

## CASE STUDY: CHILE

# Determinants of Anti-Trafficking Efforts



# Determinants of Anti-Trafficking Efforts

## Case Study: Chile

This report is published as part of the 'Determinants of Anti-Trafficking Efforts' Project. The project assesses the links and sequencing of specific factors that have yielded improved political will and capacity in national governments to address trafficking in persons and which have led to sustained and comprehensive anti-trafficking efforts. Through a multi-pronged approach, this project will conduct a review/meta-analysis of the current research and contribute a new data-set through expert interviews, a first of its kind global survey and a series of 14 case studies.

More information including the project outputs are available at:

<https://www.biicl.org/projects/determinants-of-anti-trafficking-efforts>

Report Author: Carolina Rudnick, National Research Consultant

Report Published: June 2022

Gift of the United States Government



# Table of Contents

Executive Summary .....	1
Introduction .....	2
Context .....	4
Determinants of anti-trafficking efforts .....	13
Particulars of determinants by type of response .....	13
Particulars of determinant by form of exploitation .....	28
Particulars of determinants according to trafficked persons' profile.....	41
Particulars of determinants according to perpetrator profile .....	50
Particulars of determinants by type of trafficking .....	54
Particulars of determinants by stage of response.....	56
Focus: The enactment of Law 20.507 .....	73
Focus: Intersectoral Table on TIP .....	76
COVID-19 .....	80
Conclusion.....	82

# Executive Summary

2021 marks the tenth anniversary of the modern law on trafficking in Chile, Law 20.507. Enacted and published in April of 2011, the law marked a turning point in the country's trafficking policy. It triggered the creation of specialized bodies, guidelines, referral mechanisms, victims' protocols and coordination, channelled by the existence of a multistakeholder body - the Ministry of Interior's Intersectoral Table on Trafficking in Persons (*Mesa Intersectorial de Trata de Personas*, MITP). Within a few years of its implementation, Law 20.507 allowed Chile to obtain an upgrade of its Trafficking in Persons (TIP) report qualification from traditional Tier 2 to Tier 1 (a ranking that Chile still maintains today).

Chile's advancements in its anti-trafficking policy have been the result of internal and external determinants intertwining direct and indirect pressure points. Most of the work and advancement of the anti-trafficking policy of Chile has laid on the shoulders of women. Consistent and strategic actions led by women-led civil society organizations and female public officers and politicians have triggered and sustained political will and promoted awareness raising and cooperation strong enough to adopt legislation, promote capacity-building, and provide assistance to victims with no allocated resources.

The advancements have also been the result of a complex set of factors that intertwine Civil Society Organisations' (CSOs) work and influence, international law's impact, and structural conditions, such as Chile's legalistic culture, a centralized administration, and a customary shortage of resources for "women's issues" (such as protection of the main victims of exploitation, gender and sexual violence, being women, children, and migrants). Chile's legal development have fostered innovation and coordination between institutions at the national and international level, promoting partnerships as a way to counterbalance the lack of resources and comply with the international obligations to prevent, prosecute and protect victims.

# Introduction

The work and advancement of the anti-trafficking policy of Chile has laid on the shoulders of women. Consistent and strategic actions led by women-led civil society organizations and female public officers and politicians have triggered and sustained political will and promoted awareness raising and cooperation strong enough to adopt legislation, promote capacity-building and provide assistance to victims with no allocated resources.

Chile signed the United Nations Convention against Transnational Organized Crime and its supplementary Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children (the Protocol) in 2003, which it ratified before Congress in 2005. Six years passed before the Congress enacted domestic legislation that fulfilled the commitment of criminalizing trafficking under the precise definition of Article 3 of the Protocol. Prior to the law, Chile did criminalize the act of trafficking in persons, but exclusively for forced prostitution and in its cross-border dimension. The absence of a more comprehensive legislation left trafficking for purposes other than sexual exploitation, and internal trafficking, unpunished. Research undertaken by the International Organization for Migration (IOM) in the early 2000s had identified at least 150 victims of trafficking for sexual and labour exploitation, the vast majority being foreigners. Prosecutors had encountered situations that could be framed as trafficking for forced labour, but were helpless in the absence of legislation that criminalized the conduct.

The enactment of Law 20.507 in 2011 was a landmark development in the history of Chile's anti-trafficking policies. It sparked the creation of specialized bodies, protocols and mechanisms, as well as the implementation of measures for prevention, prosecution and protection of victims. Law 20.507 was the result of gender representation in policy-making processes intersecting with political will pressured by the international community and external monitoring bodies, specifically the US. Since the early 2000s, CSOs led and conformed mainly of women had pushed through research, advocacy, and lobbying for the adoption of the Palermo Protocol definition in national legislation and encountered in a congresswoman the will to introduce a bill on the matter and sustain and endure its processing throughout the six years the parliamentary discussion lasted. The final trigger for its enactment was the visit of the then US president, Barack Obama, to the country in March 2011.

However, during the period 2005-2011, measures were taken to address the issue – actions that turned out to be crucial to channel the State's will to strengthen anti-trafficking policies after the enactment of Law 20.507. In 2008, during the first administration of President Bachelet and in the framework of her gender agenda, the Intersectoral Table on Trafficking in persons (Mesa Intersectorial de Trata de personas, MITP) was created, a multistakeholder body that gathers all public stakeholders and civil society organizations to coordinate

measures and policies on trafficking, led by the Ministry of Interior and Public Security (Ministerio del interior y Seguridad Pública, MISP). The MITP has been signalled by all stakeholders as a key advancement in the public policy on trafficking. The creation of Intersectoral Table and its efforts in coordination, mainly its first national action plan, the interagency agreement that approved it and the creation of a national victim's referral and assistance mechanism, allowed the country to advance its rank in the TiP report in 2014, advancing from historical Tier 2 to Tier 1. Since then, Chile has been permanently ranked as a Tier 1 country.

This report intends to identify and analyse the determinants that promoted the enactment of law 20.507 and the creation - and sustainability - of the MITP. It is the result of a mixed multidisciplinary methodology. Techniques from various disciplines were used to collect, process, and analyse qualitative and quantitative data from primary sources (interviews and focus groups with State and non-State actors, parliamentary debates and judicial sentences) and secondary sources (documents, databases, etc.). Specifically, the methodology was composed of the following items: (i) Interviews with State (8) and non-State actors (7); (ii) Focus groups: with State (8) and non-State (6) Actors; (iii) Collection of documentary data, (iv) Review of official databases, (v) Review of specialized literature, and (vi) Press review. A limitation encountered during the investigation was the absence of studies or research specifically about determinants of anti-trafficking policies in Chile. It has not been approached as an object of study, as research has focused mainly on reviews about the State level of compliance to international standards in prevention, persecution and protection.

# Context

Chile subscribed the United Nations Convention on Transnational Organized Crime and its supplementary Protocol to Prevent, Suppress and Punish Trafficking in Persons Especially Women and Children in August 2002. In November 2003, the Executive power introduced several bills<sup>1</sup> to Congress to formally incorporate both the Convention and its Protocols into the national legal system. In December 2004, the international instruments were ratified and in February 2005 Decree 342<sup>2</sup> was published in the Official Gazette, designating the Ministry of Interior and Public Security (*Ministerio del Interior y Seguridad Pública, MISP*) as the national authority in the matter. At that moment, the country penalized the crime of trafficking in Article 367 bis of the Penal Code, but it only considered the hypothesis of international trafficking for prostitution not requiring means of fraud, coercion, or abuse of vulnerability. It was not until 2011, with the enactment of Law 20.507,<sup>3</sup> that the crime of trafficking as defined by the Palermo Protocol was incorporated into national legislation.

As a result of the ratification of the Palermo Convention and its protocols, Bill 3778-18<sup>4</sup> that *typifies the crime of trafficking of children and adults and establishes norms for its prevention and more effective criminal prosecution*, was introduced shortly after, in January 2005.

During the time of the bill discussion, nevertheless anti-trafficking measures were taken. In July 2008, through Presidential Decree 2821 the MITP was created. The Intersectoral Table met irregularly throughout the following years, and it was not activated until the new law on trafficking was enacted, in 2011. Since then, the MITP has led the anti-trafficking public policy in the country. Decree 2821 was recently replaced by Decree 1817 of 2021, that

---

<sup>1</sup> Presidential Message regarding Bill 3246-10, Presidential Message N° 127-350 regarding Bill 3445-10 and Presidential Message N° 90-350 regarding Bill 344-10, first constitutional proceedings, 12 de November 2003 Biblioteca del Congreso Nacional de Chile (BCN), Historia del Decreto 342 <<https://www.bcn.cl/historiadelaley/nc/historia-de-la-ley/5335/>> accessed 21 July 2021.

<sup>2</sup> Decreto 342 de 16 de febrero 2005 *Promulga la Convencion de las Naciones Unidas contra la Delincuencia Organizada Transnacional y sus Protocolos contra el Trafico Illicito de Migrantes por Tierra, Mar y Aire y para Prevenir, Reprimir y Sancionar la Trata de Personas, especialmente mujeres y niños, Ministerio de Relaciones Exteriores, Chile* <<https://www.bcn.cl/historiadelaley/nc/historia-de-la-ley/5335/>> accessed 21 July 2021.

<sup>3</sup> Ley 20.507 de 8 de abril de 2011 *Tipifica los delitos de tráfico ilícito de migrantes y trata de personas y establece normas para su prevención y más efectiva persecución criminal, Ministerio del Interior y Seguridad Pública, Chile* <<https://www.bcn.cl/leychile/navegar?idNorma=1024319>> accessed 21 July 2021.

<sup>4</sup> Chamber of Deputies, Bill 3778-18 *It typifies the crime of trafficking of children and adults and establishes norms for its prevention and more effective criminal prosecution.* <<https://www.camara.cl/legislacion/ProyectosDeLey/tramitacion.aspx?prmlD=4172&prmBOLETIN=3778-18>>



modified certain provisions, incorporated new actors, both public and civil society entities, and regulated in more detail its functioning.

Law 20.507 introduced the crime of trafficking in persons in the Penal Code, in its Eight Title: *Crimes and simple felonies against persons*, incorporating two trafficking hypotheses: *trafficking for prostitution* in Article 411 *ter*, that maintained the original figure as stated in Article 367 *bis*, and *trafficking for exploitation* in Article 411 *quater*, that reproduces the Palermo Protocol definition and the UNODC guidelines.<sup>5</sup> It not only punishes those who commit, promote, facilitate, or finance trafficking, but also criminalizes the conspiracy to perpetrate human trafficking crimes. In addition, it reproduces criminal investigation techniques that are typical of drug trafficking regulations, e.g., effective cooperation with law enforcement agencies as a mitigating circumstance, communications interceptions, and the intervention of undercover agents. In terms of penalties, this Act stipulates 5 to 10-year prison sentences, fines ranging between 4.000 and 8.000 USD, and harsher sentences for recidivists. Trafficking in persons is a crime of public criminal action by prosecutors, but both the MISP and the National Institute of Human Rights (*Instituto Nacional de Derechos Humanos*, INDH) are institutional plaintiffs entitled to file criminal lawsuits in trafficking cases.

As a member state of the Organization of American States (OAS), Chile is part of the Meeting of Ministers of Justice or other Ministers or Attorneys General of the Americas (*Reunión de Ministros de Justicia o de Ministros Procuradores Generales de las Américas*, REMJA) and of the Meeting of National Authorities on Trafficking in Persons, the political forum for decision-making regarding the prevention and combat of trafficking and the assistance and protection of its victims.<sup>6</sup>

Chile is also part of MERCOSUR as an associated State, and in that capacity has endorsed resolutions on the matter and participates in the specialized bodies created to address

---

<sup>5</sup> Article 411 *quater* states: "The one who through violence, intimidation, coercion, deception, abuse of power, taking advantage of a situation of vulnerability or dependence of the victim, or the granting or receiving of payments or other benefits to obtain the consent of a person who has authority over another recruits, transfers, harbours or receives people to be the object of some form of sexual exploitation, including pornography, forced labor or services, servitude or slavery or practices similar to this, or the extraction of organs, will be punished with the penalty of imprisonment. in its minimum to medium grades and a fine of fifty to one hundred monthly tax units.

If the victim is a minor, even when there is no violence, intimidation, coercion, deception, abuse of power, taking advantage of a situation of vulnerability or dependency of the victim, or the granting or receipt of payments or other benefits to obtain the consent of a person who has authority over another, the penalties of major imprisonment in its medium degree and a fine of fifty to one hundred monthly tax units will be imposed.

Anyone who promotes, facilitates or finances the execution of the behaviours described in this article will be punished as author of the crime" (own translation).

<sup>6</sup> *Reunión de Autoridades Nacionales de Trata de Personas de la OEA*, <<http://www.oas.org/es/sms/dps/prog-trata-de-Personas.asp>> accessed 25 September 2021.



trafficking in persons. In 2004, the Council of Common Market, the governing body of MERCOSUR, created the Meeting of High Authorities competent in Human Rights and Ministries of Foreign Affairs of Mercosur and Associated States (*Reunión de Altas Autoridades sobre Derechos Humanos del MERCOSUR, RAADH*)<sup>7</sup> and in 2005, the Specialized Meeting of Public Ministries of Mercosur and Associated States (*Reunión Especializada de Ministerios Públicos del MERCOSUR, REMPM*).<sup>8</sup>

The Public Prosecutor's Office is part of the Ibero-American Association of Public Ministries (*Asociación Iberoamericana de Ministerios Públicos, AIAMP*),<sup>9</sup> a non-profit entity that integrates the Public Ministries of the Americas, Spain and Portugal, and promotes international cooperation and information exchange through the creation of specialized networks of prosecutors. In 2011, jointly with REMPM, AIAMP created the Ibero-American Network of Prosecutors Specialized in Trafficking in Persons and Smuggling of Migrants, REDTRAM.<sup>10</sup> Since then, 21 member countries have designated a national contact point to integrate this network and agreed on some common objectives.

Chile's two main public security bodies are the Criminal Investigations Police (*Policía de Investigaciones, PDI*) and *Carabineros* of Chile. PDI is part of Interpol, and several international joint investigations have been carried out in the framework of Interpol's coordination. As for *Carabineros*, together with PDI, they are part of the American Police Community (*Comunidad de Policías de América, AMERIPOL*).

---

<sup>7</sup> *Reunión de Altas Autoridades sobre Derechos Humanos del MERCOSUR, RAADH*, <<https://www.raadh.mercosur.int>> accessed 24 July 2021.

<sup>8</sup> *Reunión Especializada de Ministerios Públicos del MERCOSUR, REMPM*, <<https://www.rempm.org>> accessed 24 July 2021.

<sup>9</sup> AIAMP was founded in Brazil in 1954, as the Inter-American Association of Public Ministries; later, with the incorporation of Spain and Portugal, it was renamed the Ibero-American Association of Public Ministries. At present, the entity is compound of 22 Public Ministries and / or Prosecutors of Ibero-America, which are governed by the statutes of the Association <<https://www.aiamp.info/index.php/paises/global>> accessed 24 July 2021.

<sup>10</sup> *Red Iberoamericana de Fiscales Especializados en Trata de Personas y Tráfico Ilícito de Migrantes, REDTRAM* <<https://www.aiamp.info/index.php/redes-permanentes-aiamp/red-de-trata-de-personas>> accessed 24 July 2021. REDTRAM was created after the signing of the interinstitutional cooperation protocol between AIAMP and REMPM during the II Ibero-American Summit of Public Ministries against trafficking in persons that took place in Chile in September 2011. Said Protocol allowed the different Public Ministries to function as an informal cooperation network and facilitate the protection of victims in real time. AIAMP/REMPM, *Protocolo de Cooperación Interinstitucional para fortalecer la investigación, atención y protección a víctimas del delito de Trata de Personas entre los Ministerios Públicos Iberoamericanos* (2011) <<https://www.aiamp.info/index.php/redes-permanentes-aiamp/red-de-trata-de-personas/documentos/protocolo-de-cooperacion-interinstitucional-para-fortalecer-la-investigacion-atencion-y-proteccion-a-victimas-del-delito-de-trata-de-personas-entre-los-ministerios-publicos-iberoamericanos-aiamp-rempm-2011>> accessed 24 July 2021.

Data on victim identification is publicly available through an annual statistical report issued by the MITP.<sup>11</sup> According to the 2020 Statistical report, between the enactment of Law 20.507 in 2011 and December 2020, the official data reports 47 cases of trafficking in persons brought to court, compounding a total of 285 victims.<sup>12</sup> 30 cases correspond to trafficking for sexual exploitation and 17 cases for trafficking for forced labour. From the 47 cases, 40 have been terminated and 21 cases ended with convictions: 13 convictions for sexual exploitation and 8 convictions for labour trafficking.<sup>13</sup> Regarding victim profile, 178 were victims of labour trafficking and 107 were victims of sexual exploitation. Until 2015, all identified victims were foreigners. In 2016, three national victims were identified, all girls. After 2016, all identified victims have been foreigners. Nationalities are predominantly from neighbouring countries and the Latin American region. However, a trend of Asian victims can be identified since the early beginnings of official data collection. Foreigner victims have come from Argentina, Colombia, Dominican Republic, Paraguay, Uruguay, Bolivia, Ecuador, India, South Korea, Venezuela, South Africa, Russia, China, Cuba, Thailand and Vietnam. The main nationalities have been Bolivian, Paraguayan and Colombian; the first two, matching cases of massive recruitment of victims for labour trafficking. Colombian nationality stands out as the main nationality of female victims of sexual exploitation. 45% of the total victims have been men, amounting to 128 victims. Female victims account for 55% of the total victims, corresponding to 157 women. Although women stand out as the predominant group of identified victims, it must be highlighted that this feature appeared as recently as 2019.<sup>14</sup> In the case of female victims, 32% (51 victims)

---

<sup>11</sup> The "Statistical Report on Trafficking in Persons in Chile" is prepared by the MITP with information on investigations formalized for this crime since the enactment of Law 20.507 to date. Said information is reported by the Public Ministry, PDI, and the Chilean Carabineros and was part of the commitments of the first NPA <<http://tratadepersonas.subinterior.gov.cl/datos-estadisticos/>> accessed 24 July 2021.

<sup>12</sup> These low numbers, both in victim identification and convictions, has been a permanent concern in the US Department of State TIP reports and also underscored by academic research. Daniel Quinteros, Roberto Dufraix, Romina Ramos 'Human Trafficking Cases in Chile: Challenges for Reducing the "Dark Figure"' (2019) in J. Winterdyk, J. Jones (eds.), The Palgrave International Handbook of Human Trafficking <[https://link.springer.com/referenceworkentry/10.1007%2F978-3-319-63192-9\\_105-1](https://link.springer.com/referenceworkentry/10.1007%2F978-3-319-63192-9_105-1)> accessed 4 July 2021.

<sup>13</sup> From the remaining cases, 5 cases were terminated through the prosecutor's faculty of not persevering, 6 were requalified as different crimes (trafficking for prostitution of Article 411 ter and smuggling of migrants); 2 cases ended through other forms of termination, and 6 cases were acquitted, 3 for trafficking for sexual exploitation and 3 for labour trafficking. MITP, *Estadístico de Trata de Personas 2011-2020*, <<http://tratadepersonas.subinterior.gov.cl/media/2021/04/Informe-estadistico-sobre-Trata-de-Personas-2011-2020.pdf>> accessed 4 July 2021.

<sup>14</sup> In effect, in 2018, 54% of the total victims were men and 46% were women, trend that had been constant since the early elaboration of the statistical report. This inconsistency with UNODC global trends that indicate women as the main victims of trafficking in South America is due to the characteristics of the cases and dynamics of recruitment. Although most of the cases have been for sexual exploitation, two labor trafficking cases that occurred in 2011 and 2013 involved the recruitment of a massive number of male victims (42 and 74 men, respectively) that distorted statistics. The following years more sexual exploitation cases were detected, where female victims were recruited individually or in smaller numbers. All male victims identified were for labor trafficking.

correspond to trafficking for forced labour and 68% were victims of sexual trafficking (106 victims). Forced labour cases have been identified in the economic activities of agriculture, construction, textile factories and services (restaurants).

Regarding minors, a total of 21 child victims have been identified during the period 2011-2020, predominantly foreigner girls trafficked for purposes of labour exploitation.<sup>15</sup> Girls, boys, and adolescents account to 7% of the total number of victims identified.

In regard to case law, there is a marked tendency to convict through alternative penalties and most of the cases are resolved by the application of “justice of the agreements”. Convictions are lenient: in almost all cases, a substitute penalty was imposed – trafficking for the purpose of sexual exploitation being the crime that is most solved in this way. In oral trials, labour trafficking usually ends with an acquittal. Meanwhile, in sex trafficking cases, the tendency is to convict, as long as the victim submits to trial. In the area of acquittals for sex trafficking, it is possible to observe the influence of stereotypes linked to prostitution, gender discrimination and irregular migration.<sup>16</sup> The influence of racial and cultural stereotypes can be observed in forced labour trafficking acquittals, particularly cases with Asian victims.

Most of the key stakeholders of the anti-trafficking field gather around the MITP led by the MISP.<sup>17</sup> The Intersectoral Table is a multistakeholder permanent advisory commission of inter-ministerial composition, entrusted with the coordination of the actions, plans and programs of the different institutional actors in matters of prevention, repression and punishment of trafficking in persons, at both the national and regional levels.<sup>18</sup>

---

<sup>15</sup> 9 Ecuadorians, 5 Bolivians, 3 Paraguayans, 3 Chileans and 1 Peruvian. 14 children were victims of trafficking for forced labour (67%) and 7 children (33%) were victims of trafficking for sexual exploitation. Their ages range from 14 to 17 years old. 86% of the child victims were girls (18 victims) and 14% (3 victims) were boys.

