

# CHILE 2018 HUMAN RIGHTS REPORT

## EXECUTIVE SUMMARY

Chile is a constitutional multiparty democracy. In November 2017 the country held presidential elections and concurrent legislative elections, which observers considered free and fair. Former president (2010-14) and center-right candidate Sebastian Pinera won the presidential election and took office in March.

Civilian authorities maintained effective control over the security forces.

Human rights issues included reports of torture by law enforcement officers; abuse of minors under the state's care; violence against lesbian, gay, bisexual, transgender, and intersex (LGBTI) persons; and violence, including police abuse, against indigenous populations.

The government took steps to investigate and prosecute officials who committed abuses.

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

#### **a. Arbitrary Deprivation of Life and Other Unlawful or Politically Motivated Killings**

There were no reports that the government or its agents committed arbitrary or unlawful killings.

#### **b. Disappearance**

There were no reports of disappearances by or on behalf of government authorities.

In March 2017 the 1985 disappearance case of U.S. citizen Boris Weisfeiler was placed on schedule for an appeals court hearing. There were no developments in the case during the year.

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

Although the constitution and law prohibit such practices, there were reports of excessive force, abuse, and degrading treatment by law enforcement officers.

During the year the National Institute of Human Rights (INDH) filed seven criminal accusations that members of law enforcement had committed acts of torture during detention of student protesters, or for criminal arrests, or at prisons. On May 28, Carabineros special forces allegedly beat and strangled a Swiss Confederation High School student to the point of unconsciousness while removing student protesters from the school. On June 1, the INDH filed a criminal accusation for the case; the investigation was pending at year's end.

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

Independent auditors determined that conditions in some prisons were considered below generally accepted standards, as promulgated by the Organization of American States, due to antiquated and overpopulated prisons that typically had substandard sanitary infrastructure and an inadequate water supply. Human rights organizations reported violence, including torture, occurred, as did violence among inmates.

Physical Conditions: The prison population was unevenly distributed across the prison system, with approximately 50 percent of prisons operating beyond maximum capacity, while others were underpopulated. Overpopulation and antiquated, inadequate facilities led to comingling of pre- and post-trial prisoners as a common practice. An independent magistrate's report stated prisoners were often confined to their cells for the majority of the day, a practice that did not allow sufficient time for participation in rehabilitation and readjustment programs.

Administration: Independent government authorities, including the INDH, generally investigated credible allegations of mistreatment. 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 abuse or use of excessive force against detainees, and media covered some of the allegations.

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

The constitution prohibits arbitrary arrest and detention and provides for the right of any person to challenge the lawfulness of his or her arrest or detention in court, and the government generally observed those requirements.

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

The Carabineros and the Investigative Police (PDI) have legal responsibility for law enforcement and maintenance of order, including migration and border enforcement, within the country. The Ministry of the Interior and Public Security oversees both forces. The INDH monitors complaints and allegations of abuse.

Civilian authorities generally maintained effective control over the Carabineros and the PDI, and the government has mechanisms to investigate and punish abuse. There were no reports of impunity involving the security forces during the year.

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

Only public officials expressly authorized by law may arrest or detain citizens, and they 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 for detainees who do not hire their own lawyer. Authorities must expedite notification of the detention to family members. If authorities do not inform detainees of their rights upon detention, the judge can declare the process unlawful during the detention control hearing.

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.

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

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

### **Trial Procedures**

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

Defendants enjoy a presumption of innocence and have a right of appeal. They have the right to be informed promptly of charges, to have time to prepare their defense, and not to be compelled to testify or admit guilt. Three-judge panels form the court of first instance. The process is oral and adversarial, 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 have the right to free assistance of an interpreter. 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 nongovernmental organization (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 may confront or question adverse witnesses and present witnesses and evidence on their behalf, although the law provides for secret witnesses in certain circumstances.

For crimes committed prior to the implementation of the 2005 judicial reforms, criminal proceedings are inquisitorial rather than adversarial. As of December 1, 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.

