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**Promotion and protection of all human rights, civil,  
political, economic, social and cultural rights,  
including the right to development**

## **Report of the Special Rapporteur in the field of cultural rights, Alexandra Xanthaki, on her visit to Chile**

### **Comments by the State\***

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\* The present document is being issued without formal editing.



## **Comments of the republic of Chile on the report of the special rapporteur in the field of cultural rights on her visit**

Note: The following observations were submitted within the deadline established by the Special Rapporteur for commentaries to the draft report. However, they were not included in the final Report.

### **1. Paragraph 13**

“there is no domestic law that recognizes everyone’s cultural rights”.

#### **Observations**

First of all, the ICESCR has been incorporated into Chilean law after the enactment of the relevant Decree published in the official gazette.<sup>1</sup>

Additionally, the Supreme Court has interpreted that, pursuant to Article 5(2) of the Constitution, human rights treaties (including the ICESCR) have the same hierarchy as the Constitution. Accordingly, the right is recognized in Chilean law at the highest level (constitutional level).

On the other hand, Article 1(2) of Law No. 21.045, which created the Ministry of Cultures establishes as one of the principles "Democracy and cultural participation. Recognizing that people and communities are creators of content, practices and works with symbolic representation, with the right to actively participate in the cultural development of the country; and have socially and territorially equitable access to cultural goods, manifestations and services".

Finally, the right to education contained in article 19 No. 10, of the Constitution, establishes "it will also be the responsibility of the State to promote the development of education at all levels; stimulate scientific and technological research, artistic creation and the protection and increase of the cultural heritage of the Nation.

### **2. Paragraph 16**

“Discussion was under way on the enhancement of the provisions of the Law on Heritage to include living heritage practices and Afro-Chileans and Indigenous Peoples as rights holders. The Special Rapporteur was also told about a draft law on memorial sites, which aimed at expanding the existing Law on National Monuments. Effective participation of local populations in the creation of such laws is important”.

#### **Observations**

At the time of the Special Rapporteur's visit, the new heritage legislation was in the process of indigenous and Afro-descendant tribal consultation. The process of consultation is carried out by the Ministry of Culture, Arts and Heritage.

It began in September 2023 and culminated in April 2024 with a national agreement signed between the State and the eleven indigenous peoples consulted on the cultural and heritage rights of the consulted peoples.

In October 2024, the Government presented indications to the bill on the Cultural Heritage Law (Bulletin No. 12712-24), which is currently in the second constitutional procedure in the Senate, collecting the agreements adopted as a result of the indigenous and Afro-descendant consultation process.

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<sup>1</sup> See: <https://www.bcn.cl/leychile/navegar?idNorma=12382>.

### 3. Paragraph 17

“The Law on Equality and Anti-discrimination (Law 20.609) was also the subject of consultations, with a view to reforming it. Suggestions for reform included creating a body tasked with receiving complaints and addressing redress and compensation, as well as integrating gender, direct and indirect discrimination and an open clause for all grounds of discrimination in the scope of the law. The Special Rapporteur encourages the integration of these changes into the law”.

#### Observations

- (a) Two comments were made regarding this paragraph:
  - (i) The bill under discussion (Bulletin No. 12748-17) does not contemplate those functions. The Council has a role in articulating public policies in this area but not the power to receive complaints, suggest, or provide reparations and compensations.
  - (ii) In addition, the bill in question does not incorporate an open clause.

### 4. Paragraph 19

“With the revision of all of these important pieces of legislation, the Special Rapporteur hopes to see internationally recognized cultural rights, as currently interpreted by human rights bodies, fully enshrined in national law and a human rights approach strengthened for all.”

#### Observations

The technical assistance from the Citizen Participation, Gender and Inclusion Section of the Ministry of Cultures considers the Human Rights-Based Approach as a priority orientation.

Similarly, the application of Presidential Instruction 007 of 2022 on Citizen Participation, requires special consideration in the activities linked to the decision-making of the Service regarding public policies, plans, programmes and associated projects, by the inclusion of historically discriminated populations, and incorporating the approaches of gender, cultural diversity, in relation to indigenous peoples, and age diversity.