<sup>16</sup> Roberto Dufraix, ‘Trata de personas y tráfico de migrantes’, oral presentation in *Seminario internacional Escuela de Derecho Universidad de Valparaíso*, 2 julio 2021, <<https://www.youtube.com/watch?v=Fvhra5b06lQ&t=1324s>> accessed 14 July 2021; Natalia Cárdenas, Andrea Sánchez, ‘Trata de Personas Análisis Jurisprudencial’ *Grey Paper Association of Feminist Women lawyers (Asociación de Abogadas Feministas, ABOFEM)*.

<sup>17</sup> The MITP is compound of designated representatives of 24 institutions and organizations, that are: the Undersecretariat of Interior, the Undersecretariat of Crime Prevention, the Undersecretariat of Foreign Affairs, the General Directorate of the Maritime Territory and Merchant Marine, the General Directorate of Civil Aviation, the Undersecretariat of Women and Gender Equity, the Undersecretariat of Public Health, the Undersecretariat of Healthcare Networks, the Undersecretariat of Education, the Undersecretariat of Human Rights, the Undersecretary of Childhood, the Undersecretariat of Labour, the Public Ministry, Carabineros of Chile, Investigative Police of Chile, the National Institute of Human rights, the Defender of children’s rights, the International Organization of Migrations, the United Nations High Commissioner for Refugees, and civil society organizations: NGO Raíces, Chilean Catholic Institute of Migration, Libera Foundation, Honra Foundation and Madre Josefa Foundation.

<sup>18</sup> Decree 2821 that created the MITP, was replaced by Decree 1817 In July 2021. Decreto 1817 Exento Reemplaza el Decreto que crea la “Mesa Intersectorial sobre Trata de Personas” <<https://www.bcn.cl/leychile/navegar?idNorma=1164203>> accessed 20 July 2021.

In practice, the work of the MITP and its coordination has concretized in the way of national action plans (NAPs), agreed upon by all members of the Table, both public and private institutions. The first plan of action was launched in December 2013, covering the 2013-2014 period.

The second NAP was in force between 2015-2018; this period is characterized by efforts of the MITP and its members to consolidate the institutions and procedures created as well as the new status granted by the TiP report. Regional Intersectoral tables and regional focal points were set up and appointed in each region; new protocols and regulations were issued; guides for investigation, detection and labour inspections were developed and the MITP continued its work with the cooperation of civil society, particularly in the assistance of victims. This period matches a certain decrease in cases investigated and brought to court.

Currently, the country is implementing its third NAP, that covers the period 2019-2022. All action plans have been structured under the 4 Ps with compliance indicators.

International organizations and international CSO have been crucial to provide funding for anti-trafficking initiatives, particularly in the areas of prevention and research in collaboration with local NGOs and public institutions. Save The Children, Terre des Hommes,<sup>19</sup> UNICEF, IOM, the Embassy of United Kingdom, the Embassy of Canada,<sup>20</sup> the US Embassy and the US Department of State have been some of the main donors.

Most of the funding, before and after the enactment of the law, has been directed to trafficking for sexual exploitation. Trafficking for forced labour has been addressed as a matter of international funding in recent years.<sup>21</sup> Technical assistance by international organizations is provided on a constant basis by organizations such as ILO, IOM and OHCHR.

The State funds sexual exploitation reparative programs and residences for child victims, which operate through public tenders directed to NGOs. Since 2012, the State funds a shelter for women victims of trafficking, which is run by local NGOs under the supervision of the Women's National Service (*Servicio Nacional de la Mujer y Equidad de Género, SERNAMEG*). In certain occasions, the State has financed the elaboration of prevention

---

<sup>19</sup> Terre des Homes financed the early work undertaken by local NGOs against trafficking of children. In 2001 they brought the campaign "Stop trafficking in children and adolescents" and funded the first study that addressed the issue of trafficking, undertaken by Raíces.

<sup>20</sup> The Embassy of Canada financed preventive materials such as ONG Raíces' policy brief "Trata de Personas. La Protección de las víctimas: tarea de todas y todos", Santiago, 2011.

<sup>21</sup> The US Department of State and Freedom Fund have funded local NGOs for awareness raising, capacity building, research and strategic international litigation in trafficking for forced labour.

materials, hiring expert CSOs to carry out its design and implementation.<sup>22</sup> However, public policy on trafficking has never been assigned direct resources in the State's general budget.

The Public Ministry and both national police forces have created specialized units to address trafficking in persons. The Prosecutor's Office created an organized crime unit, at the national level, in the year 2000, just after the adoption of the Palermo Protocol. Later on, in 2004, it created the International Cooperation and Extraditions Unit (UCIEX), in charge of maintaining and coordinating the international relations of the Public Ministry with its international counterparts globally.<sup>23</sup> Together with UCIEX, two other specialized units with national scope were created: the Money Laundering and Organized Crime Specialized Unit (ULDDECO), that focuses on trafficking for forced labour and the Specialized Unit for Sexual Crimes and Intrafamily Violence (USEXVIF), that deals with trafficking for sexual exploitation. These national units provide guidance, expert support and assistance in trafficking investigations to local and regional prosecutors. Each region has appointed a trafficking coordinator prosecutor, that acts as a focal point and channels requests for assistance.

In 2012, the PDI created the Anti-trafficking Brigade in the Metropolitan Region, (*Brigada Investigadora de Trata de Personas*, BRITRAP), that carries out trafficking and smuggling of migrants investigations with national scope. With the emergence of the migration crisis and the increase in cases of smuggling of migrants, two other anti-trafficking brigades were created in the north of Chile.<sup>24</sup> Carabineros has the OS-9 unit, in charge of investigating organized crime, including trafficking in persons.

As the national human rights rapporteur, the National Institute of Human Rights (*Instituto Nacional de Derechos Humanos*, INDH) reviews the State's response regarding trafficking in its annual Human Rights reports. From 2018 onwards, the reports have highlighted the need to focus on migrants' vulnerability to trafficking, particularly when faced with a turn to more restrictive migration policies.

During the last decade, Chile has suffered the impact of an increase in its migration flows, becoming a country of destination of intraregional migration since the 2000s. In the last 25 years, the economic growth of Chile has increased substantially, reducing levels of poverty, and fostering a robust and sophisticated economy with political stability. This context of economic growth and development has acted as an important factor of migration attraction,

---

<sup>22</sup> Ministerio de Educación, Gobierno de Chile, 'Guía de Prevención de Trata de Niños, Niñas y Adolescentes' (2020) <<https://migrantes.mineduc.cl/wp-content/uploads/sites/88/2020/10/Gu%C3%ADa-de-Trabajo-para-la-Prevenci%C3%B3n-de-la-Trata.-Mineduc-2020..pdf>> accessed 14 July 2021.

<sup>23</sup> UCIEX represents the Public Prosecutor's Office before international forums and organizations such as UNODC; OEA/REMJA; World Summit of Attorneys General; World Association of Prosecutors; Ibero-American Association of Public Ministries; MERCOSUR REMPM; IBERRED; and the European Judicial Network.

<sup>24</sup> The two other brigades are located in Arica and Iquique, next to the Peruvian and Bolivian borders.

especially in the face of stagnation and crisis faced by countries such as Argentina and Venezuela, which were historically the main destinations of South American migration.<sup>25</sup>

While migrants pre-2012 came predominantly from Perú, during the period 2012-2017 the majority came from Venezuela and Colombia.<sup>26</sup> From 2018 onwards Venezuela and Haiti, in connection with their political and economic crisis, were the predominant migrant populations.<sup>27</sup> In 2020, these migratory trends deepen.<sup>28</sup> Currently, the five main migrant communities are Venezuela (30,7%), Perú (16,3%), Haiti (12,55%), Colombia (11,4%) and Bolivia (8,5%), which add up to approximately 79,3% of the total migrant population.

For many years, civil society lobbied for the reform of Decree 1.094 that regulated migration, a presidential regulation that dated from the time of the dictatorship. Its authoritarian origin influenced an approach focused on national security. The lack of an updated migratory policy and a proper migration law, consequent and respectful of human rights, that cherishes interculturality, would have favoured illicit and damaging activities.<sup>29</sup>

Chile enacted a new migration law – Law 21.325 – in April 2021. Prior to the law, Chile's immigration system allowed a foreigner to change migratory status while being in the country, but tied visa status to employment. This visa constituted a “double-edged sword” since “the foreigner who enters as a tourist must obtain a work contract in order to have access to the temporary visa, which gives excessive control to the employer, giving

---

<sup>25</sup> Alejandro Canales, 'Contemporary immigration in Chile. From ethnic-national differentiation to class inequality' (2019) *Papeles de Población*, Vol. 25, núm. 100, pp. 53-85 (2019) available at: <<https://www.redalyc.org/journal/112/11260966003/html/>> accessed 20 July 2021. In 1992, foreigners amounted to 0.81% of the total population. Migrants came traditionally from Peru and Bolivia due to proximity and an active business activity between the border cities.

<sup>26</sup> Migration flows experienced a high increase during the years 2010-2017, with a particular increase from 2015-2016 onwards. According to the 2017 Census (<<https://www.censo2017.cl>> accessed 20 July 2021), the migrant population in the country accounted for 746.465 people, corresponding to 4,35% of the total population, an exponential increase in time. The 2017 Census most prominent migrant populations were the traditional Peruvians, Colombians, Venezuelans, Bolivians and Haitians.

<sup>27</sup> In 2018, the Migration Department of the MISP, accounted 1.251.225 foreigners residing in the country, where the Venezuelan community appeared as the most prevalent (23% of the total migrant population), followed by the Haitian community, who reached 14.3%. Instituto Nacional de Estadísticas (INE), Departamento de Extranjería y Migración (DEM), 'Estimación de Personas Extranjeras Residentes en Chile al 31 de Diciembre 2018', Febrero 2019, <<https://www.extranjeria.gob.cl/media/2019/04/Presentaci%C3%B3n-Extranjeros-Residentes-en-Chile.-31-Diciembre-2018.pdf>> accessed 14 July 2021.

<sup>28</sup> The estimated migrant population in December 2020 was of 1.462.103 foreigners, an increase of 12,4% in comparison to 2018 statistics. INE, DEM, 'Estimación de Personas Extranjeras Residentes en Chile al 31 de Diciembre 2020', July 2021, <https://www.extranjeria.gob.cl/media/2021/07/Estimacio%CC%81n-poblacio%CC%81n-extranjera-en-Chile-2020.pdf> accessed 24 July 2021.

<sup>29</sup> Denisse Araya, Iria Retuerto, 'Hacia una protección integral de los niños, niñas y adolescentes víctimas de trata de personas en Chile. Nuevas condiciones y desafíos pendientes' in ACNUR, OIM, UNICEF, 'Los derechos de los niños, niñas y adolescentes migrantes, refugiados y víctimas de trata internacional en Chile. Avances y desafíos' (2012) p. 24.



opportunity for the exploitation of the worker.”<sup>30</sup> Civil society has highlighted how migrant workers are pressured to maintain employment “at any cost”.<sup>31</sup> The new law 21.325 has replaced this visa and introduced four categories for authorized entry. However, the specifications and requirements established in the law to access them are extremely problematic and, according to academia,<sup>32</sup> will constitute the main factor of precariousness of migrants and of setback in conditions for effective access to rights.

Civil society has also highlighted the high inequality in the country as a structural problem with implications in the detection of victims.<sup>33</sup>

Since the adoption of the Palermo Protocol, Chile has been reviewed in three opportunities under the UPR framework before the UN in 2009, 2014 and 2019. Among other international bodies, the CEDAW Committee, the Committee on the Rights of the Child (CRC) and the Committee on Torture have also reviewed the State’s response.

Regarding the TiP reports, Chile was ranked as a Tier 2 country till 2014, when it obtained Tier 1.

---

<sup>30</sup> Florencia Jensen, ‘Inmigrantes en Chile: la exclusión vista desde la política migratoria chilena’ in *Temáticas migratorias actuales en América Latina: remesas, políticas y emigración*, Serie Investigaciones No. 7, ALAP (2009) p. 105, available at: [https://www.academia.edu/636034/Inmigrantes\\_en\\_Chile\\_La\\_exclusi%C3%B3n\\_vista\\_desde\\_la\\_pol%C3%ADtica\\_migratoria\\_chilena](https://www.academia.edu/636034/Inmigrantes_en_Chile_La_exclusi%C3%B3n_vista_desde_la_pol%C3%ADtica_migratoria_chilena) accessed 20 July 2021.

<sup>31</sup> Casa de la Paz Foundation, ‘Desafíos para la inclusión de migrantes en Antofagasta. Un diagnóstico de percepción. Derechos Humanos y Empresas’ (2008) p. 26, available at: [https://www.casadelapaz.cl/wp-content/uploads/2018/07/Estudio-Inclusión-Laboral-de-Migrantes-Antofagasta\\_FIN.pdf](https://www.casadelapaz.cl/wp-content/uploads/2018/07/Estudio-Inclusión-Laboral-de-Migrantes-Antofagasta_FIN.pdf) accessed 20 July 2021.

<sup>32</sup> Luis Eduardo Thayer, ‘Nueva ley de migraciones: por qué precariza el trabajo y la residencia de los migrantes y puede promover más ingresos clandestinos’ (Ciperchile 27 Abril 2021) available at: <https://www.ciperchile.cl/2021/04/27/nueva-ley-de-migraciones-por-que-precariza-el-trabajo-y-la-residencia-de-los-migrantes-y-puede-promover-mas-ingresos-clandestinos/> accessed 20 September 2021.

<sup>33</sup> The changes in the economy would have had an effect in social paradigms and social norms, reinforcing discriminatory models of socialization, based on economic power and violent imposition. This, on its turn, would have reinforced and deepen rooted norms and myths in society that tend to justify exploitation, neutralizing the crime, manifested both in common citizens as well as those entrusted with the protection of victims, prosecution of offenders and enforcement of the law. Denisse Araya, Iria Retuerto (n 29) p. 123.



# Determinants of anti-trafficking efforts

## Particulars of determinants by type of response

### Prosecution

**Political will: *The Executive power's focus on prosecution: Internal, direct, pressure point***

Political will has prioritized prosecution and promoted advancements in this area. As part of the government's public security agenda against crime, prosecution has been the main focus of the anti-trafficking public policy in Chile, in respect to prevention and protection<sup>34</sup> or addressing wider structural causes of trafficking. In 2011, the Piñera administration (2010-2014) reformed the organic law that regulated the MISP,<sup>35</sup> fulfilling electoral promises of combatting crime. Among its changes, it entrusted the Undersecretary of Interior to assume the mandate of maintaining public order and "effectively combat drug trafficking, organized crime and trafficking in persons".<sup>36</sup> An Organized crime department was created within the Studies Division of the Undersecretary,<sup>37</sup> with the aim to design and implement a national strategy against trafficking in persons, that fulfil its task in 2013. The law reform also established the police forces dependence to the Ministry, placing the issue of trafficking in the Ministry's agenda of organized transnational crime and border control, allocating an important number of resources for both police forces under the Northern Border Plan.<sup>38</sup>

---

<sup>34</sup> This was highlighted by civil society in the country's 2019 UPR Report. Summary of Stakeholders' submissions on Chile, Report of the Office of the United Nations High Commissioner for Human Rights, 6 November 2018, A/HRC/WG.6/32/CHL/3, para. 54.

<sup>35</sup> *Ley 20502 Crea el Ministerio del Interior y Seguridad Pública y el Servicio Nacional para la Prevención y Rehabilitación del Consumo de Drogas y Alcohol, y Modifica Diversos Cuerpos Legales* 21 de febrero de 2011, available at <<https://www.bcn.cl/leychile/navegar?idNorma=1021537>> accessed 25 July 2022.

<sup>36</sup> Ministerio del Interior y Seguridad Pública (MISP), Balance de Gestión Integral Año 2011, p. 3.

<sup>37</sup> MISP, Balance de Gestión Integral Año 2011, p. 13.

<sup>38</sup> 2011 was the year president Piñera's administration implemented the Northern Border Plan, a border control plan that included maritime, air and land spaces, aimed at combatting international threats to internal security, and that implied a strong investment in various technologies for police forces. MISP, Balance de Gestión Integral Año 2011, p. 12. The following years the public security and transnational organized crime focus to trafficking was intensified. MISP, Balance de Gestión Integral Año 2012, p. 7: "In relation to the fight against organized crime, during 2012, the work continued focused on strengthening the strategies designed around transnational crime (human trafficking, terrorism, drug trafficking, money laundering)"; MISP, Balance de Gestión Integral Año 2013 p. 13-14; MISP, Balance de Gestión Integral Año 2014, p.15. From 2015 onwards, president's Bachelet administration made a turn in the migration policy, and matters related to trafficking were located within the migration and human rights agenda. MISP, Balance de Gestión Integral Año 2015 p.16, 25; MISP, Balance de Acción Pública Ministerial, 2015, p. 10; MISP, Balance de Gestión Integral Año 2016, p.12; MISP, Balance de Gestión Integral Año 2017, p.17-18, 47. In 2018, the Piñera administration went back to office and reinstalled its public security agenda, returning to a border control/organized crime perspective (MISP, Balance de Gestión Integral Año 2018, p. 28 and 40) and withdrew the allocation of resources to the MITP assigned

The Executive power's focus on prosecution was present during the trafficking bill discussion. In his intervention at the Senate, during the bill's last constitutional proceedings, the Minister of Justice highlighted the need for better investigation techniques and argued that "if the cooperation of other countries is to be obtained in the face of this transnational criminal phenomenon, it is necessary to have legislation at the height of the standards that they have established, in line with the legislation of advanced countries [...] it is not a symbolic reciprocity but rather has concrete legal effects. To the extent that Chile acquires the principle of double criminality, that is, that a crime in the different countries has the same status, important facilities are obtained with regard to judicial investigations, extraditions and transfer of convicted persons. The treaties regarding extradition and transfer of convicted felons, assume that in both countries where the phenomenon is being pursued, the figure is typified in the same way and, in this regard, Chile has a lag that it is essential to overcome".<sup>39</sup>

**International Law: *Framing of trafficking as transnational organized crime: external, structural, direct determinant***

The framing of trafficking of the Palermo protocol has shaped the country's anti-trafficking response, as it addresses the issue from a security and public order perspective, in line with the Palermo focus on transnational organized crime.<sup>40</sup> In 2011, the MISP reactivated the Intersectoral Table "from a perspective of study, analysis and discussion of matters related to security and public order".<sup>41</sup> Trafficking was addressed both in the discussion of the ratification of the UN Convention and Trafficking Protocol<sup>42</sup> and later in the introduction of the bill on trafficking, prioritizing the argument of the need to address and confront the rise of organized crime and its potential threat to Chile, and as a secondary argument the protection of victims.<sup>43</sup> This led to the enactment of Law 20.507 that, together with

---

for its NPA. MISP, Balance de Gestión Integral Año 2018, p. 58; Cuenta Pública del Ministerio del Interior y Seguridad Pública 2019, p. 16. Trafficking was not mentioned in the MISP public accounts of 2020 and 2021.

<sup>39</sup> Intervention of Minister of Justice Felipe Bulnes, Second Report of the Commission of Human Rights. Second constitutional proceedings, 18 January 2011. Biblioteca del Congreso Nacional de Chile (BCN), Historia de la Ley 20.507, p. 167 <<https://www.bcn.cl/historiadela-ley/nc/historia-de-la-ley/4627/>> accessed 21 June 2021

<sup>40</sup> Carolina Otárola, 'Trata de Personas: Voces y Silencios del ilícito en la sociedad, profesionales y víctimas' Tesis de Magíster (2015), p. 97 <<http://repositorio.uchile.cl/bitstream/handle/2250/136570/Tesis%20-%20Correccion%20final-%20Carolina%20Ot%C3%A1rola%2026.08.pdf?sequence=1&isAllowed=y>> accessed 21 June 2021.

<sup>41</sup> MISP, Balance de Gestión Integral Año 2011, p. 6.

<sup>42</sup> BCN, Historia del Decreto 342 (n 1) pp. 16-17; 25-26, p. 29.

<sup>43</sup> BCN, Historia de la Ley 20.507, p. 3. The Palermo Protocol's emphasis on organized crime and border control had not been the focus of police forces before the enactment of Law 20.507. In 2005, the National Headquarters of the Family (JENAFAM) of PDI organized a series of conferences on trafficking, with a focus on women and child victims, and conformed in 2006 a multidisciplinary team to address the crime, training police officers from sexual crimes units throughout the country and even developing in 2007 the first training program for sex workers to act as preventive agents. ONG Raíces, OIM, 'Trata de Niños/as y Adolescentes: Una realidad oculta. Estudio Exploratorio sobre Trata con Fines de Explotación Sexual en Niños, Niñas y Adolescentes en las Regiones I, V y Región Metropolitana (2007), p. 20.

criminalizing the act, introduced organized crime special investigative techniques for trafficking cases. Most of the materials elaborated within the MITP have focused on guidelines and protocols regarding investigation and prosecution.<sup>44</sup>

As a hindering aspect of the determinant, the excessive recourse of framing trafficking under the transnational organized crime paradigm has had consequences in the number of detected victims, as it filters potential victims in more domestic, less sophisticated settings. Trafficking statistics, internal and international, are very low, particularly in comparison with neighbouring countries.<sup>45</sup>

#### **International Mechanisms: *The creation of REDTRAM: external, direct, structural***

The existence of REDTRAM has allowed to advance in prosecution and secure convictions in complex cases while protecting victims from revictimization. In 2011, just after its creation, the Paraguayan prosecutors assisted the Chilean public ministry in its first labour trafficking case. In 2017, REDTRAM issued its "Protocol of Interinstitutional Cooperation to strengthen investigation, assistance and protection of victims of the crime of trafficking in persons and smuggling of migrants between the Ibero-american Public Ministries",<sup>46</sup> that contemplates information exchange, direct interinstitutional cooperation, creation of data bases and the establishment of common minimum standards related to assistance, protection and repatriation of victims. For the first time, in March 2021, the Public Ministry managed to obtain a conviction in a transnational sex trafficking case, exempting the victim to testify before trial. The prosecutor obtained assistance in the framework of REDTRAM, from the Peruvian Prosecutor's office, implementing the protocols and activating the network of international assistance created in 2011.

