Labor Task Force, a separate entity, maintained a registry of cases and developed a multi-sector protocol for the identification, registration, and care of children and adolescents who are victims of commercial sexual exploitation. During the year SENAME worked with the National Tourism Service (SERNATUR) to include strict norms for preventing the commercial sexual exploitation of children in hotel certification. This included special training for SERNATUR staff charged with assessing and certifying hotels. In June SERNAM joined with the Chilean Safety Association, which administers workers' compensation, to create a campaign on preventing child labor and promoting the safe legal employment of young people.

Child labor continued to be a problem in the informal economy and agriculture, with the Labor Directorate reporting 219,000 minors in child labor situations, most of whom were between the ages of 15 and 17 and in rural areas. From September 2011 until August 2012, the National Registry of the Worst Forms of Child Labor registered 718 cases of children working in dangerous or intolerable conditions.

Commercial sexual exploitation of children continued to be a problem (see section 6, Children). Children worked in the production of ceramics and books and in the repair of shoes and garments. In urban areas it was common to find boys carrying loads in agricultural loading docks and assisting in construction activities, while girls sold goods on the streets and worked as domestic servants. Children in rural areas were involved in caring for farm animals as well as harvesting, collecting, and selling crops, such as wheat. The use of children in the production, sale, and transport of drugs in the border area with Peru and Bolivia continued to be a problem.

Also see the Department of Labor's *Findings on the Worst Forms of Child Labor* at [www.dol.gov/ilab/programs/ocft/tda.htm](http://www.dol.gov/ilab/programs/ocft/tda.htm).

#### **d. Acceptable Conditions of Work**

The national minimum wage was 210,000 pesos (\$399) a month for all occupations, including domestic servants. The minimum wage for workers over age 65 and under 18 was 156,770 pesos (\$298). The 2011 official poverty level, the latest government figure available, was 72,098 pesos (\$137) per month.

The law sets the legal workweek at six days or 45 hours. The maximum workday is 10 hours (including two hours of overtime pay), but some categories of workers, such as managers; administrators; employees of fishing boats; restaurant, club, and hotel workers; drivers; domestic workers; airplane crews; telecommuters or employees who work outside of the office; and professional sportspersons are exempt from hours of work restrictions. The law mandates at least one 24-hour rest period during the workweek, except for workers at high altitudes, who may exchange a work-free day each week for several consecutive work-free days every two weeks. The law establishes fines for employers who compel workers to work in excess of 10 hours a day or do not provide adequate rest days. Annual leave for full-time workers is 15 workdays, and workers with more than 10 years of service are eligible for an additional day of annual leave for every three years worked. Overtime is considered to be any time worked beyond the 45-hour workweek, and workers are due time and a half pay for any overtime performed. The law sets fines for noncompliance with labor regulations.

The law establishes occupational safety and health standards, which are applicable to all sectors. Special safety and health norms exist for specific sectors, such as mining and diving. The National Service for Geology and Mines is further

mandated to regulate and inspect the mining industry. The law does not regulate the informal sector.

The Labor Directorate under the Ministry of Labor is responsible for enforcing minimum wage and other labor laws and regulations, and it did so effectively in the formal economy. The Ministries of Health and Labor administered and effectively enforced occupational safety and health standards. Workers in the informal economy were not effectively protected in regards to wage or safety. Insurance mutual funds are private nonprofit institutions that receive a commission from the government to provide workers' compensation and occupational safety training for the private and public sectors.

The Labor Directorate employed 1,229 labor inspectors during the year. Both the Labor Directorate and NGOs reported the need for more inspectors to enforce labor laws throughout the country, particularly in remote areas. NGOs commented that inspectors and labor tribunal judges needed more training and that a lack of information and economic means generated an inequality between parties in cases before the tribunals. Fines were not considered to have a deterrent effect with larger employers. The Labor Directorate worked preventively with small and medium-sized businesses to assist in their compliance with labor laws.

Minimum wage violations were most common in the real estate and commerce sectors. A Ministry of Economy report published in April based upon 2011 statistics indicated that between 15 and 17 percent of the formal workforce received the minimum wage.

As of September the sectors with the most infractions in safety and health standards were construction, industrial manufacturing, and commerce. Between July 2012 and June 2013, 301 workplace fatalities and 199,325 workplace accidents were registered. The service sector suffered the most accidents during the year. Immigrant workers in the agricultural sector were the group most likely to be subject to exploitative working conditions.