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

In civil matters there is an independent and impartial judiciary, which permits individuals to seek civil remedies for human rights violations; however, the civil justice system retained antiquated and inefficient procedures, which resulted in civil trials lasting years if not 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 may order civil remedies including fair compensation to the individual injured.

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

The constitution prohibits such actions, and there were no reports that the government failed to respect these prohibitions.

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

#### **a. Freedom of Expression, Including for the Press**

The constitution provides for freedom of expression, including for the press, and the government generally respected this right. An independent press, an effective judiciary, and a functioning democratic political system combined to promote freedom of expression, including for the press.

#### **Internet Freedom**

The government did not restrict or disrupt access to the internet or censor online content, and there were no credible reports that the government monitored private online communications without appropriate legal authority. According to the International Telecommunication Union, approximately 82 percent of the population had access to the internet in 2017.

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

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

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

The law provides for the freedoms of peaceful assembly and association, and the government generally respected those rights.

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

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

#### **d. Freedom of Movement**

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, or 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, including access to education and health care.

Durable Solutions: In April the government announced a Democratic Responsibility Visa for Venezuelans fleeing the humanitarian crisis in Venezuela. Under the government's immigration reform, the Democratic Responsibility Visa is the primary means for Venezuelans to work or establish legal residency in Chile. On November 7, the government facilitated the voluntary repatriation of 160 Haitians to Port-au-Prince under its Humanitarian Plan for Orderly Returns program. Haitians wishing to participate must sign a declaration that they will not return to Chile within the next nine years.

### **Section 3. Freedom to Participate in the Political Process**

The law provides citizens the ability to choose their government through free and fair periodic elections held by secret ballot and based on universal and equal suffrage.

#### **Elections and Political Participation**

Recent Elections: The country held concurrent presidential and legislative elections in November 2017, both of which observers considered free and fair. The center-right candidate, Sebastian Pinera, won the December 2017 runoff election against the center-left independent candidate Senator Alejandro Guillier.

Participation of Women and Minorities: No laws limit participation of women or members of minorities in the political process, and they did participate.

The Mapuche minority, which represents approximately 9 percent of the population, have historically been underrepresented in government. In November 2017 two candidates from the Mapuche indigenous group were elected to congress--one to the current 43-seat Senate and one to the 155-seat Chamber of Deputies (see section 6, Ethnic Minorities).

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

The law provides criminal penalties for corruption by officials, and the government generally implemented those laws effectively. There were isolated reports of government corruption during the year.

Corruption: On March 1, the Public Ministry summoned for questioning the former general director of the Carabineros, Eduardo Gordon, for misappropriation of funds in excess of 25 billion pesos (\$37 million). Gordon was also under investigation for the use of more than 14 billion pesos (\$21 million) in representation expenses by the Public Relations Department of the Carabineros while serving as general director between 2010 and 2011. As of November the Public Ministry's investigation remained open.

Financial Disclosure: Law and regulation require income and asset disclosure by appointed and elected officials. Declarations are made available to the public, and there are administrative sanctions for noncompliance.

#### **Section 5. Governmental Attitude Regarding International and Nongovernmental Investigation of Alleged Abuses 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 often were cooperative and responsive to their views.

Government Human Rights Bodies: The INDH operated independently and effectively, issued public statements and an annual report, and proposed changes to government agencies or policies to promote and protect human rights. During the year the INDH examined the inner workings of 101 of 119 National Service for

Minors (SENAME) centers around the country, focusing on mental-health services available, violence in the centers, and alleged sexual abuse of vulnerable minors.

The Senate and Chamber of Deputies have standing human rights committees responsible for drafting human rights legislation.

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

### **Women**

Rape and Domestic Violence: The law criminalizes rape of men or women, 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 criminalizes both physical and psychological domestic violence and protects the privacy and safety of the victim making the charge of rape or domestic violence.