#### **Case law: *Judges as a hinder: internal, indirect, structural***

Case law in Chile has hindered efforts in prosecution. Prosecutors and police officers interviewed pointed out how lack of proper training and specialized knowledge from judges render complex and sophisticated investigations into acquittals, by demanding standards of

---

<sup>44</sup> The MITP has elaborated the Guide of Good Practices in criminal investigation of the crime of trafficking in persons (2015), the Guide for the detection and referral of victims of human trafficking (2016) and the Action guide for intersectoral inspections on trafficking in persons (2017).

<sup>45</sup> The focus on organized crime tends to discard situations committed in domestic, less sophisticated settings. In comparison, during the period 2011-2018, Peru's Public Ministry registered 6.992 reports of human trafficking cases. Instituto Nacional de Estadísticas e Informática, Estadísticas de Trata de Personas 2012-2018, available at: <[https://www.inei.gob.pe/media/MenuRecursivo/boletines/boletin\\_trata\\_de\\_personas\\_4.pdf](https://www.inei.gob.pe/media/MenuRecursivo/boletines/boletin_trata_de_personas_4.pdf)> accessed 21 September 2021.

<sup>46</sup> AIAMP, *Protocolo de Cooperación interinstitucional para fortalecer la investigación, atención y protección a víctimas del delito de Trata de Personas y el Tráfico Ilícito de Migrantes entre los Ministerios Públicos Iberoamericanos* (2017) available at: <<https://www.aiamp.info/index.php/redes-permanentes-aiamp/red-de-trata-de-personas/documentos/protocolo-de-cooperacion-interinstitucional-para-fortalecer-la-investigacion-atencion-y-proteccion-a-victimas-del-delito-de-trata-de-personas-y-el-trafico-ilicito-de-migrantes-entre-los-ministerios-publicos-iberamericanos-aiamp-2017>> accessed 20 September 2021.

proof that were beyond the legal requirements.<sup>47</sup> Abuse of vulnerability and forced labour are problematic concepts that judges and courts have interpreted broadly, demanding excessively high thresholds of proof,<sup>48</sup> leaving no clear orientation to prosecutors and discouraging investigation and prosecution. Discriminatory views on gender and migration increase the threshold to prove lack of consent and trials without victim usually end in acquittals

**Structural conditions: Governance and Politics: Corruption as a hinder: internal, indirect, structural**

Research undertaken by NGOs has highlighted corruption as a hindering factor of prosecution. In 2013, a police officer working in border control was convicted in a trafficking case for sexual exploitation.<sup>49</sup> In exchange of a payment, he supervised that the victims did not have problems in the border control where he worked. Police officers are consumers of commercial sex, protect clandestine brothels or demand sexual favours in border control and migration proceedings.<sup>50</sup> This has also been exposed in the media<sup>51</sup> and in the US Department of State TiP reports.<sup>52</sup>

**Structural conditions: Governance and Politics: Accusatorial system as a hinder: internal, indirect, structural**

The accusatorial system, introduced in 2000, has been highlighted as a determinant that might hinder prosecution. In countries with high levels of impunity the accusatorial system provides powerful selective mechanisms of prosecution, on many occasions linked to existing serious inequalities,<sup>53</sup> which seems to be the case in Chile, were studies have pointed out how the organizational culture of the public ministry discards investigating these

---

<sup>47</sup> Interview with Carolina Suazo, Deputy prosecutor, High Complexity Crimes Prosecutor's Office, Metropolitan North Central Prosecutor's Office, Public Ministry of Chile (Santiago, Chile, 12 August 2021); Interview with advisory attorney, National Prosecutor's Office, Public Ministry of Chile (Santiago, Focus group 24 September 2021); Interview with Police Chief inspector Anti-trafficking Brigade Giordano Lanzarini (Santiago, Focus group 24 September 2021).

<sup>48</sup> Tania Gajardo Orellana, 'La trata de personas ¿crimen de lesa humanidad? A propósito del caso "paraguayos"' in Revista Jurídica del Ministerio Público N° 64, Septiembre 2015, p. 183.

<sup>49</sup> Ministerio Público C/ C.E.P.V., Tribunal de Juicio Oral en lo penal de Arica, 16 de enero de 2013. This case was framed under Art. 411 *ter*, that is, trafficking for prostitution, that requires no proof of means of coercion.

<sup>50</sup> ONG Raíces, OIM (n 43) p. 30-31, 47.

<sup>51</sup> Crece la violencia y los abusos contra mujeres migrantes en Magallanes, (CIPER, 29 December 2014) available at: <<https://www.ciperchile.cl/2014/12/29/crece-la-violencia-y-los-abusos-contra-mujeres-migrantes-en-magallanes/>>.

<sup>52</sup> US Department of State Report on Trafficking in Persons 2015, p. 119, 2016, p. 128, and 2017, p. 126.

<sup>53</sup> José Luis Díez-Ripollés, 'La política legislativa penal iberoamericana a principios del siglo XXI', Polít. crim., No 5, 2008, A7-5, p. 22, available at: <[http://www.politicacriminal.cl/n\\_06/a\\_7\\_5.pdf](http://www.politicacriminal.cl/n_06/a_7_5.pdf)> accessed 7 September 2021.

types of cases, that involve high resources with low chances of conviction,<sup>54</sup> even more so in the face of national case law.

**Funding and resources: *High-maintenance cases as a hinder: internal, indirect, structural***

According to civil society interviewees, the high costs involved in trafficking victims' assistance, prevents prosecutors to pursue criminal investigations. This, in turn, is a consequence of case law and structural conditions of the Public Ministry, whose statistical goals tend to favour early closing of cases.<sup>55</sup>

**Civil society: *Unresolved tension with the State: internal, indirect, structural***

National studies have highlighted the tension between state agents and civil society regarding prosecution, that hinders advancements in this area, mainly by preventing participation of the former in policy or joint action.<sup>56</sup> State agents operate with secrecy, and power dynamics regarding the use or access to information, together with tensions associated with fear of being examined or evaluated; lack of knowledge on the subject, and confidentiality as a control and power mechanism are some of the tensions that studies identify.<sup>57</sup> In effect, Decree 1817 that replaced Decree 2827, expressly establishes that the Prosecution and Control Sub-commission of the Intersectoral Table will be conformed exclusively by State agents.<sup>58</sup> In the focus group with State actors, none of them mentioned civil society as a key factor in advancements in anti-trafficking policy.

**Civil society: *Cooperation with state agents: internal, direct, structural***

Despite the abovementioned, working groups compound of CSOs and prosecutors have proved to be crucial for advancing efforts in prosecution while increasing victim protection. Promoted by civil society, in 2010<sup>59</sup> and 2017,<sup>60</sup> child sexual exploitation preventive

---

<sup>54</sup> Roberto Dufraix, 'Trata de personas y tráfico de migrantes', oral presentation in Seminario internacional Escuela de Derecho Universidad de Valparaíso, 2 julio 2021, available at: <<https://www.youtube.com/watch?v=Fvhra5b06lQ&t=1324s>> accessed 14 July 2021.

<sup>55</sup> Ibid.

<sup>56</sup> Otárola (n 40) p. 95. The study cites an NGO who explains how they were left out of the Intersectoral table once it was reactivated by the MISP, even though the NGO had played a crucial role in the enactment of the trafficking bill.

<sup>57</sup> Ibid.

<sup>58</sup> Article 2 of Decree 1817 "The Subcommittee for Persecution and Control will have an eminently operational nature, in which only State institutions competent in the criminal prosecution process may participate and it will be these that set their objectives. Without detriment to the foregoing, the subcommittee may invite other members of the Table to specific sessions when it deems necessary".

<sup>59</sup> Denisse Araya, Iria Retuerto (n 29) p. 131. In 2010, the Public Ministry and USEXVIF partnered with NGOs to undertake a pilot plan "Criminal prosecution of promotion and facilitation of child prostitution and the obtention of sexual services by children and adolescents", in the Metropolitan and V region, that aimed to promote the collection of evidence to prevent depending on the child testimony and avoid secondary revictimization and elaborate a protocol for the investigation of crimes of sexual exploitation.

<sup>60</sup> ONG Raíces, Informe Final Estudio sobre Caracterización de las formas de Explotación Sexual Comercial de Niños, Niñas y Adolescentes para la Secretaría Ejecutiva del Consejo Nacional De La Infancia (2017) p. 149.

projects, run by civil society organizations joined specialized prosecutors and local police officers in working groups, to provide reciprocal training, create protocols for joint action in reporting, referral, expert reports, protection and coordination, obtaining legal successes. Investigative techniques were adopted to avoid children's revictimization, such as video recorded interviews, that prove to be successful in trials and less harmful for the victims.

## Protection

**Civil society: Local NGOs and international organizations subsidizing role: internal, direct, structural**

Prior to the enactment of law 20.507, it was NGOs who provided assistance to vulnerable migrants and had initiatives regarding reparation of trafficked victims.<sup>61</sup> These organizations covered a significant demand of psycho-social assistance to the migrant population at the national level.<sup>62</sup>

It was NGOs who first dealt with trafficking cases and began acquiring expertise, later transferred or delivered to the State. In 2001, prior to the Second International Congress against commercial sexual exploitation of children (CSEC) (Yokohama, 2001), the Chilean government asked NGO Raíces to carry out a pilot project to assist child victims of commercial sexual exploitation. From this experience, the National Service of Minors (*Servicio Nacional de Menores, SENAME*) opened 17 projects to assist victims throughout the country, which are still functioning to date.<sup>63</sup>

International organizations were also central in providing assistance to trafficked victims, particularly IOM. Since 2005, IOM developed a trafficking victims assistance comprehensive program that operated in Argentina, Brazil, Chile, Paraguay and Uruguay<sup>64</sup> and that is still in operation to date, with a focus on the Venezuelan migration crisis. Assistance from IOM contributes substantially to strengthening the protection system as a whole, especially by alleviating its budgetary deficiencies.<sup>65</sup>

---

<sup>61</sup> OIM/Chile, 'Investigación sobre Trata de Personas. Resumen Ejecutivo' (2008) p. 14.

<sup>62</sup> Ibid.

<sup>63</sup> Araya, D. y Retuerto, I., 'Manifestaciones locales de la explotación sexual comercial de NNA en Chile. Dinámicas, espacios y género', Diciembre 2010, p. 16. With the support of IOM, a Gessel chamber was implemented to record testimonies of victims. This voluntary initiative ended becoming a law, enacted in 2018, that regulates video recorded interviews and other protective measures to prevent secondary victimization in minors and victims of sexual crimes. Other experiences are narrated in Denisse Araya, Iria Retuerto (n 29).

<sup>64</sup> OIM, Asistencia a víctimas de trata de personas: Experiencias en la Triple Frontera, Organización Internacional para las Migraciones, 2010, p. 26, available at: < <https://www.corteidh.or.cr/sitios/Observaciones/11/Anexo17.pdf>> accessed 24 July 2021; Otárola (n 40) p. 30.

<sup>65</sup> IOM assistance covers repatriation, housing and monetary allowances to trafficked victims.

**Civil society: Cooperation with the State to overcome lack of funding and resources: internal, direct, structural**

Cooperation between the State and civil society has been a key factor to advance in stronger and more comprehensive victim services, in the face of structural lack of resources. Initially, it was the Public Ministry who supported trafficking victims through their general victim's assistance program. This involved the expense of vast resources that tensioned the general budget of the regional prosecutor's offices. According to interviewees<sup>66</sup>, the MITP has allowed to balance the costs of victim protection, distributing tasks and roles among all members of the Table, including civil society.

The functioning of the State's Intersectoral Trafficking Victim's Assistance Protocol rests mainly on coordination and cooperation among members. It was created in 2013 and it consists in the mapping of all service providers, state and non-state actors, in the areas of their competences and expertise, coordinated by a central focal point that acts as a hub, connecting victims to the nearest service providers' networks.<sup>67</sup> Training deficiencies have also been solved through reciprocal training between State actors and civil society organizations.<sup>68</sup>

**Structural conditions: Governance and politics: The unitary structure of the state and local state networks: internal, indirect, structural**

Linked to the abovementioned determinant, the State's administrative structure has facilitated the process of replicating the national victim's protocol network at the local level, as each ministry or national service has its own representatives at the regional level. Local networks are usually less resourced and may lack specialized professionals, so the effectiveness throughout the country is still a challenge.

When the victims' protocol was designed and later implemented, it counted on the previous existence of the Victims Assistance Network (*Red de Apoyo a Víctimas, RAV*), a coordination mechanism led by the Victim Support Program of the MISP based on interagency collaboration agreements that materialized in national and regional task forces

---

<sup>66</sup> Interview with Carolina Suazo, Deputy prosecutor, High Complexity Crimes Prosecutor's Office, Metropolitan North Central Prosecutor's Office Public Ministry of Chile (Santiago, Chile, 12 August 2021); Interview with Paz González Lever, public administrator, Director Social Unit, Libera Foundation (Santiago, Chile, 12 August 2021); Interview with representative, Corporación ONG Raíces (Santiago, Chile, 3 August 2021).

<sup>67</sup> MISP, Protocolo Intersectorial de Víctimas de Trata 2015, available at: <http://tratadepersonas.subinterior.gov.cl/media/2015/07/MITP-Protocolo-Intersectorial-de-Atenci%C3%B3n-de-V%C3%ADctimas-de-Trata-de-Personas.pdf> accessed 20 July 2021.

<sup>68</sup> Awareness raising and training provided by NGOs to the police has allowed to improve the treatment provided to child victims, particularly those living on the streets. ONG Raíces (n 60) p.160.



compound of all signatory institutions<sup>69</sup> This previous institutional experience in coordination allowed the Intersectoral Trafficking Victims Protocol to be implemented easily.

**Structural conditions: Governance and politics: State cooperation within MITP: internal, direct, structural**

Formal avenues where public entities can connect and coordinate, has allow transfer of information and problem-solving. Coordination between State institutions allowed to create an expedite system of migratory regularization for trafficking victims. In 2013, in the framework of the first NPA and MITP's coordination, the Public Ministry, the MISP and the Department of Migration regulated a Visa protocol that exempt the procedure of any costs and opened its access to all members of the Table that dealt with victims.<sup>70</sup>

**Political will: Allocating resources for trafficked women: internal, direct, pressure point**

When the MITP was reactivated in 2013, SERNAM authorities took a leading role, partnering with the executive secretariat of the Table to lead one of the sub-committees of the upcoming action plan. The interest and commitment of authorities led to the allocation of resources that allowed to open the first and only shelter for trafficking victims, although exclusively for women.<sup>71</sup> The shelter was recognized by all interviewees as an invaluable resource for protecting victims.

**Civil society/ Gender Representation in Policy-Making Processes: Vocation and Women: internal, direct, pressure point**

Studies<sup>72</sup> in the country have highlighted certain psychological traits present in NGOs teams. They point out how organizations were lead and conformed mainly of women, exhibiting a strong sense of vocation and commitment and humanitarian concerns regarding the suffering of victims. These attitudinal dispositions have sparked self-taught and permanent training, fostering specialization and expert knowledge among civil society and the creation of national and international networks of cooperation.<sup>73</sup>

---

<sup>69</sup> MISP, Subsecretaría de Prevención del Delito, Mesas de Trabajo Red de Atención a Víctimas RAV, <https://www.apoyovictimas.cl/mesa-de-trabajo-rav/> accessed 18 August 2021.

<sup>70</sup> Daniela Bonacic, 'Informe sobre la trata de Personas en Chile: Un Análisis legislativo e Institucional en el Marco de la Nueva Ley 20.507', Informe de Título, Pontificia Universidad Católica de Chile (2012), p. 48 <<https://bibliotecadigital.indh.cl/bitstream/handle/123456789/621/TESIS%206.pdf?sequence=1>> accessed 7 July 2021. Law 20.507 introduced Article 33 bis in Decree 1094, that established a visa for trafficking victims. As part of the intersectoral agreement of 2013, the MISP committed to exempt victims from its payment, alleviating budget constraints for MITP members.

<sup>71</sup> Otárola (n 40) p. 7.

<sup>72</sup> Otárola (n 40); ONG Raíces, OIM (n 43).

<sup>73</sup> The first association of Chilean NGOs was created in 2011, after the enactment of law 20.507. Led by the US Embassy, it gathered civil society organizations and embassies with the aim to assist the implementation of the new law and propose recommendations. The group is still functioning, and is currently led by IOM. Observa La Trata Chile, the national chapter of Observa La Trata Latinoamerica, a network of NGOs and academics,

## Prevention

### *Civil society: Pioneers in research and prevention: internal, direct, pressure point*

The work of NGOs was a key determinant for advancements in prevention. Studies and research about trafficking in the country were initiated by civil society in early 1990s,<sup>74</sup> sparked from the concern regarding child commercial sexual exploitation. In 2001, NGO Raíces developed the first study that recognized the existence of trafficking in the country, and particularly internal sexual trafficking of children.<sup>75</sup> From then onwards, NGOs funded by international organizations, and international organizations themselves developed various investigations to determine the nature and scope of trafficking in the country.<sup>76</sup> They also developed qualitative studies that systematized the experiences of victims with the aim of eradicating the prevailing prejudice towards child victims, who were viewed as responsible of their abuse.<sup>77</sup> These studies were the basis of the bill on trafficking introduced in 2005 and subsequent investigations were presented throughout the whole legislative discussion.<sup>78</sup>

The earliest preventive campaigns were also undertaken by civil society. The participation of local NGOs in international networks such as ECPAT International allowed access to funding for local research and preventive campaigns. In 2001, NGO Raíces joined Terre des Hommes' international campaign "Stop trafficking of Children", and implemented the campaign till 2006.<sup>79</sup> Between 2006 and 2007, and funded by ILO, two more campaigns were displayed coordinated by NGO Raíces and gathering more than 60 public and private institutions. In 2007, the initiative was entrusted to SENAME to ensure its continuity and

---

also gathers local NGOs. Civil society organizations are part of various international networks and associations such as ECPAT International, OUTRAV and GAATW.

<sup>74</sup> ONG Raíces, Moya, A., Araya, D., 'Alto al Tráfico de Niños y Niñas. Diagnóstico Descriptivo de Comercio y Tráfico Sexual Infante-Juvenil' (2001); Fundación Instituto de la Mujer, Corporación la Morada, 'Informe Final Proyecto Tráfico de Mujeres' (2004); Save the Children y ONG Raíces, 'Mapeo Geográfico y Social de la República de Chile. Zonas de Riesgo y Rutas vulnerables de Tratas de Personas; Santiago, junio (2006); ONG Raíces, OIM (n 43).

<sup>75</sup> ONG Raíces (n 74).

<sup>76</sup> OIT, Universidad ARCIS, SENAME, 'Estudio de la explotación sexual comercial infantil y adolescente en Chile, Lima, OIT/Oficina Regional para las Américas/ Programa IPEC Sudamérica (2004). <<https://es.scribd.com/document/326874640/estudio-de-la-explotacion-sexual-comercial-infantil-en-chile-pdf>> accessed 28 August 2021,

<sup>77</sup> Denisse Araya, Iria Retuerto (n 63) p. 42, 101, 106.

<sup>78</sup> BCN, Historia de la ley 20.507 (n 43) p. 3.

<sup>79</sup> Denisse Araya, Iria Retuerto (n 29) p. 135. The campaign involved other Latin American NGOs (Infante (Bolivia), Fundación Esperanza (Colombia) and ONG Ideif (Perú), with whom later, international advocacy was implemented, addressing MERCOSUR.

sustainability, who has carried it since then, keeping the public-private multistakeholder nature of the activity.<sup>80</sup>

Civil society also fostered international cooperation. In 2005, in the framework of the “Stop trafficking of Children” campaign, Peruvian and Chilean NGOs organized the first Inter-border encounter to prevent trafficking between Peru and Chile,<sup>81</sup> gathering international organizations, state and legislative representatives and civil society. The following years, the State initiated bilateral encounters with Perú, Bolivia and Argentina to produce work plans to tackle trafficking and worst forms of child labour.