All these aspects will be considered in the updating of the Special Rule on Citizen Participation of the Under-Secretariat for Culture and the Arts currently underway.

Finally, it should be noted that the Quality of Service Policy designed and approved in 2024 by the Ministry includes the aforementioned principles. Among its objectives is to guarantee Universal Access to institutional services, in a sustained and progressive manner, considering specific actions in the Annual Improvement Plan 2025, with resources included, which also include all channels of citizen attention.

### 5. Paragraph 20

- (a) Indicates:

“The second National Plan for Human Rights was adopted in 2022. Its stated objectives include improving respect for the economic, social and cultural rights of various groups of the population; recognizing the cultural rights and rights to cultural identity of Indigenous Peoples and tribal peoples; and strengthening intercultural approaches to foster the integration of migrants.”

#### Observations

The goal proposed by this Plan in the area of cultural rights of indigenous and tribal peoples points to the obligation to guarantee access to this category of rights, "in conditions of equality and non-discrimination, adopting measures that reduce the gaps in the exercise of

these rights". This implies a broader obligation of the State than only that of "respect" stated in this paragraph.

## **6. Paragraph 25**

"In 2017, the Ministry of Cultures, Arts and Heritage was created (Law 21.045), with a broad and holistic vision of culture that aligns in many ways with cultural rights. It benefited from prior consultations with Indigenous Peoples, who insisted on pluralizing the concept of "culture". The law was amended twice in 2019 to create a National Council for Scenic Arts (Law 21.175) and to provide for the digital transformation of the Ministry (Law 21.180). The Ministry has representations in all regions of the country, but most of the decision-making power is centralized. The coronavirus disease (COVID-19) pandemic and the related cuts in funding had an impact on the first years of operation of the Ministry. At the time of the visit, the Ministry employed about 3,000 persons across the country, but benefited from only 0.44 per cent of the national budget."

### **Observations**

The budget law for the year 2025 significantly increased the budget of this Ministry (the 2025 budget grew by 45.8% compared to 2024). The President of the Republic has committed several times to reach 1% of the public budget in the budget law for the year 2026.

## **7. Paragraph 28**

"The Ministry has a national Subdirectorate for Indigenous Peoples, which include Afro-Chileans, tasked with revitalizing cultures, fostering the transmission of languages and practices and attending to claims related to land. The Subdirectorate also develops and disseminates intercultural material and conducts awareness-raising campaigns."

### **Observations**

The mission of the National Sub-Directorate for Native Peoples (Pueblos Originarios) is to recognise, respect and promote the cultures of indigenous peoples and Afro-descendant tribes in Chile, their ancestral practices, beliefs, histories and worldviews, with special consideration for the development of indigenous and Afro-descendant cultures, arts and cultural heritage.

To this end, it supports and promotes the implementation of public policies, plans and cultural programmes with a human rights, territorial and intercultural approach, contributing to the revitalisation and protection of cultural heritage with the traditional and contemporary artistic and cultural expressions of these peoples.

## **8. Paragraph 31**

"The Special Rapporteur listened with interest to the numerous plans and visions of the national and local authorities concerning cultural rights. However, she was struck by the emphasis on plans, rather than coherent actions. Chile ratified the International Covenant on Economic, Social and Cultural Rights in 1972, and democracy was restored several years ago. There is an urgent need to move from plans to action to ensure the participation of all in cultural life."

### **Observations**

We believe this wording could be improved, since it is not clear whether information on the subject was not obtained during the meetings, or whether it is a conclusion reached based on the meetings held.

Additionally, the conclusion seems rather unjustified: as the report itself notes, there are several actions to implement cultural rights after the ratification of ICESCR and the restoration of democracy, most notably, the creation of a Ministry in charge of Cultural Rights. The country has also ratified new conventions on these topics and has developed laws, guidelines and policies on this topic.

For example, the Ministry of Cultures has lines of work and programmes that contribute to Article 15 of ESCR. In particular, the Community Culture Points Programme; IberCultura Viva and IberRutas.

Likewise, from a more general perspective, there are the lines of work developed by the National Sub-Directorate of Native Peoples, and those developed by the Department of Education and Training in Arts and Cultures.