Family courts handle cases of domestic violence and penalize offenders with fines up to 720,000 pesos (\$1,065). Additional sanctions include eviction of the offender from the residence shared with the survivor, 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 days' to 15 years' imprisonment. Murder in the context of domestic violence is defined as femicide in the criminal code, and penalties range from 15 years to life in prison. The government generally enforced the laws against domestic violence effectively.

As part of its 2014-18 national action plan against violence against women, the Ministry of Women and Gender Equality ran a victims' assistance and protection program that operated psychological, legal, and social assistance centers and shelters throughout the country and maintained an emergency hotline.

Sexual Harassment: Sexual harassment is not a criminal offense, but it is classified as a misdemeanor, with penalties outlined exclusively in the labor code. By law sexual harassment in the workplace is cause for immediate dismissal from employment. The law requires employers to define internal procedures, or a company policy, for investigating sexual harassment, and employers may face

finances and additional financial compensation to victims if it is shown the company policy on sexual harassment was not followed. The law provides protection to those affected by sexual harassment by employers and coworkers. The law provides severance pay to individuals who resign due to sexual harassment if they have completed at least one year with the employer.

At the local government level, the Municipality of Las Condes passed a municipal resolution allowing the placement of warning signs in 63 strategic locations, including bus stops and construction sites, aimed at reducing verbal harassment of women in public places. The municipal resolution also prescribes fines for this type of harassment, reaching up to 233,000 pesos (\$345).

Coercion in Population Control: There were no reports of coerced abortion or involuntary sterilization.

Discrimination: Although women possess most of the same legal rights as men, the government did not enforce the law effectively, since discrimination in employment, pay, ownership and management of businesses, and education persisted. Certain laws defining the marital relationship enable discrimination. The default and most common marital arrangement is “conjugal society,” which provides that a husband has the right to administer joint property, including his wife’s property, without consultation or written permission from his spouse, but a wife must demonstrate that her husband has granted his permission before she is permitted to make financial arrangements. Legislation remained pending 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 or a joint-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 32 percent less than that of men, according to the Ministry of Women and Gender Equality. The ministry is in charge of protecting women’s legal rights and is specifically tasked with combatting discrimination against women.

## **Children**

Birth Registration: Citizenship is derived by birth within the country's territory and from one's parents or grandparents. There were no reports that birth registration was denied on a discriminatory basis.

Child Abuse: There are laws against child abuse, but it remained a persistent problem. The law renders persons 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. The law also includes a public registry of these sex offenders.

In June President Pinera convened a bipartisan National Agreement on Childhood Parliamentarians, ministers, and experts from civil society developed measures to promote child development, safeguard children's rights, and ensure the physical protection and rehabilitation of child abuse victims. The measures also include mechanisms to put an end to the abuses that occurred in some SENAME centers and foster-care facilities.

Early and Forced Marriage: The legal minimum age of marriage is 18 (16 with parental consent).

Sexual Exploitation of Children: Commercial sexual exploitation of children and adolescents was a problem, and children were victims of sex trafficking with and without third-party involvement. The law prohibits all forms of human trafficking, prescribing penalties ranging from five years and one day to 15 years in prison, plus fines, for trafficking offenses. Nevertheless, internal child sex trafficking cases were often prosecuted under a different law, Article 367 of the penal code, which provides lesser penalties. Due to sentencing guidelines for first-time offenders or those sentenced to less than five years' confinement, many convicted traffickers were given weak and inadequate sentences for the crime, which hampered efforts to deter and hold traffickers accountable.

Heterosexual sexual relations with minors between the ages of 14 and 18 may be considered statutory rape depending on the circumstances; 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.

Institutionalized Children: In June 2017 the second special congressional committee in five years investigated allegations of abuse at SENAME centers and

issued a report that claimed widespread lack of oversight of its child protective programs at centers for orphans and children who had been removed from the care of their parents by the family courts. The report also found the service had long waiting lists for its programs, lack of training for its personnel, and “an [organizational] culture lacking in the protection of [children’s] rights.”

In July 2017 the INDH released the results of a yearlong study of 171 SENAME child-service centers. Among the 405 children interviewed, 195 reported negligent treatment by child-services workers; physical, mental, or psychological abuse; and sexual abuse or exploitation.