Civil society organizations played and still play a big role in detecting victims. The first trafficking case in the country after the enactment of law 20.507 was discovered by an NGO, who assisted vulnerable migrants in Santiago.<sup>82</sup>

NGOs working in the network of SENAME’s specialized centers for child victims of commercial sexual exploitation filled the gap in anti-trafficking training, by providing training to the network of institutions of the child protectional system (schools, public officers, judges).<sup>83</sup>

Currently, the MITP has been able to consolidate and coordinate the different disperse efforts in training and awareness-raising, promoting joint action under the framework of UNODC Blue campaign.<sup>84</sup>

**Civil society: *International organizations and State support: external, direct, structural***

International organizations promoted State action by partnering with public institutions and funding preventive initiatives.<sup>85</sup> In 2002, ILO in partnership with SENAME and other public agencies, created the Registry for worst forms of child labour. From 2004 till 2010, IOM partnered with SENAME and developed a series of seminars and training conferences, including transborder seminars with Bolivian authorities.<sup>86</sup> IOM also partnered with

---

<sup>80</sup> The campaigns undertaken were “En Chile la Explotación Sexual Comercial existe” and “No hay excusas. El comercio sexual con menores de 18 años es un crimen”. ONG Raíces, ‘Avances y Desafíos en el Enfrentamiento de la Explotación Sexual Comercial de Niños, Niñas y Adolescentes en Chile. Informe de Seguimiento’ 2009, p. 25.

<sup>81</sup> ONG Raíces, OIM (n 43) p. 23-24.

<sup>82</sup> Otárola (n 40) p. 37. INCAMI, a catholic organization that assists vulnerable migrants, discovered the first trafficking case that ended with a conviction. Ministerio Público c/ Manzueta y Otros, RIT 199-2012, Cuarto Tribunal de Juicio Oral en lo Penal de Santiago.

<sup>83</sup> ONG Raíces (n 60) p. 156.

<sup>84</sup> Mesa Intersectorial de Trata de Personas, ‘Participa en los webinars por el «Día Mundial contra la Trata de Personas» 2021 #ChileSinTrata’ (23 July 2021) <<http://tratadepersonas.subinterior.gov.cl/noticias/participa-en-los-webinars-por-el-dia-mundial-contra-la-trata-de-personas-2021-chilesintrata/>> accessed 30 August 2021

<sup>85</sup> ONG Raíces/OIM (n 43). IOM, ILO/IPEC, Save the Children, ECPAT-International and the British Embassy provided support to NGOs for anti-trafficking initiatives. Denisse Araya, Iria Retuerto (n 29) p. 129.

<sup>86</sup> ONG Raíces/OIM (n 43) p. 21; BCN, *Aspectos básicos de la experiencia internacional y de Chile para el combate de la trata de personas*, 1 de abril 2010 (2010a), available at:

SERNAM to organize a series of international seminars and with the PDI, strengthening their sexual crimes unit. From 2005, Save the Children Sweden signed various agreements with the MISP, starting with the incorporation of Chile in the Latin-American website for missing persons. In 2006, both institutions agreed to develop two geographical and social mappings of potential trafficking spots, executed by NGO Raíces, involving police officers and justice operators, experience that was replicated in 2007.<sup>87</sup>

Save the Children Sweden also supported Carabineros in 2005, to develop conferences on the issue of missing persons and its connection to trafficking.

After the enactment of law 20.507, the U.S. Embassy promoted the creation of a civil society table, that gathered NGOs and embassies to improve cooperation and coordination with anti-trafficking state agents.<sup>88</sup> This table is currently led by IOM and is still in operation.

**Media: Exposing cases to the general public: internal, indirect, pressure point**

Media has exposed trafficking cases that have triggered legislative action. The approval of law 19.927 in 2004 was due to the mediatic scandal of a paedophilia case that involved politicians.<sup>89</sup>

After the enactment of law 20507, in the absence of publicly financed mainstream campaigns, the media has played a role in exposing situations of trafficking in Chile, introducing the term and its characteristics to the general public.<sup>90</sup>

**External monitoring: International reputation and UN bodies reporting: external, indirect, structural**

Chile's international reputation is a matter of serious concern for state authorities. This was highlighted by interviewees.<sup>91</sup> Its relatively small position in the global market renders its

---

<[https://obtienearchivo.bcn.cl/obtienearchivo?id=repositorio/10221/7830/5/84101\\_No16-10-Trata-de-Personas.pdf](https://obtienearchivo.bcn.cl/obtienearchivo?id=repositorio/10221/7830/5/84101_No16-10-Trata-de-Personas.pdf)> accessed 28 July 2021.

<sup>87</sup> ONG Raíces/OIM (n 43) p. 22.

<sup>88</sup> Otárola (n 40) p. 35. The civil society table gathered the most important civil society and international organizations (OIM, ONG Raíces, ONG Ciudadano Global and INCAMI) that dealt with trafficking of children and vulnerable migrants. In 2013 they were all included as members in the MITP.

<sup>89</sup> The "Spiniak case" in 2004 allowed the enactment of Law 19.927 *Modifica el Código Penal, el Código de Procedimiento Penal y el Código Procesal Penal en Materia de Delitos de Pornografía Infantil* that reformed the criminal norms regarding sexual crimes, and the crimes of promotion of child prostitution and trafficking for prostitution. Araya, D. y Retuerto, I. (n 63) p. 17.

<sup>90</sup> Gustavo Villarubia 'Así operan en Chile las redes de trata de personas para explotación laboral y sexual' *Ciperchile* (29 August 2012) <<https://www.ciperchile.cl/2012/09/26/asi-operan-en-chile-las-redes-de-trata-de-personas-para-explotacion-laboral-y-sexual/>> accessed 10 August 2021; 'Azapa, el valle de los inmigrantes' *24 Horas* (28 August 2015) <<https://www.24horas.cl/programas/informe-especial/informe-especial-presento-azapa-el-valle-de-los-inmigrantes-1761454>> accessed 10 August 2021; ;Trabajadores Agrícolas Extranjeros en Melipilla' *Megavisión* (28 January 2016) <<https://www.youtube.com/watch?v=PBVebZjdSp8>> accessed 10 August 2021.

<sup>91</sup> Interview with Carolina Suazo, Deputy prosecutor, High Complexity Crimes Prosecutor's Office, Metropolitan North Central Prosecutor's Office Public Ministry of Chile (Santiago, Chile, 12 August 2021); Interview with Paz

reputation as a democratic and respectful of human rights law-abiding country a cherished value of the political system. As stated by interviewee Suazo,<sup>92</sup> Chile's reputation was compromised for its lack of proper criminalization of trafficking.

The UPR Report of Chile in its first cycle (2009) expressed concerns from CEDAW and UN human rights committees regarding the lack of adequate domestic legislation on trafficking.<sup>93</sup> The CRC had expressed similar concerns in its Report in 2008.<sup>94</sup> The observations of the UN Committees were part of the arguments expressed during the discussion of the trafficking bill.<sup>95</sup>

In its speech at the Senate in the final constitutional proceedings of law 20.507, in January 2011, the Minister of Justice expressed the government's interest in approving the bill, in compliance of Chile's international obligations.<sup>96</sup>

The 2014 UPR Report<sup>97</sup> welcomed the entry into force of law 20.507 and included several recommendations from States that encouraged Chile to continue its efforts in the fight against trafficking in persons and the strengthening of its public policy. All these recommendations were accepted by the government.<sup>98</sup>

**International law: *The role of Soft Law: external, indirect, structural***

---

González Lever, public administrator, Director Social Unit, Libera Foundation (Santiago, Chile, 12 August 2021).

<sup>92</sup> Interview with Carolina Suazo, Deputy prosecutor, High Complexity Crimes Prosecutor's Office, Metropolitan North Central Prosecutor's Office, Public Ministry of Chile (Santiago, Chile, 12 August 2021).

<sup>93</sup> According to the Universal Periodic Review (UPR) in 2006, CEDAW remained concerned by the insufficient information available on the causes and extent of trafficking in Chile as an origin, transit and destination country; the lack of national legislation; and the absence of adequate measures to combat the phenomena of trafficking and exploitation of prostitution. In 2008, CRC noted that not all forms and types of trafficking (e.g. trafficking for forced labour and internal trafficking) were prohibited under article 367 (b) of the Criminal Code and recommended adopting the bill which was before the Senate, aimed at criminalizing trafficking in children in accordance with the Palermo Protocol.

<sup>94</sup> Committee on the Rights of the Child, 47<sup>o</sup> session, Consideration of Reports Submitted by States Parties Under Article 12, Paragraph 1, of the Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography, 18 February 2008, CRC/C/OPSC/CHL/CO/1, parr. 23.

<sup>95</sup> BCN, Historia de la ley 20.507 (n 43) p. 30.

<sup>96</sup> [...] because it is imperative to harmonize the internal legislation to the treaty [...] this bill was approved in 2007 by the Chamber of Deputies, and at present it is good that Chile generates a culture of complying with the international conventions that it ratifies, particularly in a matter that is of concern to the international community". Intervention of the Minister of Justice Felipe Bulnes. Second report of the Human Rights Commission, second constitutional proceedings, 18 January 2011. BCN, Historia de la ley 20.507 (n 43) p. 171.

<sup>97</sup> Human Rights Council, Report of the Working Group on the Universal Periodic Review of Chile, April 2014, A/HRC/26/5.

<sup>98</sup> Human Rights Council, Report of the Working Group on the Universal Periodic Review of Chile, Opinions on the conclusions and / or recommendations, voluntary commitments and responses presented by the State under review, A/HRC/26/5/Add.1/Rev.1, para. 4.

Initiatives such as the UN Guiding Principles of Business and Human Rights and ILO's Alliance 8.7 have triggered state action, while creating channels for NGOs to act, particularly regarding trafficking for forced labour.

After endorsing the 2011 Guiding Principles on Business and Human Rights and subscribing the 2012 Declaration of the UN Conference on Sustainable Development,<sup>99</sup> in 2013 the Government created, through Decree 60 of the Ministry of Economy, the Council of Social Responsibility for Sustainable Development. In 2014, during the III United Nations Business and Human Rights Forum in Geneva, the representative of Chile's Ministry of Foreign Affairs announced the country would initiate the process of elaborating a NPA,<sup>100</sup> which was launched in August 2017.<sup>101</sup> This allowed a local NGO to advocate for the need to introduce human rights due diligence laws into the business and human rights agenda with a focus on trafficking and forced labour, and in 2018 partnered with the MITP, the British Embassy, Global Compact Chile, universities and NGOs, to organize activities and launch an anti-trafficking awareness-raising program for businesses, entrepreneurs and college students. In 2019, the Undersecretary of Human Rights was entrusted to implement the last stage of the business and human rights NPA and began the elaboration of its next version. The previous work of NGOs in the business and human rights agenda allowed them to lobby for incorporating the issue of trafficking in the new NPA and were invited to join the 360 Group, a public-private advisory committee for the action plan on business and human rights led by the Undersecretary of Human Rights.

In 2019, Chile was invited by ILO to be an Alliance 8.7 Pathfinder Country. As part of its commitments regarding strengthening forced labour prohibitions, the Undersecretary of Labour promoted the ratification of the 2014 ILO Protocol of the ILO Convention on Forced Labour. In April 2021, Decree 48 of the Ministry of Foreign affairs was enacted,<sup>102</sup> incorporating the 2014 ILO Protocol into domestic legislation.

---

<sup>99</sup> Declaración final de Río + 20, "El Futuro que Queremos", available at: <<https://www.cepal.org/rio20/es/index>>.

<sup>100</sup> Forum on Business and Human Rights, Plenary and parallel UN-led sessions, 1 December 2014, available at: <<https://www.ohchr.org/EN/Issues/Business/Forum/Pages/2014ForumParallelUNled.aspx>> accessed 23 September 2021.

<sup>101</sup> "Canciller Muñoz presenta Plan de Acción Nacional sobre derechos Humanos y Empresas: 'Hoy marcamos un hito'" Sala de Prensa, Ministerio de Relaciones Exteriores (21 August 2017) available at: <[https://www.minrel.gob.cl/canciller-munoz-presenta-plan-de-accion-nacional-de-derechos-humanos-y-minrel\\_old/2017-08-21/145507.html](https://www.minrel.gob.cl/canciller-munoz-presenta-plan-de-accion-nacional-de-derechos-humanos-y-minrel_old/2017-08-21/145507.html)> accessed 23 September 2021; Gobierno de Chile, Plan de Acción Nacional de Derechos Humanos y Empresas 2017, available at: <[https://minrel.gob.cl/minrel\\_old/site/artic/20171109/asocfile/20171109170236/plan\\_de\\_accion\\_nacional\\_de\\_ddhh\\_y\\_empresas.pdf](https://minrel.gob.cl/minrel_old/site/artic/20171109/asocfile/20171109170236/plan_de_accion_nacional_de_ddhh_y_empresas.pdf)> accessed 23 September 2021.

<sup>102</sup> Decreto 48 Promulga el Convenio sobre el Trabajo Forzoso, 1930, y su Protocolo de 2014, ambos de la Organización Internacional Del Trabajo, published 16 September 2021, available at: <<https://www.bcn.cl/leychile/navegar?idNorma=1165323>> accessed 23 September 2021.

**Technology: Expanding prevention through the use of technology: internal, direct, pressure point**

One of the unexpected consequences of the Covid-19 pandemic was the turn to online virtual spaces as replacement for physical gatherings that have increased exponentially the amount of awareness raising and training initiatives both from the State as from civil society organizations. That has also allowed the possibility to connect with other regions of the world and foster exchange of knowledge and partnerships.

**Understanding trafficking: Lack of reliable Data as a hinder: internal, indirect, structural**

In 2013, and as part of the actions agreed upon in the first NPA, it was decided to create a system of data collection. The “Statistical Report on Trafficking in Persons in Chile”,<sup>103</sup> was launched and is updated annually. Said information is reported by the Public Ministry, the Chilean Investigative Police and the Chilean Carabineros. But as official data derives internally from the government’s own processes, there is a selection bias in data collection as it only includes those who are formally identified. The lack of reliable data obstructs the effectiveness of policy responses as it does not reflect the dark figure.<sup>104</sup> It is interesting to notice that official numbers are significantly lower than the number of cases identified by civil society in their own investigations.

This is particularly serious in the appraisal of trafficking for forced labour: migrant workers are often trafficked; yet not only do they themselves avoid being recognized as such because their earning capacity would be destroyed, but the government also avoids categorising them as anything other than migrant workers. The difficulties with data collection further impact the influence of other determinants, particularly, commensurate funding and resource allocation.

## Partnership

**International Mechanisms: Channels of cooperation among States: external, direct, structural**

MERCOSUR provided venues for connecting and articulating cooperation among states. REMPM<sup>105</sup> was a venue that managed to channel appropriately the interest and will to strengthen regional cooperation and joint action in trafficking cases. In December 2008, AIAMP organized its first Ibero-American Summit of Public Ministries against trafficking in

---

<sup>103</sup> MITP, *Informe Estadístico de Trata de Personas 2011-2020*.

<sup>104</sup> Quinteros, Dufraix, Ramos (n 12) p. 3.

<sup>105</sup> *Reunión Especializada de Ministerios Públicos del Mercosur*, REMPM, available at: <<https://www.rempm.org/rempm.php>> accessed 20 September 2021.



persons and issued its Declaration against Trafficking on Human beings.<sup>106</sup> In 2011, within AIAMP and REMPM, REDTRAM was created.<sup>107</sup> Prosecutors interviewed were emphatic in pointing out the importance of REDTRAM's assistance in complex investigations and how that has led to more convictions.<sup>108</sup>

**Political will: "When political will met civil society...": internal, direct, pressure point**

The bill on trafficking was the product of joint work between congresswoman Saa and NGOs working in child sexual exploitation. Congressman Saa had been an active political actor during the dictatorship in the women's movement for peace and was a feminist. She had a history of introducing bills of what her male colleagues called "women's issues", mainly protection of children and women, gender violence, sexual and reproductive rights, and gender equality. Her partnership with NGOs and international organizations permitted to sustain a bill processing that lasted 6 years. Civil society provided the inputs: NGOs, IOM and ILO attended to hearings at the Chamber of Deputies and the Senate, presented expert reports and studies, and were profusely cited in the final reports of both chambers.<sup>109</sup>

Although initially Congressman Saa had no explicit or informal support from the administration, from 2007 onwards, the government got involved in the bill processing, improving substantially the text. Joint action from all stakeholders allowed a bill that was not a pressing issue for most of congressmen see the light.<sup>110</sup>

**Structural conditions: Legalistic culture: internal, indirect, structural**

---

<sup>106</sup> AIAMP, *Declaración contra la Trata de Personas*, I Cumbre 2008, available at: <<https://www.aiamp.info/index.php/comite-ejecutivo/documentos/declaraciones-protocolos/declaracion-contra-la-trata-personas-aiamp-i-cumbre-2008>> accessed 24 July 2021.

<sup>107</sup> MERCOSUR/REMPM, Reunión Preparatoria de la XII Reunión Especializada de Ministerios Públicos del Mercosur y Estados Asociados, 23 y 24 de noviembre de 2011, available at: <[http://www.rempm.org/archivos/Reuniones/12/Preparatoria/Acta\\_12\\_Preparatoria\\_Uruguay.pdf](http://www.rempm.org/archivos/Reuniones/12/Preparatoria/Acta_12_Preparatoria_Uruguay.pdf)> accessed 20 September 2021; AIAMP/REMPM, *Protocolo de Cooperación Interinstitucional para fortalecer la investigación, atención y protección a víctimas del delito de Trata de Personas entre los Ministerios Públicos Iberoamericanos* (2011).

<sup>108</sup> Access to expert reports in trafficking cases was possible due to REDTRAM's cooperation. Interviewee Suazo pointed out that Paraguay, a country with experience in trafficking investigations, assisted the Chilean Public Ministry in its first trafficking case, a highly publicized case of labor trafficking in agriculture of Paraguayan nationals. Interview with Carolina Suazo, Deputy prosecutor, High Complexity Crimes Prosecutor's Office, Metropolitan North Central Prosecutor's Office Public Ministry of Chile (Santiago, Chile, 12 August 2021).

<sup>109</sup> As civil society eloquently describes: "And then 6 years passed from the presentation of the bill until 2011, when it was approved and ratified by both chambers, on April 8, 2011. It cost us sweat and tears, and this process has also been beautiful, because it was about working together: State, Civil Society, Parliamentarians, that is, I doubt there is another bill worked with so many people". Otárola (n 40) p. 88.

<sup>110</sup> "I congratulate Deputy Saa for her initiative, because she has brought up an issue that was not very visible. In this way, the enormous potential of the legislative function is evident when it has the ability to provide antecedents, to investigate, to obtain cooperation from different instances, which allow us to influence certain phenomena that are not always very visible". Intervention of Deputy Isabel Allende, Deputy Chamber discussion, 10 April 2007. BCN, *Historia de la Ley 20.507* (n 43) p. 70.

In December 2013, the members of the MITP signed an interagency agreement to approve and implement the first NPA on Trafficking in Persons, assigning concrete and precise tasks to each of its public members.<sup>111</sup> The signing of the Intersectoral agreement was identified as a determinant in the stability and continuity of the work of the MITP and the continuous implementation of NPAs. Interviewees pointed out<sup>112</sup> the legalistic nature of Chilean idiosyncrasy. The formal binding of a written agreement allowed the work of the MITP to continue uninterrupted through four different administrations of opposing political parties.

**Civil society: *International organizations as mediators with the State: external, indirect, structural***

International organizations were crucial to connect NGOs with state entities and soften potential tensions, allowing mutual cooperation and transfer of knowledge. During the time the bill was being discussed, civil society organizations supported by international organizations partnered with public institutions, particularly police forces, to provide technical assistance and promote research. This led to several actions such as systems of data collection,<sup>113</sup> conferences<sup>114</sup> and studies<sup>115</sup> on trafficking, expanding awareness-raising and training efforts.

## Particulars of determinant by form of exploitation

### Trafficking for the purpose of sexual exploitation

**Political Will: *internal, pressure point, direct***

Trafficking in persons as a crime exists in Chilean legislation since 1995. Before 1995, the conduct was unpunished. The Penal Code only sanctioned sexual exploitation of children occurred internally within the country, which was not considered or framed as trafficking

---

<sup>111</sup> *Convenio Intersectorial para aprobar e implementar el Plan de acción nacional contra la Trata de Personas de la Mesa intersectorial de Trata de Personas*, 6 de diciembre 2013, available at: <<http://tratadepersonas.subinterior.gov.cl/media/2015/07/MITP-Convenio-Intersectorial-para-aprobar-e-implementar-Plan-de-Accion-Nacional-contr-la-Trata-de-Personas.pdf>> accessed 20 July 2021.

<sup>112</sup> Interview with officer, UNHCR (Santiago, Chile, 21 July 2021).

<sup>113</sup> In 2005, Save the Children Sweden signed an agreement with the MISP to include Chile in the Latinamerican online registry of missing persons. Raíces was appointed to lead the promotion of the system and recollection of data among public institutions and the general public. Denisse Araya, Iria Retuerto (n 29) p. 130.

<sup>114</sup> In 2005 Carabineros de Chile with Save the Children Sweden organized an international conference on missing persons. Later, Carabineros signed an agreement with Raíces and IOM and developed initiatives in training and research. Denisse Araya, Iria Retuerto (n 29) p. 132-133.

<sup>115</sup> In 2006 and 2007 two mappings of potential points of sexual exploitation of children were developed. In 2010, the Directorate of Family Protection of Carabineros lead the study "Characterization of points of sexual exploitation of children in the Metropolitan region". Denisse Araya, Iria Retuerto (n 29) p. 133.

but as “promotion of child prostitution”.<sup>116</sup> In 1995, a bill was passed<sup>117</sup> introducing the crime of international trafficking for prostitution in Article 367 *bis* of the Penal code. What triggered the presentation of the bill from a group of deputies in Congress had been a widely publicized case of an organization that intended to transfer Chilean women abroad for prostitution.<sup>118</sup> Once the case was reported, it was evident the absence of a law that punished the conduct. Art. 367 *bis* intended to punish, according to congressmen “the figure internationally known as “White Slave Trafficking” (“*Trata de Blancas*”). This includes those actions carried out by some people with the purpose of inducing, through deception, to leave or enter the country to people under the assumption of doing honest work, for the exercise of prostitution and even, to be intermediaries of drug trafficking”.<sup>119</sup>

During the discussion of Bill 3778-18, the concern over sexual exploitation of children, adolescents and women was one of the main arguments for the need to update the legal description of the crime.