## **9. Paragraph 33**

“The Special Rapporteur is concerned that the Commission of Cultures, Arts and Heritage of the Chamber of Deputies has not planned to adopt a comprehensive protection of cultural rights for all, and that neither the Congress nor its Commission on Culture has any plans to incorporate article 15 of the International Covenant on Economic, Social and Cultural Rights into domestic law. This omission casts doubt on the State’s commitment to its obligations to respect, protect and fulfil cultural rights.”

### **Observations**

This is not correct, the Convention is already incorporated into domestic law.

## **10. Paragraph 39**

“The Special Rapporteur was told that certain past violent incidents against lesbian, gay, bisexual, transgender, intersex and queer persons had not been investigated adequately or prosecuted.”

### **Observations**

There is no basis for this allegation. Although there might be cases where investigations have had issues or experienced challenges, it is worth noting that the Public Prosecutor created in 2019 an Observatory of Violence against LGBTI persons. This corresponds to a network for the coordination of work between the Prosecutor and civil society organizations. In addition, the Observatory records crimes, advise prosecutors on their investigations, articulates, and coordinates the communication flows between the different organizations. Unfortunately, the SR did not meet with the Office of the Prosecutor in order to get information on this topic.

## **11. Paragraph 41**

“That requirement, established in the United Nations Declaration on the Rights of Indigenous Peoples, has now reached the status of emerging customary law and should be systematically applied by the State in its internal policies.”

### **Observations**

This is not the standard contained in the UNDRIP. The Declaration does not require consent in "all matters that regard their culture and their lands" it has a limited scope.

In any case, Chile does not agree with the statement made by the SR that the UNDRIP has become customary international law. There is neither sufficient state practice nor *opinio juris* in this regard, as only a few countries have incorporated the UNDRIP in their legislation. Additionally, and as it is clear from the relevant decisions of the ICJ, a country's vote in favor

of a UNGA Declaration does not entail that the country accepts such declaration as legally binding.

## 12. Paragraph 41

“It includes the right of veto of Indigenous Peoples on matters that have a direct impact on their cultural rights.”

### Observations

A veto of indigenous peoples is also not recognized under international law. Concerning the ILO Convention, the ILO has clearly stated that consultation does not imply a right to veto.<sup>2</sup> In addition, the ILO Convention 169 “does not provide indigenous peoples with a veto right, as obtaining the agreement or consent is the purpose of engaging in the consultation process, and is not an independent requirement”<sup>3</sup>

In the specific case of the UNDRIP, the previous SR on indigenous rights, James Anaya, noted that although the UNDRIP provides that, in general, consultations with indigenous peoples should be conducted “in good faith... in order to obtain their free, prior and informed consent” (article 19), “this provision of the Declaration should not be seen as according indigenous peoples a general ‘veto power’ over decisions that may affect them but, rather as establishing consent as the objective of consultations with indigenous peoples”<sup>4</sup>

## 13. Paragraph 44

“Indigenous languages are not recognized and publicly supported, and speakers struggle to realize their right to use them in public spaces and institutions.”

### Observations

The Government is promoting a Ten-Year Plan for Indigenous Languages, with the aim of revitalizing, conserving and promoting indigenous languages in Chile. This, as part of the commitments made on the occasion of the International Decade of the World's Indigenous Languages (2022-2032) promoted by the United Nations General Assembly and entrusted to UNESCO. The main objective of this Ten-Year Plan is to establish lines of action that aim at the revitalization, conservation and creation of new speakers of indigenous languages in a context of sustained decline of these languages. Its coordination and planning have been entrusted to the Ministry of Social Development and Family, through the under secretariat of Social Services. This Plan is expected to be implemented from 2025.

Additionally, one of the matters contained in the indications presented by the Executive in October 2024 for the new heritage legislation,<sup>5</sup> is related to the recognition of indigenous and Afro-Chilean cultural heritages and, in particular, with the right of indigenous peoples to “make use of their mother tongue to promote, apply, name and define their cultural heritage within the areas of application of this law”, as well as the duty of the State to promote the safeguarding, promotion, revitalization, recovery, research and dissemination of said cultural heritage, which includes mother tongues.