In July the UN Committee on the Rights of the Child released the final report containing the analysis by two experts following a January visit to SENAME centers. The visit was scheduled in response to a congressional inquiry filed before the Committee on the Rights of the Child following the 2016 death of Lisette Villa in a SENAME center.

According to local media, the report points out “serious negligence on the part of personnel responsible for the care of minors” as well as cases of “sexual abuse, torture, and cruel and inhuman treatment” in SENAME centers.

The new administration has implemented procedural changes to the SENAME, including the creation of an early warning system, working groups across a range of ministries with the Judiciary, and stricter requirements for foster families that would like to house children. As of July the government began the closure and replacement of the SENAME centers where deaths and abuse were reported, closing a center at Playa Ancha in late July and scheduling the closures of the Pudahuel and Galvarino centers.

International Child Abductions: The country is a party to the 1980 Hague Convention on the Civil Aspects of International Child Abduction. See the Department of State’s *Annual Report on International Parental Child Abduction* at <https://travel.state.gov/content/travel/en/International-Parental-Child-Abduction/for-providers/legal-reports-and-data.html>.

## **Anti-Semitism**

The Jewish community numbers approximately 18,000 persons. Jewish community leaders reported concern over the tone of social media postings they perceived as threatening. The commentary leaders found offensive primarily

referenced frustration with Israeli government policies and did not specifically mention either Jewish individuals or Chilean Jews.

Several Jewish organizations expressed concern when in June the mayor of Valdivia announced the town would join the Boycott, Divestment, and Sanctions Movement. The measure prohibits the city from working with any business that benefits or is linked to Israel's "occupation of Palestine" or "Israel's apartheid policy that targets Palestinians." The vote to adopt the boycott at the city level was taken unanimously by the local government after the initiative was personally introduced by the city's mayor; central government authorities were exploring the constitutionality of the move.

### **Trafficking in Persons**

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

### **Persons with Disabilities**

The law prohibits discrimination against persons with physical, sensory, intellectual, and mental disabilities, and the government mostly enforced these provisions. 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 as well as improved access to some buses. Nevertheless, many metro stations and most buses remained inaccessible to persons with physical disabilities.

The Ministry of Social Development's National Service for the Disabled (SENADIS) reported that children with disabilities attended primary and secondary school but noted difficulties in ensuring equal access to schooling at private institutions. SENADIS also reported that persons with disabilities had fewer opportunities to continue their education beyond secondary school.

The government, along with SENADIS, worked to expand access to legal justice for persons with disabilities.

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

Equal treatment and nondiscrimination are explicitly protected in the constitution, and the labor code specifically prohibits discrimination. In its annual report, the INDH published survey results regarding racial discrimination, where 76 percent of those surveyed reported having witnessed discriminatory actions against immigrants, most of whom were from other Latin American countries or from the Caribbean, including Afro-descendants. There were reports of discrimination against racial minorities and immigrants in the public-health and education systems. The government implemented training programs for public officials on assisting immigrants and incorporated interpreters into offices, and provided information in languages other than Spanish, specifically Haitian Creole. The government implemented a plan for assistance to migrants in public services, *Chile Receives You*, with a special focus on improving access to public immigration services outside of the Santiago metropolitan region through increased infrastructure and staffing and training for public servants.

## **Indigenous People**

Although the constitution does not specifically protect indigenous groups, indigenous people 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. In its annual report on human rights, the University of Diego Portales reported indigenous people encountered serious obstacles to exercising these civil and political rights, including regarding natural resource use in their territories and the right to nondiscrimination and equal access to justice. Indigenous persons experienced societal discrimination, including in employment; there were reports of incidents in which they were attacked and harassed. In its annual report, the INDH published racial discrimination survey results, where between 65 and 83 percent of citizens reported agreeing with a series of discriminatory statements regarding indigenous groups.