Political will was also crucial for the allocation of resources in the early stages of the implementation of the law. As mentioned above, public institutions mandated with the protection of women, specifically SERNAMEG, assumed a protagonist role during the design of the first NPA and committed to install and fund the first and only shelter for women victims, that operates in the Metropolitan region and has national scope.<sup>120</sup> They also undertook public campaigns in 2013, that focused exclusively on sexual trafficking of women.

### **International law and understanding of trafficking: *internal, indirect, structural***

The previous existence of Art. 367 *bis* in the Penal Code meant that when Law 20.507 was enacted, the Chilean criminal justice system had already the experience investigating,

---

<sup>116</sup> The conduct punished in the crime of “*promotion or facilitation of child prostitution*” of Article 367 of the Penal Code is, actually, trafficking in persons. In effect, the TIP Report analyses Chile’s performance considering these cases as part of the trafficking statistics. However, as the crime does not match the same acts and means described in the trafficking definition, particularly its transnational nature linked to organized crime, internal commercial sexual exploitation of children -which is the phenomenon the crime intends to address- is perceived as a different crime, of different nature and dynamics, a perception both fueled by gender and social discrimination on the side of the criminal justice operators and legal overlaps and confusing systematizations by civil society organizations.

<sup>117</sup> Ley 19.409 *Agrega artículo 367 bis al Código Penal*, promulgada 31 de Agosto de 1995, available at: <<https://www.bcn.cl/leychile/navegar?idNorma=30776>> accessed 20 September 2021. Art. 367 *bis* sanctioned the promotion or facilitation of people to or out of the country for prostitution and established as aggravated circumstances the minority of age and the use of violence, intimidation, deceit, abuse of vulnerability or economic helplessness, family affiliation or dependency with the victim, or regularity in the conduct.

<sup>118</sup> Parliamentary motion, August 16, 1994. First constitutional proceedings. BCN, *Historia de la ley 19.409*, p. 3, available at: <<https://www.bcn.cl/historiadelaley/nc/historia-de-la-ley/6791/>> accessed 30 July 2021.

<sup>119</sup> Constitutional Commission report, August 17, 1994, first constitutional proceedings. BCN, *Historia de la ley 19.409*, p. 8.

<sup>120</sup> *Convenio Intersectorial para aprobar e implementar el Plan de acción nacional contra la Trata de Personas de la Mesa intersectorial de Trata de Personas*, 6 de diciembre 2013.

prosecuting and convicting trafficking cases for sexual exploitation. That previous experience, particularly from the specialized units in sexual crimes and the prosecutors that participated in REDTRAM, allowed to investigate, prosecute and convict a serious case of transnational sexual trafficking involving Dominican victims just one year after the law was enacted.<sup>121</sup> Likewise, the majority of cases brought to court has been cases of sexual trafficking.<sup>122</sup>

**Civil society: research and prevention: *internal, direct, pressure point***

As abovementioned, the early studies of trafficking in the country undertaken by CSO focused on sexual exploitation. Women-led civil society organizations and feminist organizations were the first to address the issue and focused on sexual trafficking of children and women. International organizations such as IOM also undertook research focused on sexual trafficking.<sup>123</sup> These studies were all presented as supporting arguments both in the presentation of Bill 3778-13 as well as during its discussion.

**Structural conditions: *Culture and gender discrimination as a hinder: internal, indirect, structural***

However, and widely shared by most of interviewees – both state and non-state actors – the criminal justice system lacks gender-perspective and rooted gender stereotypes and intersectional discriminatory views on women are common among legal operators.<sup>124</sup> This hinders detection, prosecution, and sanction.

Added to these inconveniences is the fact that people who, for profit, facilitate the prostitution of others are not penalized, unless it involves minors. The fact that prostitution is a legal activity in Chile causes confusion when it comes to differentiating sex workers from victims of sexual exploitation, and the latter tend to be discriminated.

Research has highlighted the absence of a gender approach in the first NPA and the lack of recognition of gender discrimination as a structural issue.<sup>125</sup> The state has not taken a clear position in respects to prostitution neither legislate on the matter, but has rather hide the exercise of the activity, being licit as long as it does not offend morals and good customs.

**Case law as a hinder: *internal, indirect, structural***

---

<sup>121</sup> Ministerio Público C/ Manzueta y otros, RIT 199-2012, Sentencia de fecha 7 de septiembre de 2012, Cuarto Tribunal Oral en lo Penal de Santiago.

<sup>122</sup> MITP, *Informe Estadístico de Trata de Personas 2011-2020*.

<sup>123</sup> Organización Internacional para las Migraciones (OIM), 'Estudio exploratorio sobre la trata de personas con fines de explotación sexual en Trata en Argentina, Chile y Uruguay' Rosario, Serapis, (2008b).

<sup>124</sup> Tania Gajardo Orellana, Karen Guzmán Valenzuela y Carolina Suazo Schwencke, 'Interpretación jurisprudencial de los principales tipos penales contenidos en la Ley 20.507' in *Revista Jurídica del Ministerio Público* N° 53, December 2012, p. 201, 217.

<sup>125</sup> Bonacic (n 70) p. 36, 39.

Court decisions exhibit the same pattern of gender discrimination, that hinders detection, prosecution, adequate sanctions and proper protection to women. The standards of proof of the means of deceit, force or coercion are extremely high and acquittals are based on the assumption that there were available options for the victims.<sup>126</sup> Case law reveals that the proof of uprooting required by the act of transfer does not take into consideration vulnerability factors that are exacerbated in the case of migrant women. Cultural stereotypes also affect and interfere in identifying the crime as certain Latin-American women, the majority of victims of sexual trafficking, are perceived and judged as sexually active or potential prostitutes.

Grounded in the entrenched gender discrimination, case law reveals a trend of secondary victimization, by demanding the testimony of the victim on trial in order to convict.<sup>127</sup>

**Structural conditions: *Corruption as a hinder: internal, indirect, structural***

As abovementioned, corruption has been highlighted by interviewees and in the literature as a determinant that impedes stronger and more effective action against sexual trafficking.

**Structural conditions: *Prostitution's unsolved status: internal, indirect, structural***

Prostitution in Chile is not forbidden nor regulated, except certain old norms in the Sanitary Code. In addition, Chile has not criminalized the figure of adult pimping. CSO and prosecutors pointed out how both society and the criminal justice system operate under gender discrimination and sexist stereotypes regarding women and prostitution, and how its unsolved social status and recognition creates tension when facing sexual trafficking cases.<sup>128</sup>

This, in turn, would have reinforced and deepen rooted norms and myths in society that tend to justify exploitation, neutralizing the crime, manifested both in common citizens as well criminal justice operators. "These attitudes influence the fact that, particularly in the case of trafficking in persons for sexual exploitation, the crime is naturalized, invisible, and women, children and especially young people, are made responsible or guilty of its occurrence, ("they know perfectly well what they are coming for", "it's a consented situation", "they like the easy way out"), what finally ends up favouring and exonerating the abusers and exploiters".<sup>129</sup>

**Media framing: *Glamourizing prostitution as a hinder: internal, indirect, pressure point***

---

<sup>126</sup> Gajardo, Guzmán, Suazo (n 124) p. 206-208; Ministerio Público C/ Amelfi y otros, RIT N°287-2012, Sentencia de 13 de diciembre de 2012, Cuarto Tribunal Oral en lo Penal de Santiago.

<sup>127</sup> Ministerio Público C/ Amelfi y otros, RIT 287-2012, Sentencia de 13 de diciembre de 2012, Cuarto Tribunal Oral en lo Penal de Santiago; Ministerio Público C/ Kang Min Lee y Jaesung Kim, RIT 291-2015, Sentencia de 22 de enero de 2016, Primer Tribunal de Juicio Oral en lo Penal de Santiago.

<sup>128</sup> Otárola (n 40) p. 88.

<sup>129</sup> Denisse Araya, Iria Retuerto (n 29) p. 124.

Media framing has also contributed to the unresolved status of prostitution and consequently, hindered the identification of potential victims. In the early 2000, the national media reported the case of a Chilean woman who had worked in prostitution in Japan – the “Chilean geisha” was the term media used – and was involved in a corruption case committed by her Japanese husband-client. The woman became a public figure and an entrepreneur, was invited to several TV shows and used her publicity to write a book and defend her story as a prostitute.<sup>130</sup> However, she was accused of promotion of prostitution in 2002 and 2005, for transferring Chilean women to Japan for prostitution. None of these cases ended in convictions and were finally closed.<sup>131</sup> The criminal cases, however, were cited during the bill discussion as examples of the reality of trafficking in the country.<sup>132</sup>

#### **International cooperation: external, direct, structural**

REDTRAM and the incorporation of a gender-approach allowed the first conviction without the statement of the victim. REDTRAM has established as one of its goals not to rely on the victim’s testimony and impose the burden of proof solely on her. This commitment and the REDTRAM structure allowed to obtain the first conviction without the testimony of the victim on trial. The prosecutor relied on expert witnesses from the Victims Unit of the Public Ministry of Perú,<sup>133</sup> who testify about the victim’s situation.

#### **Structural conditions: *The feminist revolution: internal, indirect, pressure point***

In 2018, there was a feminist outburst in the country. Women of all ages took the streets in March 2018, spurred by sexual harassment cases in universities. This feminist outbreak shined a spotlight on all gender violence, included trafficking for sexual exploitation. NGOs leveraged the momentum and partnered with feminist NGOs, associations of women judges, universities and business associations to organize and implement workshops on prevention of trafficking on women<sup>134</sup>.

---

<sup>130</sup> ‘De prostituta a «superventas”: La «geisha» chilena’ *El Mundo* (1 September 2002) available at: <<https://www.elmundo.es/cronica/2002/259/1030951330.html>> accessed 23 August 2021.

<sup>131</sup> ‘Anita Alvarado fue procesada por facilitación de la prostitución’ *Cooperativa* (10 February 2005) available at: <[http://web.archive.org/web/20210410203036/https://www.cooperativa.cl/p4\\_noticias/site/artic/20050210/pags/20050210173350.html](http://web.archive.org/web/20210410203036/https://www.cooperativa.cl/p4_noticias/site/artic/20050210/pags/20050210173350.html)> accessed 23 August 2021.

<sup>132</sup> Deputy Chamber discussion, March 8, 2011, third constitutional proceedings. BCN, *Historia de la ley 20.507* (n 43) p. 198.

<sup>133</sup> Interview with Carolina Suazo, Deputy prosecutor, High Complexity Crimes Prosecutor's Office, Metropolitan North Central Prosecutor's Office Public Ministry of Chile (Santiago, Chile, 12 August 2021).

<sup>134</sup> ‘Fundación Libera y organizaciones colaboradoras lanzan proyecto contra la esclavitud moderna’ (Pacto Global Chile, 6 August 2018) available at: <<https://pactoglobal.cl/2018/fundacion-libera-organizaciones-colaboradoras-lanzan-proyecto-la-esclavitud-moderna/>> accessed 20 August 2021.

## Trafficking for the purpose of forced labour

Trafficking for forced labour has been a complex issue for the State to address it adequately. It has been difficult to prove, prosecute and obtain commensurate sentences according to the seriousness of the offence, something permanently highlighted by the TiP Reports. Many factors have shaped this complexity, that has been a matter of constant concern of the Public Ministry,<sup>135</sup> in reaction to unfortunate acquittals in criminal cases.

**Civil society and international organizations: *Leading research and action: internal, direct, pressure point***

It was civil society who shine a light on forced labour in the early stages of the bill discussion that brought the attention of congressmen. During the discussion of Bill 3778-13, the issue of labour exploitation was highlighted by the ILO as the most common form of exploitation in the country.<sup>136</sup> IOM also shared its study on the prevalence of trafficking, showcasing forced labour of Chinese victims as the most prevalent type of trafficking.<sup>137</sup> These studies triggered a crucial discussion during the processing of the bill regarding the exact term to define this end of exploitation. Between the more sociological concept of “labour exploitation” and the legal concept of “forced labour”, the latter was chosen. That turned to be crucial in defining the State’s efforts that followed and led to consequences that will be explained below.

Although forced labour was not the focus of civil society for many years, as mentioned above, it was civil society who draw attention to the matter in 2017, canalizing the momentum driven by the country’s adoption of 2011 UN Guiding Principles on business and human rights, the 2014 ILO Protocol, the 2030 Agenda, and the recent launching of Chile’s first business and human rights NPA. Civil society advocated for the need to address the issue of trafficking in business settings, partnering with Global Compact Chile, the MITP, the Undersecretary of Labour and the Undersecretary of Human Rights to include the issue in their action plans.

---

<sup>135</sup> Emiliano Arias Madariaga, Ulda Figueroa Ossa. Concepto de trabajos forzados, servidumbre y esclavitud en el tipo penal del artículo 411 quáter del Código Penal chileno y bienes jurídicos protegidos por estas modalidades de trata de personas. *Revista Jurídica del MP* N° 55, Junio 2013, p. 205; Tania Gajardo Orellana, ‘La trata de personas ¿crimen de lesa humanidad? A propósito del caso “paraguayos”’ (2015) *Revista Jurídica del MP* N° 64, p. 183; Karen Guzmán Valenzuela. La finalidad de los trabajos forzados en el delito de trata de personas. *Revista Jurídica del MP* N° 70, 2017.

<sup>136</sup> Second report of the Constitutional commission, second constitutional proceedings. BCN, Historia de la ley 20.507 (n 43) p. 135.

<sup>137</sup> OIM/Chile (2008a) (n 66). Deputy Chamber discussion, first constitutional proceedings. BCN, Historia de la Ley 20.507 (n 43) p. 61.



Since 2018, it has been NGOs who have implemented awareness raising and training initiatives to identify, detect and refer forced labour trafficking cases.<sup>138</sup>

**Political will and soft law: ILO initiatives: external, direct, structural**

Political will has been crucial to ratify the latest international instruments on the matter, and significant advancements have been possible due to this international effort. Results beyond ratification are expected from civil society. As already explained, in 2019 Chile was invited by ILO to be an Alliance 8.7 Pathfinder Country. As part of its commitments regarding strengthening forced labour prohibitions, the Undersecretary of Labour promoted the ratification of the 2014 ILO Protocol of the ILO Convention on Forced Labour. In April 2021, Decree 48 of the Ministry of Foreign affairs was enacted, incorporating the 2014 ILO Protocol into domestic legislation.

Later, in June 2021, through Decree 31 of the Ministry of Labour,<sup>139</sup> the Ministerial Advisory Commission for the implementation of the 2014 ILO Protocol was created. Led by the Undersecretary of Labour, the commission has been entrusted to elaborate Chile's first NPA against forced labour.<sup>140</sup> The entity is compound solely of public institutions, but its provisions contemplate the participation of academia, workers and business associations and civil society. In August 2021, through Decree 173 of the Ministry of Labour,<sup>141</sup> the Ministerial Advisory Commission for the prevention and eradication of Child Labour and the Child Labour Observatory were updated, incorporating the participation of non-State actors, such as CSO, business associations and universities.<sup>142</sup>

**Understanding of trafficking: Confusion in terminology as a hinder: internal, indirect, structural**

In its original version, the trafficking bill included the Palermo protocol's term of forced labour as one of the purposes of exploitation. During the discussion at the Chamber of Deputies, one deputy introduced the request to replace the term "forced labour" for "labour

---

<sup>138</sup> Trama Migrante began working on the matter in 2018, as well as Libera, who from 2018 developed a series of seminars and conferences on forced labour. In 2020, they organized a national training for NGOs and migrant and pro-migrant organizations to identify and report trafficking for forced labour.

<sup>139</sup> Decreto 31 Crea Comisión Asesora Ministerial para la implementación del Protocolo de 2014 relativo al Convenio sobre el Trabajo Forzoso de 1930 (p029), de la Organización Internacional del Trabajo (OIT) enacted 10 June 2021, available at: <<https://www.bcn.cl/leychile/navegar?i=1167307>> accessed 30 July 2021

<sup>140</sup> Subsecretaría del Trabajo, 'Primera Sesión de la Comisión Asesora Ministerial para la implementación del Protocolo 29 de OIT sobre trabajo forzoso' (29 julio 2021) available at: <<https://ddhh.minjusticia.gob.cl/primera-sesion-de-la-comision-asesora-ministerial-para-la-implementacion-del-protocolo-29-de-oit-sobre-trabajo-forzoso/>> accessed 30 July 2021.

<sup>141</sup> Decreto 173 Exento Modifica Decreto N° 131 Exento, de 1996, del Ministerio del Trabajo y Previsión Social, modificado por el Decreto N° 156 Exento, de 2014, Que crea Comisión Asesora Ministerial para la Prevención y Erradicación del Trabajo Infantil y el Observatorio de Trabajo Infantil, enacted 5 April 2021 <<https://www.bcn.cl/leychile/navegar?idNorma=1163612>> accessed 10 September 2021.

<sup>142</sup> Decree 173, Art. 2.

exploitation". He supported the request explaining the situation of local indigenous agricultural workers of his constituency, who had been replaced by migrant workers, who received less salary, had entered illegally to the country under false promises and were "exploited like slaves".<sup>143</sup> His indication was approved, and the processing of the bill kept the term "labour exploitation" until it reached the Senate in its second constitutional proceeding. At the Senate, concerns were brought up regarding the dim dividing line between labour exploitation and breach of labour standards, that should be more properly addressed at labour courts. Consequently, it was decided to return to the term "forced labour" for its more precise legal content and its clear prohibition in international law. It was preferred to use a term that had a more defined technical meaning, which would leave out the possibility that any breach of labour standards would be equated with the crime of trafficking in persons.<sup>144</sup>

However, this distinction between "labour exploitation" and "forced labour", and particularly the fact that the latter was chosen, has created a false dilemma that has hindered prosecution. The obvious presence of labour breaches in trafficking for forced labour cases has automatically drawn prosecutors and judges to discard forced labour unless gross denigration, humiliation and inability to leave are present in the case.<sup>145</sup> Internal statistics from the Public Ministry show that more than 50% of reported forced labour trafficking cases end up in early terminations of administrative nature.

#### **Case law as a hindrance: *internal, indirect, structural***

Linked to the abovementioned, all criminal justice operators interviewed<sup>146</sup> highlighted how the high threshold demanded by judges to probe a trafficking for forced labour case has been an issue that hinders investigation and prosecution of these crimes. In effect, the first case of trafficking for forced labour – widely publicized in the news as it concerned a former

---

<sup>143</sup> Intervention of Deputy Eduardo Díaz: "the indication seeks to point out a very widespread fact, which is the labor exploitation of migrants. It is necessary to recognize that reality. [...] Some people, who have entered illegally and with false promises, are exploited almost like slaves; they are made to work in subhuman conditions. In this way, Chilean labor legislation is violated. In my opinion, these Mapuche peasants lost their jobs because many times those who hired them replaced them with people who, out of necessity, were willing to be subjected to exploitative labor conditions. My indication attends to a double reality. On the one hand, those who exploit the needs of migrants are penalized and, on the other, the employment of our compatriots is defended, when it is legal. In the case of the Mapuche peasants displaced from their jobs due to unfair competition, a situation arises that, from now on, may even be considered as constituting a crime" (own translation). Deputy Chamber discussion, first constitutional proceedings. BCN, Historia de la ley 20.507, p. 69.

<sup>144</sup> Senate discussion, second constitutional proceedings. BCN, Historia de la ley 20.507, p. 135.

<sup>145</sup> Ministerio Público C/ Linfeng Cheng y Aiyun Zhang, RIT 21-2020, Tercera sala del Tribunal de Juicio Oral en lo Penal de La Serena, Sentencia de 8 julio de 2020.