Finally, it should be noted that Law N°19.253 recognizes the use and conservation of indigenous languages on its Article 28, which provides “The recognition, respect and protection of indigenous cultures and languages shall include: a) The use and conservation of indigenous languages, along with Spanish in areas of high indigenous density”.

<sup>2</sup> See: ILO “General Observation 2010/81 - Indigenous and tribal peoples”, p. 10.

<sup>3</sup> See: Handbook for ILO Tripartite Constituents, Understanding the Indigenous and Tribal Peoples Convention, 1989 (No. 169), 2013, p. 16).

<sup>4</sup> See: A/HRC/12/34, para. 46.

<sup>5</sup> Bulletin No. 12712-24.

Therefore, there are mechanisms in the legislation and in policy to promote the use of these languages.

#### 14. Paragraph 45

“The Special Rapporteur commends the legal recognition of the tribal Afro-descendants in 2019 and the efforts to revise educational curriculums to increase their visibility as part of Chilean society.”

##### Observations

In addition to said legislation in force since 2019, it is important to highlight that in 2024, Supreme Decree No. 12 of 2023 of the Ministry of Social Development and Family was published, approving the Regulations governing the consultation process with the Chilean Afro-descendant tribal people. A consultation process aimed at the representative institutions of the Chilean Afro-descendant tribal people preceded the preparation of this Decree. This consultation process culminated in July 2023 with the respective systematization report giving an account of the agreements reached with the Afro-descendant tribal people that were included in this new regulation.

#### 15. Paragraph 50

“Stereotypes and dehumanizing discourse about migrants are on the rise in Chile. Foreigners in the country are the subject of many public debates, and negative narratives and fear are being amplified by the media and in some government discourses. Narratives about migrants’ inherent criminality or destructive ways of life must be pushed back by all public bodies in a coordinated and consistent manner, as required by international law. Instead, the Special Rapporteur heard some government officials blame migrants for failures of the State....”

##### Observations

The way this statement is worded makes it unclear whether it is the opinion of an individual working as a public servant or an official position. Given that this Government does not promote this type of conduct and does not represent the official discourse of the authority, it would be important to clarify that these statements were delivered individually and are not part of the official discourse.

#### 16. Paragraph 50

“The ongoing attacks on their ways of life and cultures have an impact on their ability to access other human rights. Although education and health services are, by law, universally available to all inhabitants of Chile, non-citizens and migrants reported difficulties in having their diplomas registered and in accessing healthcare, including maternity care.”

##### Observations

We recognize that there might be challenges in accessing some of these services, we would appreciate if the SR would note that under Chilean law, children, notwithstanding their migration status have a right to education.<sup>6</sup> Similarly, all migrants, again notwithstanding their migration status, have a right to health.<sup>78</sup> Challenges may exist, but the Report should present a more balanced approach.

<sup>6</sup> See: Article 17 of Law 21.325.

<sup>7</sup> See: Article 15 of Law 21.325.

<sup>8</sup> See: <https://saludresponde.minsal.cl/salud-inmigrantes/>, it explains that undocumented migrants are presumed to have no resources and thus, benefit from free healthcare.

## 17. Paragraph 53

“The Special Rapporteur was told about challenges related to cultural practices in prisons. For Indigenous Peoples and local populations, those include challenges related to accessing spiritual leaders and healers and maintaining cultural and religious practices that do not interfere with the security of the detention centers. She reminded the Government that economic, social and cultural rights continue to apply in places of detention.”

### Observations

We would also appreciate a more nuanced approach. The SR did not have the opportunity to meet with prison officials (Gendarmería), but there have been many measures taken to guarantee cultural practices for indigenous peoples in prison.

For instance, there are penitentiary establishments that have special spaces for segmentation, exclusively for the Mapuche indigenous population. These modules are separated from the rest of the prison population and seek to implement an intercultural approach that considers the particularities of the Mapuche people. This approach is reflected in measures that guarantee conditions more in line with their cultural reality, such as adaptations in food, the handling of parcels, visits, access to traditional medicine and the possibility of carrying out ceremonies and rituals specific to their worldview. For example, in the Araucanía and Biobío regions, indigenous Mapuche people are allowed to wear native clothing, such as traditional blankets and headbands, to keep their hair long and to carry symbolic objects.