There were numerous reports of police abuse against Mapuche individuals and communities, including against children. The INDH brought petitions to protect the constitutional rights of Mapuche individuals, including children and adolescents, in cases of excessive use of force by security forces. Amnesty International's annual report reiterated there were continuing reports of excessive use of force and arbitrary detention during police operations in Mapuche communities. In November 2017 the Supreme Court reopened the case of Alex

Lemun, who was killed by a police officer in Ercilla in 2002. The case had been tried in the military justice system and closed without prosecution. As of November there were no further updates on the case.

Indigenous lands are demarcated, but some indigenous Mapuche communities demanded restitution of privately and publicly owned traditional lands.

The law recognizes nine indigenous groups in the country and creates an administrative structure to provide specialized programs and services to promote economic, social, and cultural development of these peoples.

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

The law sets the age of consent at 18 for consensual same-sex sexual activity; heterosexual activity is permitted, under some circumstances, at age 14. Antidiscrimination laws exist and prohibit discrimination based on sexual orientation or gender identity in housing, employment, and access to government services. In March the Movement for Homosexual Integration and Liberation (MOVILH), a leading gay rights NGO, reported it tracked 484 cases of discrimination due to sexual orientation or gender identity during 2017, a 69 percent increase over 2016, including an increase of 245 percent in hate speech incidents. The most common discriminatory acts reported to MOVILH were verbal abuse and discrimination in the workplace, such as difficulty obtaining promotions.

Violence against lesbian, gay, bisexual, transgender, and intersex (LGBTI) individuals continued. On June 23, the night of Santiago's Pride Parade, MOVILH reported that its founder, LGBTI activist Rolando Jimenez, was subjected to verbal and physical abuse and arbitrary arrest and detention for defending a same-sex couple being subjected to verbal discrimination, harassment, and physical abuse by Carabineros at a restaurant. One of the victims filmed the incident with a cell phone, but police confiscated the phone and did not return it. The couple and Jimenez were held for eight hours in Santiago Police Precinct Number One before being informed of the accusations against them and read their rights. The couple was released, while Jimenez was formally charged with attacking a police officer and making death threats, as well as with theft of the officer's watch. MOVILH alleged the police accusations were false and that Jimenez was attacked because he had been a constant critic of alleged homophobic actions by Police Precinct

Number One. On August 7, the INDH sued the police for arbitrary detention and cruel, inhuman, and degrading treatment. The case was pending at year's end.

Law enforcement authorities appeared reluctant to use the full recourse of a 2012 antidiscrimination law, including charging assailants of LGBTI victims with a hate crime, which would elevate criminal penalties as permitted under the law.

In September, Congress passed the Gender Identity Law, which grants transgender Chileans starting at age 14 the ability to change gender markers on government-issued identity documents, including national identity cards and university diplomas, to reflect their gender identity.

### **HIV and AIDS Social Stigma**

The law prohibits discrimination against persons based on their HIV status and provides that neither public nor private health institutions may deny access to health-care services based on a person's serological status.

The majority of citizens with HIV and AIDS were men, and NGOs reported government-sponsored outreach campaigns were oriented to a male audience, particularly men who have sex with men.

## **Section 7. Worker Rights**

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

Revised labor standards came into effect in April 2017. The legislation was designed to modernize labor relations, strengthen unions, and facilitate labor agreements. The law provides for the rights of workers, with some limitations, to form and join independent unions of their choice, bargain collectively, and conduct strikes. The law also prohibits antiunion practices and requires either back pay or reinstatement for workers fired for union activity.

Police, military personnel, and civil servants working for the judiciary are prohibited from joining unions. Union leaders are restricted from being candidates or members of congress. The Directorate of Labor has broad powers to monitor unions' financial accounts and financial transactions. The law prohibits public employees from striking, although they nevertheless frequently did. While employees in the private sector have the right to strike, the law places some restrictions on this right. For example, an absolute majority of workers must

approve strikes. The law also prohibits employees of 101 private-sector companies, largely providers of services such as water and electricity, from striking, and it stipulates compulsory arbitration to resolve disputes in these companies. In addition workers employed by companies or corporations whose stoppage would cause serious damage to the health, economy, or security of the country do not have the right to strike. In a change from the previous labor code, employers may not dismiss or replace employees involved in a strike. Unions must provide emergency personnel to fulfill the company's "minimum services." Those include the protection of tangible assets and of the company's facilities, accident prevention, service of the population's basic needs, ensuring the supply of essential public services, and ensuring the prevention of environmental and sanitary damages.