<sup>146</sup> Interview with Carolina Suazo, Deputy prosecutor, High Complexity Crimes Prosecutor's Office, Metropolitan North Central Prosecutor's Office Public Ministry of Chile (Santiago, Chile, 12 August 2021); Interview with advisory attorney, National Prosecutor's Office, Public Ministry of Chile (Santiago, Focus group 24 September 2021); Interview with Police Chief inspector Anti-trafficking Brigade Giordano Lanzarini (Santiago, Focus group 24 September 2021).

presidential candidate involved in the trafficking of Paraguayan workers to his agricultural fields – the final sentence was issued after an oral trial that lasted 24 days and ended in acquittal.<sup>147</sup> The Oral Criminal Court of Santa Cruz considered that the crime of trafficking in persons was a crime against humanity, and as such demanded that the accusing entity proved the damage against humanity that it implied, raising the standard of proof to an almost unreachable level. In addition, the legislative discussion over the terms labour exploitation and forced labour have obscured their meaning. The fact that the latter term was finally chosen to prevent confusing the criminal act to mere breaches of labour law, the actual breaches of labour law any forced labour case exhibits, gets automatically framed as a labour case discarding the hypothesis of trafficking unless gross denigration, humiliation and serious restrictions to freedom of movement are compromised.<sup>148</sup> In addition, the absence of intercultural training and specialized knowledge about the dynamics and phenomenology of trafficking among the judiciary allows discriminatory naturalizations that do not take into account cultural differences and contextual vulnerability, that also raise the standard of proof to levels that are impossible to reach, ending up acquitting traffickers. This has been particularly serious in the case of Asian victims.<sup>149</sup> The absence of adequate training and failure to recognize trafficking for forced labour is a current ongoing problem, particularly with judges that operate outside the Metropolitan region. This judgement from 2020 is quite eloquent in showing the failure to identify ILO indicators of forced labour and exposes the invisibility of the crime rooted in authorized perceptions of superiority and inferiority between individuals, and particularly, towards migrants:

*“TENTH: That, regarding the vulnerability to which the offended has been exposed once she entered the country and incorporated to work in the commercial establishment of the accused, in the Vicuña commune, due to not knowing the Spanish language, lack of all roots, being subject to the authority of her employers, both in her workplace and in her place of residence, which she shared with the accused, which allowed them to exercise greater control over her person, as well as abuse in the treatment she may have received, reaching physical abuse on one occasion and the work overload to which she could had been exposed, with non-compliance with the payment of her salaries and social benefits, are all elements that, even assuming they occurred, are anyway insufficient to meet the legal*

---

<sup>147</sup> Ministerio Público C/Guerra y otro, RIT N°31-2015, Tribunal Oral en lo penal de Santa Cruz, Sentencia definitiva de 8 de junio de 2015 cited in Gajardo (n 135).

<sup>148</sup> Interview with Carolina Suazo, Deputy prosecutor, High Complexity Crimes Prosecutor’s Office, Metropolitan North Central Prosecutor’s Office Public Ministry of Chile (Santiago, Chile, 12 August 2021); Ministerio Público C/ Linfeng Cheng y Aiyun Zhang (n 144).

<sup>149</sup> Ministerio Público C/ Xiaojie Chen y Kun Yu Lee, RIT 85-2018, Primer Tribunal de Juicio Oral en lo Penal de Santiago, sentencia definitiva de 8 de marzo de 2019; Ministerio Público C/ Linfeng Cheng y Aiyun Zhang (n 144); Ministerio Público C/ Kang Min Lee y Jaesung Kim (n 127).

*requirements of the crime of trafficking in persons proposed by the prosecutor, since none of them, by themselves, nor together with the others, depart too much from the situation of vulnerability of many migrants who enter the country with the hope of improving the economic situation of their families who have remained in the country of origin and are exposed to work in extreme conditions in what has been euphemistically called the informal labour field of our country.*<sup>150</sup>

It is not surprising, therefore, that most of the convictions in trafficking for forced labour cases have involved child victims, that demand a lower standard of proof by not requiring proof of means of deceit or coercion.

**International monitoring:** *external, indirect, structural*

As abovementioned, it has been a concern of UN human rights bodies the absence of the purpose of labour exploitation in the crime description.<sup>151</sup> The 2019 UPR Report<sup>152</sup> in its third cycle, received eight recommendations from States regarding issues related to trafficking, where the need to review legislation on trafficking for the purpose of labour exploitation was highlighted expressly by three countries (United Kingdom and Northern Ireland, Belarus, and Guyana). All eight recommendations were accepted by the Government.<sup>153</sup>

## Trafficking for the purpose of forced criminality

**Civil society:** *Identifying the trend: internal, indirect, pressure point*

The existence of trafficking for the purpose of forced criminality has been identified mainly by civil society and alerted by international entities.<sup>154</sup> Academics, public defence

---

<sup>150</sup> Ministerio Público C/ Linfeng Cheng y Aiyun Zhang (n 144).

<sup>151</sup> The 2019 UPR pointed out the concern of the Committee on Torture that article 411 quarter of the Penal Code did not include acts of trafficking for the purpose of labour exploitation (art. 2) and urged the State to review its criminal legislation on trafficking in order to bring it into line with international standards. Observaciones finales sobre el sexto informe periódico de Chile, Comité contra la Tortura, 28 de agosto de 2018, paras. 54 y 55. CAT/C/CHL/CO/6

<sup>152</sup> Human Rights Council, Report of the Working Group on the Universal Periodic Review of Chile, A/HRC/41/6.

<sup>153</sup> Human Rights Council, Report of the Working Group on the Universal Periodic Review of Chile, A/HRC/41/6/Add.1, parr. 5.

<sup>154</sup> In 2013, the TiP Report identified the trend in Chile of potential children involved in illicit activities, including drug trafficking and theft. Since then, it has continuously recommended developing guidelines for officials to screen for trafficking indicators of children involved in illicit activities to ensure no trafficking victims are penalized for unlawful acts their traffickers compelled them to commit.

attorneys<sup>155</sup> and the media<sup>156</sup> have highlighted the presence of trafficking for forced criminality among the migrant population in the north of the country – mainly migrants from Perú and Bolivia, women and adolescents from poor or indigenous communities that are deceit or taken advantage of their vulnerability to transfer drugs, in their bodies in the way of ovoids or transferring the product – and children and adolescents of poor urban communities that are recruited by drug trafficking organizations as soldiers. However, the crime has never been addresses by the criminal justice system. Trafficking for forced criminality is not expressly stated as a form of exploitation, although academia and prosecutors do consider it can be interpreted from the terms forced labour, serfdom or slavery or practices analogous to slavery.

**Structural conditions: Politics and governance: *The criminalization of irregular migrants as a hinder: internal, direct, structural determinant***

The criminalization of irregular migrants impedes the criminal justice system to visualize a migrant transferring drug through the border as a potential victim of trafficking and as resources are scarce, public defenders who have identified the trend are in no capacity to sustain defence allegations under that hypothesis, that requires anthropological and/or criminological experts and sensibilized and trained judges.

**Understanding trafficking: *Palermo framing as a hinder: internal, direct, structural determinant***

Likewise, the framing of trafficking as an international issue of organized crime impedes identifying the crime of internal trafficking of children for forced criminality. Children and adolescents involved in illicit activities are not only not identified as victims but also tend to receive a harsher response from the state, who sees them as lost cases for rehabilitation and potential threats that could worsen in time.

## Trafficking for other exploitative purposes

In general terms, trafficking for purposes other than sexual exploitation or forced labour have never been addressed by the criminal justice system. No official investigation or

---

<sup>155</sup> Gabriel Carrión, Defensoría Penal Pública de Tarapacá, 'La vulnerabilidad de hombres y mujeres de pueblos originarios, su abuso e instrumentalización para fines delictuales', oral presentation in International Seminar "Human Trafficking and Migrant Smuggling. Necessary reflections twenty years after the Palermo Convention", organized jointly by the Legal and Human Rights Clinic of the University of Valparaíso Law School, the Department of Social and Legal Sciences of the University of Tarapacá and the Faculty of Legal and Political Sciences of Arturo Prat University, July 2, 2021, available at: <<https://www.youtube.com/watch?v=BLhZgrVajTk>> accessed 18 August 2021.

<sup>156</sup> Matías Sánchez Jiménez, 'Soldaditos del Narcotráfico' *Revista del Sábado, El Mercurio* (5 September 2020) available at: <<http://comunicacionpobreza.cl/wp-content/uploads/2021/01/Soldaditos-del-narcotrafico.pdf>> accessed 18 August 2021.

prosecution has ever been promoted and none of the annual statistical reports have ever included a case of that nature.

**Media and structural conditions: Venezuelan Migrant's vulnerability and forced begging:** *internal, direct, pressure point*

Although it cannot be discarded that forced begging might have been occurring before and after the enactment of law 20.507, under the current Venezuelan migration crisis, media<sup>157</sup> has exposed cases of Venezuelan citizens who would have rented children from other Venezuelans for begging. Authorities identified the situation and reported it to local prosecutors. Investigations are currently ongoing.

**Understanding of trafficking: No law, no imagination:** *internal, direct, structural, acts as a hinder*

Organ removal is the only purpose of exploitation that is expressly stated in Law 20507, other than sexual trafficking and the general terms of forced labour, serfdom, slavery and practices analogous to slavery. In contrast with other Latin-American trafficking laws, it does not specify other contemporary forms of slavery, such as the ones identified in the UNODC Global Report 2020. This has made other exploitative purposes go invisible to criminal justice operators.

**Structural conditions: Politics and Governance: The Children's rights agenda clouds the general view:** *internal, indirect, structural, acts as a hinder*

Chile has been very active in addressing child labour and ILO's category of "worst forms of child labour". However, this agenda has been for many years pursued without connection with the anti-trafficking agenda. The recourse to concepts such as "worst forms of child labour" has clouded the potentially criminal character of the act. Consequently, exploitative purposes such as child marriage, forced criminality and forced begging, types of trafficking where child victims are prevalent, are not treated as trafficking cases. This is particularly serious when face to the national Registry of worst forms of child labour. The Registry focuses on the social dimension of the issue (referral, assistance and protection from social services) but does not approach its criminal dimension.

**International law/ Political will (1): Finally! The connection between the child labour agenda and the trafficking public agenda:** *internal, direct, structural*

---

<sup>157</sup> 'Navarro irá a Fiscalía: "Arriendo de niños en Concepción para pedir limosna es gravísimo; denunciaremos por trata de personas"', *Crónica Digital* (24 September 2021) available at: <<https://www.cronicadigital.cl/2021/09/24/navarro-ira-a-fiscalia-arriendo-de-ninos-en-concepcion-para-pedir-limosna-es-gravisimo-denunciaremos-por-trata-de-personas/>> accessed 30 September 2021; 'Denuncian "arriendo" de niños para pedir limosna en Concepción' *Cooperativa* (24 September 2021) available at: <<https://cooperativa.cl/noticias/pais/region-del-biobio/denuncian-arriendo-de-ninos-para-pedir-limosna-en-concepcion/2021-09-24/154019.html>> accessed 30 September 2021.

Linked to the abovementioned, the connection between both agendas was only possible in 2019, after Chile's recognition as an ILO Pathfinder country, when the Undersecretary of Labour and the Undersecretary of Interior joint forces to undertake a common approach to child labour in the context of their own action plans.<sup>158</sup> The Ministerial Advisory Commission on the eradication of Child labour created in August 2021 by Decree 173 expressly contemplates the MITP as one of its members. Although this coordination is auspicious, the results of this union are yet to come.

### **Political will (2): Raising awareness: internal, direct, pressure point**

Although not directly addressed as a trafficking issue, efforts in awareness raising regarding other forms of exploitation have been possible due to the political will of specialized agencies created in the recent years. In 2018, Chile created the institution of the Child Ombudsman,<sup>159</sup> an autonomous institution with the mission to disseminate, promote and protect the rights of children, in accordance with national and international human rights law. This institution was created as part of Chile's commitments under the Convention of the Rights of the Child.

The Child Ombudsman launched in 2018 a study on adolescent marriage in Chile.<sup>160</sup> The policy brief highlighted the risks associated with early marriages, and recommended necessary and urgent reform of Law No. 19,947 on Civil Marriage, modifying the authorized age to marry to 18 years old. It must be noted that the policy brief does not address the issue of trafficking directly but cites opinions of OHCHR on the danger of forced marriage. The launch of the study was publicized in the media,<sup>161</sup> bringing attention to the issue. It is something still to be observed if this study translates into awareness raising of its connection to trafficking.

---

<sup>158</sup> 'Chile país pionero de la Alianza 8.7: Compromiso contra la trata de personas y el trabajo y el trabajo infantil' Mesa de Trata de Personas (1 April 2019) available at: <<http://tratadepersonas.subinterior.gov.cl/noticias/chile-pais-pionero-de-la-alianza-8-7-compromiso-contra-la-trata-de-personas-y-el-trabajo-infantil/>> accessed 20 August 2021.

<sup>159</sup> Ley 21067 Crea la Defensoría de los Derechos de la Niñez, promulgada 22 de enero de 2018, available at: <<https://www.bcn.cl/leychile/navegar?idNorma=1114173>> accessed 20 September 2021.

<sup>160</sup> The policy brief exposed their concern over the high number of marriages between adolescents and adult men. The average age of adolescent women was 16.9 years in a range between 16 and 17 years, which is where the current law allows adolescent marriage. The men's average age was 23, in a range that goes up to 38 years. Thus, as the study concludes, it is primarily male adults who are interacting in the context of adolescent marriage. Defensoría de la Niñez, Policy Brief N° 1 *Matrimonio adolescente en Chile: una realidad a erradicar*, 2018, available at: <<https://www.defensorianinez.cl/observatorio/wp-content/uploads/2021/08/PB1-Matrimonio-Adolescente.pdf>> accessed 3 October 2021.

<sup>161</sup> "'¡Son niñas!': Defensoría de la Niñez revela que 135 matrimonios con adolescentes se han realizado en Chile entre 2018 y 2020` El Mostrador (1 October 2021), available at: <<https://www.elmostrador.cl/braga/2021/10/01/son-ninas-defensoria-de-la-ninez-revela-que-135-matrimonios-con-adolescentes-se-han-realizado-en-chile-entre-2018-y-2020/>> accessed 3 October 2021.



# Particulars of determinants according to trafficked persons' profile

## Sex, Gender Identity and Sexual Orientation

**Structural conditions: Entrenched gender discrimination:** *internal, indirect, structural*

As mentioned below, gender discrimination is a serious cultural problem and also at the institutional level.<sup>162</sup> All interviewees from civil society and most of public officers stated gender discrimination towards female or LGTBQ victims, as a main hinder in identifying female victims.

**Framing of trafficking: "All together when it was all about human rights":** *internal, indirect, pressure point*

Before the enactment of Law 20.507, trafficking was entrusted to the PDI police headquarters of crimes against the family, and it was viewed as a human rights issue. During that period, NGOs worked closely with police officers, particularly providing training and promoting joint initiatives in prevention and awareness raising. In 2007, the PDI launched its first anti-trafficking campaign and several workshops were organized by the police for sex workers and transexual sex workers associations to identify and prevent trafficking.

**Civil society and the feminist movement:** *internal, direct, pressure point*

Civil society has been crucial to raise awareness about the gender-discrimination dynamics that are present both in the crime as in its investigation and prosecution stages, and promote improvements in the State response. The feminist movement of 2018 also fostered cooperation between feminist State and non-State actors. The national Women Judges Association, member of the International Women Judges Association (IAWJ) partnered with NGOs to undertake workshops, conferences and training, partnership that lasts till today and promoted the design and implementation of an annual anti-trafficking course for judges in the National Institute of Judicial Studies, the academic arm of the National Association of Judges.<sup>163</sup>

---

<sup>162</sup> Bonacic (n 70) p. 10.

<sup>163</sup> 'Seminario Online Trata de Personas y Trabajo Forzado en el Mercado Global: El Rol Clave del Estado de Proteger los Derechos Humanos, Instituto de Estudios Judiciales IEJ, 4 de junio de 2020, available at: <[https://www.iej.cl/evento/seminario\\_tratadepersonas/](https://www.iej.cl/evento/seminario_tratadepersonas/)> accessed 3 October 2021; [Curso Online] Trata de Personas y Trabajo Forzado en el Mercado Global: El Rol Clave del Estado de Proteger los Derechos Humanos, junio-julio 2020, available at: <<https://www.iej.cl/programas/tratadepersonas/>> accessed 3 October 2021; Conferencia Regional: Trata de Personas en América Latina y el Caribe 2020, 30 y 31 de julio 2020, available at: <[https://www.iej.cl/evento/cr\\_tratadepersonas/](https://www.iej.cl/evento/cr_tratadepersonas/)> accessed 3 October 2021; [Curso Online] Trata de Personas y Formas de Esclavitud Contemporánea: Pandemia, Migración y Derechos Humanos, junio-julio 2021, IEJ, available at: <<https://www.iej.cl/programas/trata21/>> accessed 3 October 2021.

## Age

**Civil society: *Permanent concern and defence of the rights of the Child: internal, direct, pressure point***

Chile's first efforts in addressing trafficking emerged from the work done by NGOs involved in child's rights protection. In 2003, Chile had a National Policy on Childhood and an Integrated Action Plan for the period 2000-2010, implemented by the Ministry of Planning and Cooperation. Promoted by NGOs, Carabineros created in 2003 a Missing Persons Department and the National Investigative Police created a Special Brigade for the same purpose, following NGOs concern and recommendation pointing out how many of the missing persons could be trafficked victims.

In March 2004, the First Subregional Workshop on trafficking of children, online child pornography and legal frameworks in the MERCOSUR, Bolivia and Chile took place at the OAS Interamerican Institute of the Child in Uruguay.<sup>164</sup> From then onwards, multiple initiatives undertaken by civil society were developed with the aim to raise awareness about the issue of child trafficking, and particularly, internal trafficking for sexual exploitation. These efforts led to the presentation of the Bill 3778-18 in 2005, as the history of the law recognizes: "The motion was presented in 2005 and had its origin in a joint action with the non-governmental organization Raíces, which participated intensively in a campaign against the trafficking of children in the continent".<sup>165</sup>

**International law and Political will: *"It was all about the children": internal, direct, pressure point/structural***

The children's rights international agenda has been successful in mobilizing political will. From 1990 onwards, as Chile was returning to democracy, many international human rights instruments were ratified. The situation of children was a prioritized matter, reflected both in the early ratification of international instruments and in the building up of a public policy focused on addressing child labour and worst forms of child labour.

Chile ratified the Convention on the Rights of the Child<sup>166</sup> in 1990; the CEDAW in 1998; the Worst Forms of Child Labour Convention in 2000;<sup>167</sup> and declared a national day to fight

---

<sup>164</sup> Primer Taller Subregional Proyecto sobre Tráfico de Niños, Pornografía Infantil en Internet y Marcos Normativos en el Mercosur, Bolivia y Chile. Exposición de la Dra. Stella López Beltrán, Instituto Interamericano del Niño-OEA, Montevideo, 22 y 23 de marzo de 2004, available at: <[http://www.iin.oea.org/proy\\_trafico\\_ninos\\_internet/DOCUMENTOS/Uruguay.pdf](http://www.iin.oea.org/proy_trafico_ninos_internet/DOCUMENTOS/Uruguay.pdf)> accessed 10 august 2021.

<sup>165</sup> Intervention of Deputy María Antonieta Saa. Chamber discussion, first constitutional proceedings. BCN, Historia de la Ley 20.507 (n 43) p. 60.

<sup>166</sup> Decreto 830 Promulga Convención sobre los Derechos del Niño, publicado en el D.O. 27 de septiembre de 1990, available at: <<https://www.bcn.cl/leychile/navegar?idNorma=15824>> accessed 3 August 2021.

<sup>167</sup> Decreto 1447 Promulga el Convenio 182 de la Organización Internacional del Trabajo, sobre la Prohibición de las Peores Formas de Trabajo Infantil y la Acción Inmediata para su Eliminación, publicado en

against commercial sexual exploitation of children in 2005.<sup>168</sup> In 1996, Chile created by decree the National Advisory Council for the eradication of child labour and the protection of the child worker. In September 2002, the government subscribed an agreement with the ILO for the execution of a national diagnosis on child and adolescent labour and identification of cases of worst forms.<sup>169</sup> In 2014, the National Advisory Council was reformed, to include the establishment of a Child Labour Observatory; in 2015, the State launched its National Strategy for the eradication of child labour and the protection of the adolescent worker 2015-2021. In 2018, the ILO invited Chile to join the Alliance 8.7 and become a Pathfinder country. As a last and current stage, in August 2021, the National Advisory Council -now Ministerial Advisory Commission- was reformed again,<sup>170</sup> allocating its secretariat in the Ministry of Labour and incorporating as part of its members the Executive Secretariat of the MITP, connecting child labour to trafficking.

The protection of children was also expressed as a main concern and as one of the most important arguments during the processing of the anti-trafficking law, where cases of exploitation of children in Chile were known.<sup>171</sup>

#### **International monitoring: external, indirect, structural**

International monitoring played a role in the need to address child exploitation. In 2007, the CRC was alarmed about the high number of children exposed to dangerous and/or degrading work and recommended that Chile continue and reinforce efforts to prevent and combat economic exploitation through the effective implementation of the National Action Plan.

The ILO Committee of Experts noted in 2007 that indigenous children and street children were particularly affected by the worst forms of child labour and that, according to SENAME, over 6,500 children were reported to be living in the street. The international

---

el D.O. el 17 de noviembre de 2000, available at: <<https://www.bcn.cl/leychile/navegar?idNorma=177949>> accessed 3 August 2021.

<sup>168</sup> Decreto 557 *Declara Día nacional de Lucha contra la explotación sexual comercial infantil*, publicado el 4 de julio 2005, available at: <<https://www.bcn.cl/leychile/navegar?idNorma=239774>> accessed 3 August 2021.

<sup>169</sup> Decreto 180 *Promulga el Acuerdo con la Organización Internacional del Trabajo para la Ejecución de un Diagnóstico Nacional sobre Trabajo Infantil y Adolescente e Identificación de Casos de las Peores Formas*, publicado el 23 de septiembre de 2002, available at: <<https://www.bcn.cl/leychile/navegar?idNorma=202863>> accessed 3 August 2021. The agreement and diagnosis lead to the creation of the Registry of worst forms of child labour.

<sup>170</sup> Decreto N° 173 *exento Modifica Decreto N° 131 Exento, De 1996, Del Ministerio Del Trabajo Y Previsión Social, Modificado Por El Decreto N° 156 Exento, De 2014, Que crea Comisión Asesora Ministerial para la Prevención y Erradicación del Trabajo Infantil y el Observatorio de Trabajo Infantil*, publicado 13 de agosto de 2021, available at: <<https://www.bcn.cl/leychile/navegar?idNorma=1163612>> accessed 3 August 2021.