Regarding cultural and religious practices, Gendarmería has established clear guidelines to facilitate the celebration of the indigenous New Year and other rituals relevant to the worldview of indigenous peoples. For instance, through Circular Letter No. 213 of June 3, 2014, the heads of penitentiary establishments were instructed to grant facilities for these celebrations, including the entry of traditional authorities, such as machis, lonkos and other ancestral representatives, upon written request. For example, the celebration of We Tripantu (Mapuche New Year) is authorized in penitentiary centers such as Temuco, Angol, Lebu and Osorno, and of Machaq Mara (Aymara New Year) in the facilities of Arica, Alto Hospicio and Antofagasta. These celebrations also have the possibility of receiving a greater number of visits than that regularly stipulated. Additionally, at the Temuco Penitentiary Center, a Mapuche ceremony is held on the first Wednesday of each month in the chapel area.

In relation to education and health, Resolution No. 3925 of July 29, 2020 establishes specific measures to prevent discrimination and promote cultural relevance in penitentiary establishments. For example, when there is no intercultural education offer, the absence of indigenous people from school does not negatively affect their evaluation for exit permits or access to Education and Work Centers. In addition, the entry of traditional doctors and healers is authorized, along with traditional medicines, to care for persons deprived of liberty who require it according to their worldview.

A recent example of progress in this area is the pilot project ‘Intercultural Health Care Model in Penitentiary Facilities’, implemented in 2023 at the Osorno Penitentiary Completion Center. This project, developed in collaboration between Gendarmería, the Osorno Health Service and representatives of the Mapuche-Huilliche people, seeks to ensure access to traditional health care. It includes the training of officials in indigenous worldview, the coordination between institutions to guarantee the entry of healers and traditional medicines, and the provision of adequate physical spaces for these services.

## 18. Paragraph 57

“The Special Rapporteur highlighted the gentrification risk often connected with revitalization initiatives, which can empty the centre of its long-established inhabitants.”



**Observations**

The risks of gentrification are known and measures are taken to reduce them. Thus, the site's management plan, which is being drawn up, and the actions of the entity that manages it, take the inhabitants of the site into particular consideration.

The management plan has as its central objective: 'Preserve, repopulate, revitalize, rehabilitate the World Heritage Site, Historic Area of the port city of Valparaíso, preserving the attributes that constitute its Outstanding Universal Value and the social, cultural scopes that concern the good living of the community that inhabits it'.

**19. Paragraph 58**

"This situation highlights the need to prioritize effective participation and, in the case of Indigenous Peoples, build trust and provide guarantees about cultural sovereignty."

**Observations**

We believe it should be noted that there are institutional channels to promote and accompany processes for recognition, if required and approached by indigenous peoples' communities. These includes different perspectives according to each people, and which can be seen in the recognition of declared national monuments, sites, and concessions for administration by indigenous peoples' communities.

It is also relevant to point out that there is no imposition to include sites or establish categorisations without the people's consent.

**20. Paragraph 59**

"The Special Rapporteur was also alarmed by the intimidation and arrest of some leaders of the communities, who were defending their right to their heritage."

**Observations**

There are no sources to this statement, which leaders have been arrested for defending their right to heritage?

**21. Paragraph 59**

"The Government must also ensure human rights due diligence and the accountability of the companies involved in development projects across the territory and engage in good faith with the claims to protect heritage sites that are important for the people concerned."

**Observations**

These situations have been considered in the process of Prior Consultation for the new patrimonial legislation, both with indigenous peoples and Afro-descendant Chileans, finalized with unanimous agreements in April 2024.<sup>9</sup>

**22. Paragraph 60**

"The Special Rapporteur received less information about efforts invested in living cultures, in adopting positive measures to promote and protect the values, aspirations and priorities of all individuals and communities across Chile and include them in the public strategies, policies and practices."

<sup>9</sup> See: <https://www.pueblosoriginarios.gob.cl/consulta-previa-indigena-y-afrodescendiente/nueva-legislacion-patrimonial>.