The labor reform extended unions' rights to information, requiring large companies to disclose annual reports including balance sheets, statements of earnings, and audited financial statements. Large companies must provide any public information required by the Superintendence of Securities and Insurances within 30 days following the date when the information becomes available. Smaller companies must provide information necessary for the purposes of preparing the collective bargaining process.

While the law prior to the labor reform provided for collective bargaining rights only at the company level, the reform extends such rights to intercompany unions, provided they represent workers at employers having 50 or more employees and falling within the same economic rubric or activity. Intercompany unions for workers at micro or small businesses (i.e., with fewer than 50 workers) are permitted to bargain collectively only when the individual employers all agree to negotiate under such terms. The law does not provide for collective bargaining rights for workers in public institutions or in a private institution that receives more than 50 percent of its funding from the state in either of the preceding two years or whose budget is dependent upon the Defense Ministry. It also does not provide for collective bargaining in companies whose employees are prohibited from striking, such as in health care, law enforcement, and public utilities. Whereas the previous labor code excluded collective bargaining rights for temporary workers or those employed solely for specific tasks, such as in agriculture, construction, ports, or the arts and entertainment sector, the recently revised labor standards eliminate these exclusions, extending bargaining rights to apprentices and short-term employees. Executives, such as managers and assistant managers, are prohibited from collective bargaining.

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 financial penalties did not always deter companies from repeating offenses. Companies are generally subject to sanctions for violations to the labor code, according to the severity of each case. Companies may receive “special sanctions” for infractions, which include antiunion practices. NGOs reported cases in labor tribunals took on average three months to resolve. Cases involving fundamental rights of the worker often took closer to six months. NGOs continued to report it was difficult for courts to sanction companies and order remedies in favor of workers for various reasons, including if a company’s assets were in a different name or the juridical entity could not be located.

Freedom of association was generally respected. Employers sometimes did not respect the right to collective bargaining. Despite being prohibited by law, public-sector strikes occurred throughout the year. According to Freedom House, IndustriALL Global Union, and the International Trade Union Confederation, antiunion practices, including a threat of violence, continued to occur. NGOs and unions reported companies sought to inhibit the formation of unions and avoid triggering collective bargaining rights, especially among seasonal agricultural workers, by using subcontracts and temporary contracts as well as obtaining several fiscal registration or tax identification numbers when increasing the size of the workforce.

The revised labor code provides that the labor court can require workers to resume work upon a determination that a strike, by its nature, timing, or duration, causes serious risk to health, national security, and the supply of goods or services to the population, or to the national economy. Generally, a back-to-work order should apply only where a prolonged strike in a vital sector of the economy might cause a situation endangering the public’s safety or health, and where applied to a specific category of workers.

## **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’ imprisonment for violations were sufficiently stringent to deter violations. NGOs reported many government officials responsible for identifying and assisting victims had limited resources and expertise to identify victims of labor trafficking. In addition, judges often suspended or commuted sentences. The government worked to prevent and combat forced labor through its antitrafficking interagency

taskforce of government agencies, which included international organizations and local NGOs. The task force developed and adopted a 2015-18 national action plan.

Labor trafficking continued to occur. Some foreign citizens were subjected to forced labor in the mining, agriculture, domestic service, and hospitality sectors. Some children were forcibly employed in the drug trade (see section 7.c.).

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

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

The country conforms to international standards, which dictate the minimum age for employment or work should be no less than 15 years. The law sets the minimum age for employment at 18, although it provides that children between 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.