<sup>171</sup> Deputy Saa refers to Bolivian children who herd cattle in Chile, receiving in exchange only precarious and degrading food and accommodation. *Discusión en Sala*, 10 de abril 2007. BCN, *Historia de la ley 20.507*, p. 61.

concern about the situation of children was an element present in the presentation of Bill 3778-18 and throughout its discussion<sup>172</sup>.

**Understanding trafficking: The complex categories of “child prostitute” and “child trafficking victim”:** *internal, direct, structural*

The criminal justice system has never acknowledged the intimate common nature of the crime of “promoting or facilitating child prostitution” (Art. 367 of the Penal Code) and internal trafficking of children for sexual exploitation. This has been highlighted permanently by the TiP Reports, pointing out the inadequacy of said crime.<sup>173</sup> Civil society has highlighted how the framing of child prostitution tends to create the false image of consent on the part of the child, minimizing the damage and hindering the detection of trafficking cases.<sup>174</sup> Civil society has also expressed their concern on the overlap between types of exploitation defined in the Convention on the Rights of the Child, the ILO Convention on worst forms of child labour, the Supplementary Convention on Slavery and the Palermo Protocol,<sup>175</sup> that has obscured the exact meaning of the criminal provisions and tends to differentiate exclusively on rooted discriminatory perceptions of children victims of sexual exploitation, that tend to come from vulnerable and socio-economically poor backgrounds.

**Structural factors: Lack of gender perspective in investigation, prosecution and judgements:** *internal, direct, structural*

State actors and non-State actors<sup>176</sup> expressed their concern on how the lack of gender perspective, as well as in adult sexual exploitation, has affected the views and perceptions of child trafficking for commercial sex, in a process described as “adultification”. Interviewee Suazo<sup>177</sup> also acknowledged the potential confusion between commercial sexual exploitation of children and trafficking, were cases that meet the threshold of trafficking are not considered as such. One aspect of concern is the need to probe the uprooting required in the transfer element.

---

<sup>172</sup> Interview with María Antonieta Saa, councillor, Santiago Metropolitan Regional Council, former congresswoman, author of Bill 3778-18 (Santiago, Chile, 12 August 2021). Interview with representative, Corporación ONG Raíces (Santiago, Chile, 3 August 2021).

<sup>173</sup> The TiP reports include statistics of prosecution of Art. 367 as part of the general review of trafficking statistics. In its 2015 report, the US Department of State recommended to “issue guidance to law enforcement and justice officials clarifying that third-party prostitution of children is trafficking”. 2016 and 2017 Tip Reports made similar recommendations.

<sup>174</sup> ONG Raíces (n 60) p. 52.

<sup>175</sup> Seminario Explotación Sexual Comercial de Niños, Niñas y Adolescentes, Una Vulneración Invisibilizada, Instituto de Estudios Judiciales IEJ, 22 de mayo 2021, available at: <<https://fb.watch/9zYh6LV8Ws/>> accessed 20 August 2021.

<sup>176</sup> Interview with Carolina Suazo, Deputy prosecutor, High Complexity Crimes Prosecutor’s Office, Metropolitan North Central Prosecutor's Office Public Ministry of Chile (Santiago, Chile, 12 August 2021); Interview with representative, Corporación ONG Raíces (Santiago, Chile, 3 August 2021).

<sup>177</sup> Interview with Carolina Suazo, Deputy prosecutor, High Complexity Crimes Prosecutor’s Office, Metropolitan North Central Prosecutor's Office Public Ministry of Chile (Santiago, Chile, 12 August 2021).

Likewise, civil society organizations have highlighted how sexual exploitation of children is tolerated under social prejudice: “this prejudice revolves around the erroneous assumption, installed in the social imaginary, that an adolescent is responsible for a sexual assault, as long as they receive something in return.”<sup>178</sup>

## Citizenship and migration status

The grand majority of trafficking victims in Chile have been foreigners. Three aspects have been highlighted as causes of this trend. According to interviewees, the vulnerability all migrants face is a determinant for its occurrence, vulnerability that has been proved in the majority of cases, both for international and internal trafficking.<sup>179</sup> Migratory flows have also been a factor that places migrants as primary victims of trafficking. The evolution of Chile as a country of destination of migration has exacerbated the chances of mixed flows of trafficked and smuggled migrants,<sup>180</sup> even more so under the Covid 19 pandemic. Finally, the difficulties in proving the necessary uprooting required by the element of transfer impedes the detection or proof of trafficking in the case of national victims.<sup>181</sup> The increased vulnerability of irregular migrants has been highlighted by the INDH in its latest reports.<sup>182</sup>

### **Civil society: Connecting trafficking with smuggling of migrants: internal, indirect, pressure point**

It was civil society who shone a light on the international dimension of trafficking in Chile and migrants as vulnerable population. In 2007, IOM undertook an exploratory study on trafficking of adults for sexual exploitation in Argentina, Chile and Uruguay,<sup>183</sup> confirming Chile as a country of origin, transit and destination, with internal and international trafficking occurring. The study also showed the direct relation between smuggling of migrants and trafficking in persons.<sup>184</sup> The study and its conclusions were part of the discussion of bill 3778-18.

---

<sup>178</sup> Denisse Araya, Iria Retuerto (n 29) p. 147.

<sup>179</sup> Interview with Carolina Suazo, Deputy prosecutor, High Complexity Crimes Prosecutor’s Office, Metropolitan North Central Prosecutor’s Office, Public Ministry of Chile (Santiago, Chile, 12 August 2021). The first trafficking case corresponded to an internal and international case for sexual exploitation. Victims were recruited on the street and their vulnerability was linked to their scarce knowledge about the country.

<sup>180</sup> Interview with Carolina Suazo, Deputy prosecutor, High Complexity Crimes Prosecutor’s Office, Metropolitan North Central Prosecutor’s Office, Public Ministry of Chile (Santiago, Chile, 12 August 2021). Interview with Police Chief inspector Anti-trafficking Brigade Giordano Lanzarini (Santiago, Focus group 24 September 2021).

<sup>181</sup> Interview with Carolina Suazo, Deputy prosecutor, High Complexity Crimes Prosecutor’s Office, Metropolitan North Central Prosecutor’s Office, Public Ministry of Chile (Santiago, Chile, 12 August 2021).

<sup>182</sup> Instituto Nacional de Derechos Humanos (INDH), ‘Informe Anual 2020: Situación de los Derechos Humanos en Chile’ 2020, p. 144, available at: <<https://ia2020.indh.cl/informe/INFORME-INDH-2020.pdf>> accessed 10 August 2021.

<sup>183</sup> OIM (2008b) (n 128).

<sup>184</sup> Ibid, p. 195.

**Structural conditions: Increase in migration flows: external, direct, structural**

Since the end of the military dictatorship, the volume of immigrants residing in Chile has quadrupled, which makes Chile one of the main destinations for international migration in South America.<sup>185</sup> Research highlights the change in the composition of migratory flows in Chile, which went from being predominantly from Europe to having a preferably South American origin, and from border countries in particular. Chile is increasingly a destination for migrants from the Latin American region.<sup>186</sup>

The literature and interviews highlighted the evolution of migration flows to the country as a key determinant.<sup>187</sup>

**Political will: The role of international networks of prosecutors: external, indirect, structural**

The current migratory crisis has been addressed by REDTRAM. In its declaration on mixed migration flows issued in 2021,<sup>188</sup> they pointed out the need to guarantee the rights of the migrant population victim of trafficking and smuggling of migrants; the need to avoid, within the framework of international commitments, “hot returns” that threaten the migrant population, especially those that may be a victim of human trafficking and migrant smuggling; and adopt all necessary measures aimed at not criminalizing the migrant population, especially victims of human trafficking and migrant smuggling.

**Structural conditions: Migration policy and securitization of borders as a hinder: internal, direct, structural**

Although Chile recently enacted a new migration law<sup>189</sup> that replaced its 1975 regulation, the former legislation under which Law 20.507 operated for many years, DL 1094, was characterized by a national security approach that tend to see foreigners as potential threats and provided wide margins of discretion to immigration control agents to prohibit entry at the border, make arrests that have later been declared illegal by the higher courts of justice, or selectively and discretionally apply sanctioning mechanisms, particularly expulsions.<sup>190</sup>

---

<sup>185</sup> Canales (n 25).

<sup>186</sup> Ibid. According to IOM, Chile is also a destination country for trafficking due to the attraction of the positive regional and global perception of its economic stability. OIM (2008b) (n 128), p. 176.

<sup>187</sup> Bonacic highlighted in 2012 how rapidly the country was becoming a receiver of migration, and professionals from the Public Ministry and INDH underscored the same aspect as a key factor in addressing trafficking.

<sup>188</sup> REDTRAM, *Declaración de la REDTRAM sobre flujos migratorios mixtos* 29 de abril de 2021, available at: <<https://www.aiamp.info/index.php/redes-permanentes-aiamp/red-de-trata-de-personas/documentos/declaracion-de-la-redtram-sobre-flujos-migratorios-mixtos>> accessed 10 August 2021.

<sup>189</sup> Ley 21325 *Ley de Migración Y Extranjería*, enacted in April 2021, available at: <<https://www.bcn.cl/leychile/navegar?idNorma=1158549>> accessed 10 August 2021.

<sup>190</sup> Quinteros cited by Roberto Dufraix, Romina Ramos, Daniel Quinteros “‘Ordenar la casa’: Securitización y producción de irregularidad en el norte de Chile’ *Sociologías*, Porto Alegre, ano 22, n. 55 (2020) p. 175

Since 2011, this securitization dynamic has intensified with the implementation of the 2011-2014 Northern Border Plan, which allocated more than USD 60 million to combat drug trafficking in the three regions of the extreme north of the country: Arica and Parinacota, Tarapacá and Antofagasta.<sup>191</sup> Said program was reformulated and expanded during 2018 to the Atacama and Coquimbo regions, seeking to reinforce border control with the use of technology and the coordination of various state agencies, with the aim to seal the borders and anticipate risks.<sup>192</sup>

On the other hand, during this same period, immigration policy has severely restricted access to regularity, through the elimination of the temporary visa for work reasons and the successive incorporation, as a requirement for entry, of consular visas for certain countries. Thus, nationals of the Dominican Republic, Haiti and Venezuela have had to start obtaining their visas in the country of origin, which has caused not only a decrease in total entry, but also an increase in clandestine entry.<sup>193</sup> This was highlighted by the INDH 2018 Annual Report of Human Rights<sup>194</sup> and the 2020 and 2021 TIP reports,<sup>195</sup> that pointed out how stricter visa laws increased migrant populations', especially Venezuelans', vulnerability to trafficking.

The implementation of restrictive policies on human mobility not only have produced irregularity; it also constitutes fertile ground for the criminalization of certain flows and for the proliferation – and normalization – of the exploitation of migrant labour.<sup>196</sup> As expressed by Dufraix, citing Stefoni, Leiva and Bonhomme, migratory irregularity constitutes “a decisive factor when offering working conditions that violate all national and international norms”. In this way, the border, and the control devices that are deployed from it, tend to legally incapacitate the body of migrants, turning them into useful and functional subjects to the dynamics of the unregulated labour market and, with it, in a workforce especially vulnerable to exploitative practices.<sup>197</sup>

---

<https://www.scielo.br/j/soc/a/HFQzb6g6bptxKHGmbcsg36d/?lang=es&format=pdf> accessed 4 July 2021.

<sup>191</sup> Viviana García Pinzón 'Territorios fronterizos. Agenda de seguridad y narcotráfico en Chile: el Plan Frontera Norte' (2016) p. 88, available at: <https://revistaei.uchile.cl/index.php/REI/article/view/36839/38405> accessed 10 July 2021.

<sup>192</sup> Dufraix, Ramos, Quinteros (n 190) p. 172

<sup>193</sup> Ibid, p. 175.

<sup>194</sup> INDH, 'Informe Anual 2018: Situación de los Derechos Humanos en Chile' 2018, p. 57, available at: <https://bibliotecadigital.indh.cl/handle/123456789/1173> accessed 10 August 2020.

<sup>195</sup> US Department of State, TiP Report 2020, p. 152 and US Department of State, TiP Report 2021, p 174.

<sup>196</sup> Dufraix, Ramos, Quinteros (n 190) p. 191; José Brandariz, Roberto Dufraix, Daniel Quinteros 'La expulsión judicial en el sistema penal chileno: ¿Hacia un modelo de Cimmigration?' Polít. crim. Vol. 13, No 26 (Diciembre 2018) Art. 3, p. 752, available at: <https://www.scielo.cl/pdf/politcrim/v13n26/0718-3399-politcrim-13-26-00739.pdf> accessed 4 July 2021.

<sup>197</sup> Dufraix, Ramos, Quinteros (n 196) p. 191.



The securitization dynamics and the border control focus has hindered detection of trafficked victims at the border, particularly when faced to the double nature of PDI's mission – investigation of crimes and border control –, prioritizing the latter at the expense of victim identification. Finally, the criminalization of irregular migrants has render internal labour exploitation almost invisible.

**Structural conditions: Politics and governance: *The anti-immigrant public agenda: internal, indirect, structural***

Discriminatory discourses by different authorities have fuelled antimigrant sentiments in the general public, disseminating a negative perception of foreigners as actual or potential delinquents and a threat to nationals.<sup>198</sup> In addition, the restrictive approach towards migration initiated in 2018 criminalized the irregular migrant, contributing to an overall negative perception that has fuelled strong sentiments of xenophobia.<sup>199</sup> The antiimmigrant sentiment hinders detection of trafficked victims. Gross violations of rights need to be present in order to surpass the psychological threshold required to be categorized as trafficking, increasing impunity.

## Race and ethnic origin and other criteria

**Structural conditions: Politics and Governance: *Entrenched racial and social discrimination as a hinder: internal, indirect, structural***

Entrenched racial and social discrimination impedes detection. The Haitian community encountered entrenched discrimination that has been profusely covered by the media<sup>200</sup>

---

<sup>198</sup> "Alcaldesa de Antofagasta e inmigración: "La población que está llegando está generando serios problemas" ("Mayor of Antofagasta and immigration: "The population that is arriving is generating serious problems") *Emol*, (14 December 2016) available at: <<https://www.emol.com/noticias/Nacional/2016/12/14/835586/Alcaldesa-de-Antofagasta-e-inmigracion-La-poblacion-que-esta-llegando-esta-generando-serios-problemas.html>> accessed 14 July 2021.

<sup>199</sup> Violent attacks to migrants and their belongings have taken place recently in cities in the north of the country. 'Iquique: marcha contra migrantes terminó en la quema de pertenencias de extranjeros' *La Tercera* (26 September 2021) available at: <<https://www.latercera.com/la-tercera-domingo/noticia/iquique-marcha-contra-migrantes-termino-en-la-quema-de-pertenencias-de-extranjeros/CH7A5N7DTRBJ5BGSVGBB7OYMTQ/>> accessed 30 september 2021; 'Chile: la marcha contra migrantes que terminó con la quema de pertenencias y carpas de extranjeros' *BBC News Mundo* (26 September 2021) available at: <<https://www.bbc.com/mundo/noticias-america-latina-58700359>> accessed 30 September 2021.

<sup>200</sup> Under the framework of the new migration policy, in 2018 the government initiated its "Humanitarian plan to return to Haiti", that offered the Haitian community the opportunity to return to their country with the compromise of not returning to Chile in 9 years. The measure was highly criticized by civil society and migrants' organizations who claimed the measure was racist by focusing exclusively in the Haitian community, which was only 8,4% of the total migrant population according to the 2017 Census. 'El racismo como política de Estado: La deportación de haitianos en Chile' (Racism as a State Policy: Deportation of Haitians in Chile) *El Desconcierto* (7 November 2018) available at: <<https://www.eldesconcierto.cl/cartas/2018/11/07/el-racismo-como-politica-de-estado-la-deportacion-de-haitianos-en-chile.html>> accessed 30 September 2021.

and the academia.<sup>201</sup> No trafficking cases involving Haitian victims has ever been prosecuted. The first case, reported by a local NGO is as late as 2020 and is still in an investigative stage. However, Haitian nationals have often been the subject of serious labour abuse that could amount to trafficking for forced labour<sup>202</sup>. Patterns that include language isolation, abuse of vulnerability, retention of wages, excessive overtime and degrading living and working conditions have been reported by local news in the regions where agriculture, fishing and mining take place. Cases involving Haitian victims were not criminally investigated.

According to the INDH, academic research and civil society,<sup>203</sup> in Chile there is a highly excluded migrant population. Exclusion increases when migrants' immigration status is irregular. However, even when they have visas and permanence residence, they still remain highly vulnerable to abuse and hostilities by a society that does not fully recognize them as subjects of rights. "Today we live with them, because they are recognized as useful for the economic model, but without a doubt that relationship is fragile and tomorrow it is not clear what its consequences will be".<sup>204</sup>

**Structural conditions: *Intersectional gender discrimination: internal, indirect, structural***

---

<sup>201</sup> According to Bonacic (n 70) p. 36, the first action plan did not address the issue of discrimination, particularly the treatment of public officials with direct contact with migrants. Various studies have stated that Chile is a country that discriminates against the Peruvian migrant population, people with Afro-descendant traits or indigenous peoples. This gives rise to perceptions of power and in some cases (labor) abuses. Gissi, (2011) and Stefoni (2003) cited by Otárola (n 40) p. 22.

<sup>202</sup> 'Denuncias de migrantes por abuso laboral se triplican en dos años' (*Complaints of migrants for labor abuse tripled in two years*) *La Tercera* (3 June 2019) available at: <<https://www.latercera.com/nacional/noticia/denuncias-migrantes-abuso-laboral-se-triplican-dos-anos/682253/>> accessed 24 September 2021.

<sup>203</sup> INDH, Informe Anual de Derechos Humanos 2016, p. 296; INDH, Informe Anual de Derechos Humanos (2018) p 87; Otárola (n 40) p. 22; Jimena Silva Segovia, Francis Ramirez-Aguilar e Pamela Zapata-Sepúlveda 'Experiencias laborales de mujeres migrantes afrocolombianas en el norte de Chile' *Interciencia*, V. 43, núm. 8 (2018) p. 544, available at <<https://www.redalyc.org/jatsRepo/339/33957744002/html/index.html>> accessed 24 September 2021; Catalina Aguirre, 'Luchadoras, verracas y guerreras: un análisis del proceso migratorio de mujeres colombianas en la ciudad de Los Andes', Tesis de grado, Universidad Andrés Bello (2015); José Tomás Vicuña Undurraga SJ y Tomás Eugenio Rojas Valenzuela Editores, 'Migración en Arica y Parinacota: Panoramas y tendencias de una región fronteriza' (2015) available at <<https://bibliotecadigital.indh.cl/bitstream/handle/123456789/911/Migraci%C3%B3n%20en%20Arica%20y%20Parinacota.pdf>> accessed 20 September 2021.

<sup>204</sup> Nicolás Rojas y Claudia Silva, "La Migración en Chile: Breve reporte y caracterización", Informe Observatorio Iberoamericano sobre Movilidad Humana, Migraciones y Desarrollo, OBIMID (2016) p. 40. According to researchers, "the migratory experience of those who arrive in the country, mainly from Latin America, presents profound adversities and vulnerabilities that, if not reversed, could generate subsequent impacts on well-being society as a whole, associated with exclusion, inequality, lack of cohesion and civic disaffection", p. 40, available at: <[https://www.academia.edu/27074674/2016\\_La\\_migraci%C3%B3n\\_en\\_Chile\\_breve\\_reporte\\_y\\_caracterizaci%C3%B3n](https://www.academia.edu/27074674/2016_La_migraci%C3%B3n_en_Chile_breve_reporte_y_caracterizaci%C3%B3n)> accessed 24 September 2021.

Gender discriminatory views on women, together with intercultural preconceptions and prejudice has also acted as a hinder in prosecutions and trials, failing to convict offenders.<sup>205</sup> This has been particularly serious regarding Asian victims. Case law regarding domestic servitude and forced labour of Chinese and Vietnamese victims show how prosecutors and judges perceive the crime as mere manifestation of cultural norms. In that respect, academia has pointed out how neither the first plan of action nor the ones that followed has ever address consistently discrimination and other structural root causes.

### Other criteria

#### **Structural conditions: Socio-educational characteristics of vulnerable migrants as a hinder**

Labour abuse has been identified as a problem regarding migrants with irregular migratory status, and particularly those with low levels of education.<sup>206</sup> Low educational status, together with the bureaucratic proceedings established by the State to homologate educational degrees, exposes them to working opportunities solely in low-skilled industries such as agriculture, services, fish industry and construction, economic activities where trafficking and forced labour are prevalent.

Low educational status not only works as a structural determinant in trafficking recruitment not addressed by the State policies, but also has an effect on investigation and prosecution. Uneducated migrants are unable to report, react, defend themselves and insist on trafficking investigations as they lack the knowledge and skills to defend their rights. As mentioned, internal statistics from the Public Ministry show that more than 50% of reported forced labour trafficking cases ends up in early terminations of administrative nature.

## Particulars of determinants according to perpetrator profile

### Sex, Gender Identity and Sexual Orientation

No clear determinants were identified regarding this category.

### Race and ethnic origin

#### **Structural conditions: Trends of discrimination: internal, indirect, structural**

Although trafficking figures are too low to establish an undisputed pattern, there is a subtle trend that shows that harsher punishments are imposed to perpetrators that are migrant

---

<sup>205</sup> Bonacic (n 70) p. 10.