**Observations**

As has been mentioned in previous comments, the State has institutional mechanisms through which it promotes and safeguards Chile's intangible cultural heritage.

There are multiple lines of work through which citizens have the possibility of promoting and raising the recognition of their intangible cultural heritage, such as a social program, an inventory list of intangible cultural heritage, a list of living human treasures, among others.

Additionally, in the process for the formulation of the proposed Cultural Heritage Law, through its citizen consultation process, it established a survey of relevant information and participation that made it possible to gather the perspectives and interests of the various communities throughout the country in this area, and which are integrated into the proposals for a substitutive indication of the project in its legislative process.

**23. Paragraph 61**

“The Special Rapporteur also warned against the use of Indigenous consultation to put to referendums or popular votes decisions regarding practices that manifestly violate human rights. The human rights obligations of States cannot be subject to consultation or vote.”

**Observations**

The State has fulfilled its obligation to promote indigenous consultation processes in order to strengthen the participation and rights of indigenous peoples and in no case to subject to a popular vote practices that violate human rights with the eventual consequence of giving them continuity.

In this specific case, the decision to initiate the indigenous consultation process regarding the need to modify and/or repeal articles 13 and 14 of the Pascua Law was adopted in order to strengthen the prevention of all types of crimes, as well as respect for various international treaties signed by the State of Chile. Additionally, regarding the vote on the modification and/or repeal of the regulations contained in articles 13 and 14 of Law No. 16,441, in the discussion and analysis of the different options, it was clear that sexual crimes, crimes in the context of domestic violence, crimes against life or physical integrity, crimes against property and crimes related to Law 20,000 (Drug Law) should always be exempted from the reduction of sentence and prison benefits.

The voting process was carried out on May 9, 2021, with a high participation of the Rapa Nui population, resulting in the modification of the rule contained in article 13 (maintaining the reduction of the sentence only for crimes of usurpation, as long as they did not affect a member of the Rapa Nui people) and the repeal of the rule contained in article 14.

**24. Paragraph 62**

“Memorialization processes should provide the spaces necessary to those affected by human rights violations to articulate their narratives.”

**Observations**

The Ministry of Cultures has a Culture, Memory and Human Rights Unit, established in 2015, which has addressed memorialization as a state obligation in relation to human rights violations since its design and implementation.

It has defined and oriented its work along the following lines:

- Social Problem: Disassociation between the community and the spaces of memory managed by Human Rights groups linked to the crimes against humanity that occurred during the Chilean military dictatorship and are included in the Truth and Justice Reports.

- Purpose: To ensure that spaces, memorials and/or sites of memory managed by Human Rights groups linked to the crimes against humanity that occurred during the military dictatorship are appropriated by the community through the contribution of cultural management tools.

Additionally, it has established linkage and participatory processes with human rights groups in its three components:

- Cultural Management Training (9 training cycles (2016- 2024))
- Cultural Artistic Projects (220 cultural artistic projects of memory and Human Rights).
- Dissemination of Sites of Memory (220 communication campaigns of artistic projects).

## 25. Paragraph 63

“The fiftieth anniversary of the coup d’état in September 2023 should have been an opportunity to define a new and improved policy on memorialization, to strengthen history teaching and public memory, but at the time of the Special Rapporteur’s visit, no political will in those areas had materialized.”

### Observations

In the same commemorative framework, the State initiated the Sites of Memory Program, which, as of July 2023, began a comprehensive intervention work in the sites recognized as National Monuments and whose purpose is to preserve the sites of memory and raise awareness among the general public about the heritage value of these spaces.

The Culture, Memory and Human Rights Unit has supported since its inception both in socialization platforms (seminars, workshops, National Meetings of Sites of Memory) as well as the creation, debate and reflection on a Law on Sites of Memory, drafted by the National Network of Sites of Memory.