Ministry of Labor inspectors effectively enforced regulations in the formal economy but did not inspect or enforce such regulations in the informal economy. 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, and contracting a minor under age 15 for activities not permitted by law. 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 operated programs 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 with 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.

Multisector 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 multisector protocol for the identification, registration, and care of children and adolescents who are victims of commercial sexual exploitation. The government also created a technical secretariat to design and implement the Third Action Plan against the Commercial Sexual Exploitation of Children and Adolescents for the 2017-19 period. The government also published a guide to coordinate interagency efforts to address trafficking in persons. In 2015 SENAME worked with the National Tourism Service (SERNATUR) to include strict norms in hotel certification procedures for preventing the commercial sexual exploitation of children. This included special training for SERNATUR staff charged with assessing and certifying hotels.

Child labor continued to be a problem in the informal economy and agriculture, primarily in rural areas. Higher numbers of violations occurred in the construction, industrial manufacturing, hotels and restaurants, and agriculture sectors.

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 worked in the production of ceramics and books and in the repair of shoes and garments. In rural areas children were involved in caring for farm animals as well as harvesting, collecting, and selling crops, such as wheat. The use of children in illicit activities, which included the production and trafficking of narcotics, continued to be a problem. Commercial sexual exploitation of children also continued to be a problem (see section 6, Children).

Also see the Department of Labor's *Findings on the Worst Forms of Child Labor* at [www.dol.gov/ilab/reports/child-labor/findings/](http://www.dol.gov/ilab/reports/child-labor/findings/).

#### **d. Discrimination with Respect to Employment and Occupation**

The law and regulations prohibit employment discrimination based on race, sex, age, civil status, union affiliation, religion, political opinion, nationality, national extraction, social origin, disability, language, sexual orientation, or gender identity, HIV-positive status or other communicable diseases, refugee or stateless status, ethnicity or social status. The government and employers do not discriminate on the basis of refugee, stateless status or ethnicity, but workers must have a work permit or be citizens to hold contracted jobs. The law also provides civil legal

remedies to victims of employment 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. In June 2017 Congress passed a law to address matters related to persons with disabilities. For all public agencies and for private employers with 100 or more employees, the law requires a 1 percent quota of jobs reserved for persons with disabilities.

The government effectively enforced applicable laws and regulations prohibiting employment discrimination. Authorities generally enforced the law in cases of sexual harassment, and there was no evidence of police or judicial reluctance to act. Companies may receive “special sanctions” for infractions such as denying maternity leave. Such penalties were generally sufficient to deter violations.

Nevertheless, discrimination in employment and occupation continued to occur. Persons with disabilities often faced discrimination in hiring; they constituted approximately 7.6 percent of the working-age population but only 0.5 percent of the workforce. Indigenous persons continued to experience societal discrimination in employment. Statistics regarding rates of discrimination faced by different groups were not available.

#### **e. Acceptable Conditions of Work**

As of November, the national minimum wage exceeded the poverty level. 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 the law provides exemptions for hours of work restrictions for some categories of workers, such as managers; administrators; employees of fishing boats; restaurant, club, and hotel workers; drivers; airplane crews; telecommuters or employees who work outside of the office; and professional athletes. 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. 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 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. By law workers can remove themselves from situations that endanger health or safety without jeopardy to their employment, and authorities effectively protected employees in this situation.

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. The law establishes fines for noncompliance with labor regulations, including for employers who compel workers to work in excess of 10 hours a day or do not provide adequate rest days. Companies may receive “special sanctions” for infractions such as causing irreversible injuries to an employee. An estimated 25 percent of the labor force worked in the informal sector, according to a 2015 Rand report. Workers in the informal economy were not effectively protected in regard to wages or safety.

The Labor Directorate employed labor inspectors during the year. Both the Labor Directorate and NGOs reported the number of inspectors was not sufficient to enforce labor laws throughout the country, particularly in remote areas. NGOs commented 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 retail sectors. The sectors with the most infractions in safety and health standards were construction, retail, industrial manufacturing, and commerce. 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.