## 26. Paragraph 75

“Diversity must be ensured within the civil service and public bodies, and interculturality must be applied correctly. Migrants, Indigenous Peoples, Afro-Chileans, persons with disabilities and lesbian, gay, bisexual, transgender, intersex and queer persons should be able to learn about the values, norms and customs of other Chileans, while all Chileans should also be able to learn about the specific histories and cultures of the above-mentioned groups, and about their positive contributions to society. The Unit on Culture, Memory and Human Rights of the Ministry of Cultures, Arts and Heritage promotes interculturality and the positive inputs of migrants, including through educational material. However, to become a reality, exposure to cultural diversity must be the norm in all aspects of society, from an early age.”

### Observations

The State of Chile is permanently and continuously making efforts to strengthen respect for cultural diversity, and interculturality, as well as the application of an intercultural paradigm, especially in the public service. In addition to the Culture, Memory and Human Rights Unit of the Ministry of Culture, Arts and Heritage, some examples that illustrate the work of the State in strengthening cultural diversity through the Ministry of Social Development and Family, are the following:

- Sectoral regulatory framework on indigenous peoples and Afro-descendant tribal people: Law No. 19253 (1993) and Law No. 21,151 (2019), Decree 66 on Regulations that regulate Indigenous Consultation (2013) and Decree 12 on Regulations that regulate Consultation of Chilean Afro-descendant Tribal People (2024)

- Sectoral institutions on indigenous peoples and Afro-descendant tribal people: National Corporation for Indigenous Development (CONADI) and the Coordination Unit for Indigenous and Afro-descendant Affairs (UCAIA). It is important to note that both bodies have been led, mainly, by indigenous people, materializing an intercultural approach to rights.
- Sectoral strengthening on indigenous peoples and Afro-descendant tribal people: UCAIA is currently coordinating indigenous and Afro-descendant consultation processes, as well as modifications to current regulations, and in terms of linguistic and cultural rights of indigenous peoples, the Ten-Year Plan for Indigenous Languages is promoted and coordinated with the aim of promoting, revitalizing and conserving indigenous languages.

## **27. Paragraph 81**

“The formal channels of participation the Special Rapporteur observed seemed to encourage the maintenance of silos and the status quo, rather than allowing inclusion. Many of the ministries, including the Ministry of Cultures, Arts and Heritage, admitted being aware that more needed to be done to engage with all parts of the population and ensure that multiple voices were truly involved in shaping their work. The Special Rapporteur is concerned that, in the search for fresh new visions, experience, long-standing expertise and historical memory are not valued, and that the people who have them are pushed aside with no period of transition and thus with no opportunity to share their knowledge and experience. Fresh visions need the reality check and the lessons provided by past experience.”

### **Observations**

It is important to note the Ministry of the General Secretariat of Government, concerned with the areas of participation and information, considers crucial to expand the channels of participation in the field of digital literacy in order to confront the problem of misinformation with the installation of better tools in our society.

In this sense, the Ministry understands disinformation as a threat to democracy, public trust and people's safety. To confront it, in 2023 the Ministry of the General Secretariat of Government - together with the Ministry of Science, Technology, Knowledge and Innovation - created the Advisory Commission on Disinformation, whose 72 recommendations are already being implemented. Likewise, it developed the "Wait, Check and Share" campaign to digitally educate citizens to avoid consuming false content.

It is also important to value the cooperation with Brazil through the recent signing of a Memorandum of Understanding and participation in OECD forums to strengthen information integrity. These actions reflect the commitment to critical citizenship and a more robust democracy.

Regarding LGBTIQ+ communities, participation of sexual and gender diversity groups has been encouraged through guidelines and good practice guides aimed at civil servants and citizens.<sup>10</sup>

## **28. Paragraph 82**

“The organizations and individuals participating in the various councils should change regularly so that many voices can be heard in the development of the plans of the ministries, in the evaluation of what has happened and in the delivery of what is about to happen.”

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<sup>10</sup> See: <https://www.cultura.gob.cl/genero/#documentos>.

### Observations

Law No. 21,045 establishes the creation of the National Council of Cultures, Arts and Heritage (Civil Society Council for all legal purposes) and includes decentralization into regional councils. Additionally, it includes in the Undersecretariat the Councils of the sectoral promotion laws.

Each entity has operating regulations, which among other aspects regulate the public renewal procedures of the members, the sessions, the nature of this, the way of making agreements, the publicity, among others.

## 29. Paragraph 86

“Various actors said that gaining access to the authorities was difficult, not just to discuss problems, but also to present initiatives and transmit what people have to say and contribute.”

### Observations

There is a specific mechanism for this under Law N°20.730. The Law allows any person to request a meeting with different authorities through an online platform.

## 30. Paragraph 90

“From what she observed, the follow-up to initiatives and evaluation of the impact of policies not only seemed weak, but did not involve the people concerned. In many cases, the authorities could not provide indications or measurements of progress. The Special Rapporteur recalls that the right to participate in decision-making processes that have an impact on one’s cultural rights does not end once the programmes or policies are established. It should continue in the monitoring and evaluation stages.”

### Observations

At the end of 2024, the ‘National Five-Year Strategy 2024 - 2029 (EQN)’ and the ‘Regional Five-Year Strategies (EQRs)’ in the field of culture were published.<sup>11</sup>

The EQN is a strategic instrument that establishes the objectives to be followed for cultural, artistic and heritage development at the national level over a period of five years. This strategy harmonises and gives coherence to all policies, plans and programmes in the field of arts, culture and heritage. It also provides a clear roadmap describing how cultural policies will be realised, supporting the operational implementation for the institutional framework.

Within the framework of this EQN 2024- 2029, a commitment has been made to develop (during the first half of 2025) a plan to monitor its objectives, reclassifying lines of action, components and developing indicators that account for the Ministry of Culture’s action.

The permanent participation of the peoples in the formulation of any measure emanating from the public services is the main foundation that constitutes the essence of the approach to the rights of indigenous and Afro-descendant peoples on which the social programme executed by SUBPO is built, which, in this case, is heir to the Prior Consultation. This generates a continuous process of application of the collective right to participation enshrined as the fundamental axis of the whole of Convention 169, in particular Article 7.

It has been observed from the gender area, through the process of collecting good practices with a gender approach in the implementation of programmes and initiatives of the SubCult, that this is indeed a challenge, since, although progress has been made in the incorporation of gender indicators by the programme teams, these are not always measured, or there is no continuity in the actions that allow the measurement of impact.

<sup>11</sup> See: <https://www.cultura.gob.cl/estrategias/estrategias-quinquennales/>.

This is one of the methodological aspects that we intend to address in the technical support on Citizen Participation in 2025, progressively, according to the availability and human capacities of the Service.

### **31. Paragraph 91**

“A good way to encourage participation is to increase the use of public spaces as spheres for deliberation, cultural exchange, social cohesion and diversity. Chilean authorities at all levels have the obligation to guarantee the collective and participatory character of public spaces and have real opportunities to strengthen the dynamics they create.”

#### **Observations**

Creative Centers (Cecrea) are part of a Ministry of Cultures' program that promotes the development of creative and civic capacities in children and young people. Currently, there are 04 centers built, aimed especially at children and young people.<sup>12</sup>

### **32. Paragraph 98 (a)**

“Adopt a law protecting cultural rights, as they are currently broadly understood, for all, irrespective of their status or any other characteristic.”

#### **Observations**

It is included in the draft law on heritage, which establishes comprehensive protection that recognizes the heritage of indigenous peoples and creates two categories of recognition: sites of cultural significance and collective traditional knowledge. The above is subject to legislative debate.

### **33. Paragraph 98 (h)**

“Complete the recognition of all Indigenous Peoples and tribal communities and ensure their equal protection before the law as soon as possible; increase the resources allocated to the Subdirectorate for Indigenous Peoples so that it may include all of them in its consultative and participatory initiatives.”

#### **Observations**

The draft law on heritage includes the development of permanent participation protocols. This is subject to legislative debate.

### **34. Paragraph 98 (i)**

“Implement free, prior and informed consent for Indigenous Peoples in all matters that affect their cultures and lands, as stipulated in the United Nations Declaration on the Rights of Indigenous Peoples.”

#### **Observations**

Chile does not recognize that FPIC is a requirement under international law, except in very specific circumstances as established in ILO Convention 169.

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<sup>12</sup> See: <https://cecrea.cultura.gob.cl/infraestructura/>.