<sup>206</sup> Pierina Ponce, 'Trata De Personas. Un desafío para la Política Pública de Chile', Tesis de Magíster, Universidad de Chile (2017) p. 6 available at: <http://repositorio.uchile.cl/bitstream/handle/2250/146603/Trata-de-personas-Un-desaf%C3%ADo-para-la-pol%C3%ADtica-p%C3%BAblica-de-Chile.pdf?sequence=1&isAllowed=y> accessed 23 August 2021.

women and indigenous people. The only two convictions that imposed custodial sentences, convicted a Dominican woman<sup>207</sup> and an Ecuadorian couple.<sup>208</sup>

### **Citizenship (Citizen v Non-Citizen) and migration status**

**Structural conditions: Migration and Dynamics of trafficking:** *external, direct, pressure point*

According to the latest statistics, 34 persons have been convicted in 21 trafficking cases. The main nationalities of traffickers have been Chilean (29%), Ecuadorian (24%) and Bolivian (18%).<sup>209</sup> Interviewee Suazo highlighted how a constant pattern in trafficking cases has to do with the composition of trafficking gangs, that usually have a member that shares the same nationality of the victim. This member is the one who creates ties with victims or takes advantage of a shared culture of migration. The current migration crisis, deepened by the Covid-19 pandemic, has increased mixed flows in the region.

**Structural conditions: Trends of discrimination:** *internal, indirect, structural*

Related to above, it can be observed a slight tendency to acquit<sup>210</sup> or impose lenient sentences<sup>211</sup> to Chilean and foreign defendants that have high economic and/or political status.

### **Legal entities (e.g., companies) v natural persons**

**Political will/International law: Introducing new standards:** *internal, direct, pressure point*

In 2009, and as part of the country's commitments to the OECD Foreign Official Bribery Convention in 2009, Chile enacted Law 20.393,<sup>212</sup> that establishes and regulates the criminal liability of legal persons. According to the law, legal persons are responsible for the crimes expressly indicated – money laundering, financing of terrorism and crimes of public and private corruption – that were committed directly for the benefit of the company, by their owners, controllers, and senior parties, executives and representatives, provided that the commission of the crime is a consequence of the failure, by the company, of the

---

<sup>207</sup> Ministerio Público C/ Manzueta y otros, Cuarto Tribunal Oral en lo Penal de Santiago, RIT 199-2012, Sentencia de 7 diciembre de 2012.

<sup>208</sup> Ministerio Público C/ Tambaco y otros, Tribunal Oral de Osorno, RIT 136-2017, Sentencia de 14 de junio de 2018.

<sup>209</sup> MITP, *Informe Estadístico de Trata de Personas 2011-2020*.

<sup>210</sup> Ministerio Público C/Guerra y otro, RIT N° 31-2015 (n 147) involved an agricultural businessman, ex presidential candidate and Ministerio Público C/ Kang Min Lee y Jaesung Kim, RIT 291-2015 (n 127) a Korean businessman.

<sup>211</sup> 'Condenan a empresario gastronómico de la India por trata de personas en Santiago' *El Mostrador* (23 January 2018) available at: <<https://www.elmostrador.cl/noticias/pais/2018/01/23/condenan-a-empresario-gastronomico-de-la-india-por-trata-de-personas-en-santiago/>> accessed 20 August 2021; Ministerio Público C/ Espinoza Sáez y otra, Juzgado de Garantía de Molina, RIT N° 760-2013, sentencia en juicio abreviado 27 agosto de 2013.

<sup>212</sup> Ley 20393 *Establece la Responsabilidad Penal de las Personas Jurídicas en los delitos que indica*, promulgada 25 Noviembre 2009, available at: <<https://www.bcn.cl/leychile/navegar?idNorma=1008668>>.

duties of direction and supervision. Corporate criminal liability is prevented through the implementation of crime prevention models, that are basically mandatory due diligence systems. It applies to all kinds of legal persons, private or public, for profit and non for profit.

In April 2021, the new migration law, Law 21.325, was enacted. This new law contains a provision that reforms law 20.393, introducing the crime of trafficking in persons as part of the catalogue of crimes that generate corporate criminal liability. Consequently, mandatory corporate due diligence regarding trafficking in persons has been introduced into national legislation.

There are plenty of implementation problems for this reform to be fully enforced;<sup>213</sup> however, it positions the country at the forefront of legal initiatives that seek to address, prevent and remedy trafficking and forced labour in businesses operations and supply chains, introducing a new standard in corporate conduct and business settings..

**International law/Political will: Soft law: external/internal, direct, pressure point**

Linked to the above-mentioned, the reform introduced by law 21.325 in law 20.393 seems to be the corollary of an intense process of adoption of the highest voluntary standards set up by ILO and United Nations conventions in the last few years regarding liability of legal entities. In effect, in the last five years, the country committed to the UN Guiding Principles on business and human rights and the 2030 Agenda (2015); launched its first NPA on business and human rights (2017); launched its first national money laundering and financing of terrorism Country Risk Evaluation, highlighting trafficking in persons as a high risk (2017); launched its Second National Strategy to prevent and combat Money Laundering and Financing of Terrorism (2018); committed to be an Alliance 8.7 Pathfinder Country (2019); initiated the elaboration of a second NPA on business and human rights and ratified the 2014 ILO Protocol (2020).

**Civil society: Raising awareness of potential complicity in businesses: internal, indirect, pressure point**

Civil society has played a role in putting the topic of corporate responsibility regarding trafficking on the table, motivating business associations to address the issue. On its turn,

---

<sup>213</sup> The reform introduced by law 21325 erred by not assigning a specific penalty to the crime. There is no cross reference to art. 411 quarter in Article 15 of Law 20.393 that establishes the penalties for legal persons per type of crime. Unless it is reformed, constitutional constraints impede its enforcement. In addition, it is currently being discuss at congress Bill 13205-7, that intends to reform completely Law 20.393 and update the liability regime of legal persons, including the list of crimes they can be liable for. The bill does not include in the proposed list crimes the crime of trafficking.

this has been fuelled by the participation of local NGOs in international civil society networks, that advocate for mandatory human rights due diligence worldwide.<sup>214</sup>

The Children's rights agenda has also had an effect in the private sector. Business associations have undertaken initiatives to address child labour. Companies United for Children (*Empresas Unidas por la Infancia* UPPI)<sup>215</sup> is a multisectoral non-profit alliance established in 2012 to promote children's rights and contribute to eradicate child labour. Other business associations' initiatives, such as Global Compact Chile<sup>216</sup> and Alliance for Integrity,<sup>217</sup> have addressed and promoted corporate due diligence in human rights.

### **Organised criminal group v individual trafficker**

**International Law/ Understanding trafficking: Framing of Palermo protocol as a hinder: external, direct, structural**

As mentioned above, the framing of trafficking under the Palermo Protocol has shaped the State's response, whose anti-trafficking public policy stresses the view of being an organized crime issue and of sophisticated dynamics. This has had effects in the lack of detection of internal trafficking and the overlapping with the crime of "promotion of child prostitution", rendering invisible the existence of child sex trafficking.

It has also neglected the identification of trafficking of Chilean nationals, particularly in forced labour.<sup>218</sup>

**Understanding of trafficking: Overlapping between individual trafficker and child pimp: internal, indirect, structural**

In the context of internal trafficking of children, the overlapping with the crime of promotion of prostitution leaves individual traffickers subject to the category of "child pimps", that usually receive lenient sentences. This has been highlighted permanently but the TiP Reports.

### **Traffickers v consumers**

**Civil society and soft law: Raising awareness: internal, indirect, pressure point**

---

<sup>214</sup> 'Call to EU: Protect people and the planet now' *AntiSlavery International* (8 January 2021) available at: <<https://www.antislavery.org/protect-people-and-planet-now/>> accessed 4 September 2021.

<sup>215</sup> *Empresas Unidas por la Infancia* <<https://www.uppi.cl/que-es-uppi/>> accessed 4 September 2021.

<sup>216</sup> 'Integrando la perspectiva de los derechos humanos: la necesidad de compromiso', *Pacto Global Chile* (16 may 2019) available at: <<https://pactoglobal.cl/2019/pacto-global-realizo-taller-integrando-la-perspectiva-de-los-derechos-humanos-la-necesidad-de-compromiso/>> accessed 30 October 2021.

<sup>217</sup> Alliance for integrity is global multistakeholder initiative of the German Federal Ministry of Economic Cooperation and Development. 'Seminario El Rol de los Derechos Humanos en la Agenda de Integridad Empresarial' *Alliance for Integrity* (28 October 2021) available at: <<https://www.allianceforintegrity.org/es/eventos-y-capacitaciones/eventos/details.php?id=165>> accessed 30 October 2021.

<sup>218</sup> From 2011 to date, the media has exposed several cases of abusive labor conditions of agricultural workers, both nationals and foreigners, in Chilean farms. However, criminal investigations were not initiated.

Civil society has made efforts to advance in the criminalization of demand by raising awareness on the existence of trafficking for forced labour in business settings and the responsibility companies have in its occurrence<sup>219</sup> and lobbying to include trafficking into the corporate criminal liability regime, be it correcting reformed Law 20.393 or introducing the crime of trafficking in Bill 13205-7, currently being discussed at congress<sup>220</sup>. Likewise, jointly with other Latin-American and international CSO, local NGOs have implemented social media campaigns highlighting the role of consumers and their purchase power in stopping trafficking.

REDTRAM has also brought attention to the demand side issue. Through public statements has recommended applying economic sanctions to companies that benefit from the use of slave labour and the inclusion of slave labour prevention parameters in corporate integrity programs.<sup>221</sup>

**Political will/International law: Introducing new standards:** *internal, direct, pressure point*

As mentioned, political will allowed the demand side to be addressed by incorporating the crime of trafficking in the catalogue of crimes a company can be criminally liable for. However, the effectiveness of this new regulation is still uncertain.

## Particulars of determinants by type of trafficking

### Internal v International trafficking

**International law/ Understanding of trafficking: The Palermo paradigm:** *external, direct, structural*

Public policy has stressed the view of trafficking as transnational organized crime, and consequently, the focus has prioritized detection, investigation and prosecution of international trafficking. The transnational crime framing can be traced in the regional

---

<sup>219</sup> Cristián Carrere y Michelle Carrere 'Fiscalía investiga denuncia de trabajo forzado masivo de inmigrantes en cosecha de arándanos y mandarinas' *Ciperchile* (28 September 2021) available at: <<https://www.ciperchile.cl/2021/09/28/fiscalia-investiga-denuncia-de-trabajo-forzado-masivo-de-inmigrantes-en-cosecha-de-arandanos-y-mandarinas/>> accessed 1 October 2021; 'Trabajadores venezolanos denuncian haber sido engañados para trabajar en el campo chileno' *Megavisión* (8 November 2021) available at: <<https://www.meganoticias.cl/reportajes/357617-denuncian-indignas-condiciones-laborales.html>> accessed 10 November 2021.

<sup>220</sup> Bill 13205-7 intends to replace completely the corporate criminal liability regime established by Law 20.393, but does not include trafficking in the list of crimes a company can be liable for, discarding the advancements of law 20.393 reformed by 21.325.

<sup>221</sup> REDTRAM, *Conclusiones V Encuentro de la Red de Trata de Personas y Tráfico Ilícito de Migrantes*, Santa Cruz de la Sierra (Bolivia), 19-21 febrero 2020, Punto N° 31, available at: <<https://www.aiamp.info/index.php/redes-permanentes-aiamp/red-de-trata-de-personas/documentos/conclusiones-v-encuentro-de-la-red-de-trata-de-personas-y-trafico-ilicito-de-migrantes>> accessed 15 September 2021.



international bodies' narrative regarding the issue. In effect, the link between trafficking and migration is stated in the first documents that establish the background and justification for creating a political forum in the OAS to address trafficking.<sup>222</sup>

In addition, trafficking investigations are undertaken by the same police force entrusted with border control and that has reinforced the focus on international trafficking.

Internal trafficking was an object of discussion during the bill processing. Some congressmen suggested differentiating the situation of a national versus a foreigner, where the former could be protected under existing legislation. However, it was chosen not to establish distinctions, since the national, within a context of internal traffic, can face the same situations of uprooting and vulnerability as the foreigner.<sup>223</sup>

Effective combat of internal trafficking has encountered additional hindrances, such as the overlapping with the crime of promotion of child prostitution, that renders internal sexual trafficking of children invisible and a background of entrenched gender, social and racial discrimination that impedes detection of vulnerable internal victims, particularly irregular migrants, in forced labour. All cases contained in the official statistics refer solely to cases of international trafficking.

### 'Incoming' v 'outgoing' v 'transit'

**Structural factors: Governance and politics: Absence of policy in outgoing trafficking: internal, direct, structural**

Although Chile has been described as a country of origin, transit and destination both in the TIP reports and in studies undertaken by civil society and international organizations, the State has never formally addressed the topic of being a country of origin. The issue was addressed during the bill discussion, but mainly citing a high exposure media case of Chilean women taken to Japan for forced prostitution, as a way of acknowledgement of the existence of trafficking.

The complete absence of measures regarding outgoing trafficking can be observed in the null reception of a news about Chilean students who accused a university and exchange program in the United States of deceiving them and subjecting them to forced labour. The

---

<sup>222</sup> OEA, Consejo Permanente de la Organización de los Estados Americanos. Comisión General. Reunión Hemisférica sobre la Trata de Personas. Antecedentes y Justificación. Proyecto De Temario. OEA/Ser.G/CP/CG-1610/05 10 February 2005, available at: <<http://www.oas.org/consejo/sp/COMGRAL/trata.asp>> accessed 25 September 2021.

<sup>223</sup> Raúl Carnevalli, 'Trata de personas y la normativa internacional. Algunas consideraciones de su regulación en Chile' *Diritto Penale Contemporaneo* 4 (2013) p. 15, available at: <[https://dpc-rivista-trimestrale.criminaljusticenetwork.eu/pdf/DPC\\_Trim\\_4-2013-176-191.pdf](https://dpc-rivista-trimestrale.criminaljusticenetwork.eu/pdf/DPC_Trim_4-2013-176-191.pdf)> accessed 7 July 2021.

case was even mentioned in the 2020 TiP Report, in its general part.<sup>224</sup> However, there were no reactions from the Chilean State.

In the context of the increase in migration flows and the existence of mixed flows,<sup>225</sup> as mentioned, incoming trafficking has captured the focus of anti-trafficking policies.

## Particulars of determinants by stage of response

### Acknowledgment and prioritisation of trafficking as a policy issue

#### Acknowledgment and prioritization of trafficking as a policy issue

##### **Civil Society: Early research and efforts in visibility: internal, direct, pressure point**

As was stated during the anti-trafficking bill discussion, “the absence of trafficking behaviours in our criminal legislation has made the problem invisible, since the agents of the system have not been able to prosecute or punish the active subjects of these crimes”.<sup>226</sup> The invisibility of trafficking prior to the enactment of Law 20.507 and the consequent absence of statistics influenced the lack of priority in the state’s agenda.<sup>227</sup>

Visibility of trafficking was possible due to the work undertaken by civil society organizations<sup>228</sup>. The first qualitative study on the matter was undertaken in 2001 by a local NGO, Raíces, who investigated the presence of trafficking in three regions of the country, identifying trafficking cases on the ground for the first time. Later, in 2006 and 2007, they developed a mapping of points and routes of sexual exploitation of children, where they detected 17 possible routes.<sup>229</sup> The elaboration of these mappings, funded by Save The Children Sweden, involved the participation of police and public officers working

---

<sup>224</sup> US Department of State Trafficking in Persons Report 2021, p. 59.

<sup>225</sup> IOM defines mixed flows as complex population movements, which include refugees, asylum seekers, economic migrants, and other migrants. Essentially, mixed flows are related to irregular movements, in which there is often transit migration, with people traveling without necessary documentation, they cross borders and arrive at their destination without authorization. IOM, Migración Irregular y Flujos Migratorios Mixtos: Enfoque de la OIM, Nonagésima Octava Reunión, 19 octubre 2009, MC/INF/297.

<sup>226</sup> Family Commission report. Deputy Chamber discussion, April 4, 2007. BCN, Historia de la Ley 20.507 (n 43) p. 33.

<sup>227</sup> Ponce (n 206) p. 21.

<sup>228</sup> Otárola (n 40) p. 87: “Well, and we got into this issue as a result of our work with girls who are victims of sexual exploitation, in 2001 [...] And one of the manifestations, trafficking, contains exploitation. In other words, then, we began to realize that there was very little information, especially regarding trafficking. And we started doing it, we did a little investigation in 2001 ... and we detected 17 cases from the three regions. These 17 cases were our battle horses to say: “This problem exists in Chile.” When you don’t have data, nobody pays attention to you. So, from the start, everyone thought of us as crazy, they thought we were crazy “. The demand and need of evidence was highlighted in interview with Marcela Castillo, attorney, APR Program, Violence against Women National Unit, National Service for Women and Gender Equality SERNAMEG (20 August 2021).

<sup>229</sup> ONG Raíces/OIM (n 60) p. 22.

in child and women services. Results were disseminated to State authorities and public institutions. IOM played an important role funding or carrying out studies that evidenced Chile as a country of origin, transit and destination. Finally, Raíces and other children's rights organizations reached out to congresswoman María Antonieta Saa to sponsor the presentation of a bill that criminalized trafficking in persons in accordance to international standards. Congressman Saa managed to obtain the support of the needed parliamentarians to sponsor the bill, which was introduced in Congress in January 2005, soon after the ratification of Palermo protocol.

**International law / Civil society: Powerful tool in the hands of organized civil society: external, indirect, structural**

The origin of the impulse of civil society to address and advocate for trafficking policies and particularly the adoption of the Palermo Protocol emerged from the concern regarding the threat and reality of trafficking of children. Civil society networks worked together in the region, funded by international organizations, to address the issue collectively and appeal to the regional state organizations such as OAS and MERCOSUR who had addressed the issue in their political agendas. The state of Chile in the framework of the Meeting of Ministers of the Interior of MERCOSUR and Associated Countries, had signed in 1999 the General Plan for Cooperation and Reciprocal Coordination for Regional Security in MERCOSUR and in the year 2000, adhered to the Complementation of the General Plan for Cooperation and Reciprocal Coordination for Regional Safety Regarding Traffic of Minors.<sup>230</sup>

By 2003, almost all countries of Mercosur, full members and associates, had ratified the Child Convention, the Optional Protocol on the Sale of Children, Child Prostitution and the Use of Children in Pornography, the 1999 ILO Convention on Worst Forms of Child Labour, but only Argentina, Paraguay and Perú had ratified the Palermo Protocol. CSO working on child protection joined forces and advocated for action. In 2004, NGOs from the Mercosur countries, Bolivia and Chile, funded by Save the Children Sweden, presented their "Proposal for Joint Action to Confront Trafficking in Girls, Boys and Adolescents in the MERCOSUR Member States, Bolivia and Chile".<sup>231</sup> The document expressed their common concern regarding the increase in child trafficking, demanded the prioritization of the issue

---

<sup>230</sup> MERCOSUR, Complementación del Plan General de Cooperación y Coordinación Recíproca para la Seguridad Regional en Materia de Tráfico de Menores entre el Mercosur, la República de Bolivia y la República de Chile, MERCOSUR/CMC/DEC:Nº7/00, available at: [https://normas.mercosur.int/simfiles/normativas/16446\\_DEC\\_007-2000\\_ES\\_Comp-Plan\\_Coop\\_Seg\\_Tr%C3%A1f-Menores\\_MCS\\_BOLCHI\\_Acta%201\\_00.pdf](https://normas.mercosur.int/simfiles/normativas/16446_DEC_007-2000_ES_Comp-Plan_Coop_Seg_Tr%C3%A1f-Menores_MCS_BOLCHI_Acta%201_00.pdf) accessed 20 October 2021.

<sup>231</sup> Save the Children Suecia, ONG Raíces, Araya, D. y Ramos, R. Propuesta de Acción Conjunta para enfrentar el tráfico de Niños, Niñas y Adolescentes en los Estados Miembros del MERCOSUR, Bolivia y Chile; Santiago, Chile 2004, available at: <https://docplayer.es/10775358-Propuesta-de-accion-conjunta-para-enfrentar-el-traffic-de-ninas-ninos-y-adolescentes-en-los-estados-miembros-del-mercotur-bolivia-y-chile.html> accessed 10 August 2021.

in the regional agenda and concrete and precise actions: the signing of a public agreement by the Presidents, a commitment to undertake joint work through a common action plan, the ratification of the Palermo Protocol and the adoption of domestic legislation on trafficking of children. Although this document was never cited explicitly in official records, MERCOSUR adopted that same year and the years that followed, several resolutions, agreements and mechanisms aimed at strengthening the subregional and regional anti-trafficking system, following the main ideas contained in the proposal.

In effect, in September 2004, representatives from Argentina, Brazil, Paraguay, Uruguay, Bolivia and Chile, called by the OAS Interamerican Institute of the Child (*Instituto Interamericano del Niño*, IIN) and the U.S. Embassy in Uruguay, within the context of the final conference of the “Project on trafficking of children, online child pornography and legal frameworks in the Mercosur, Bolivia and Chile” adopted the Declaration “Towards a regional strategy against Trafficking of children and online child pornography”,<sup>232</sup> that concluded the necessity to update and modernize the legal frameworks in force.

In March 2005, the preparatory meeting of the first meeting of RAADH took place in Paraguay, and agreed to address the prevention and combat of trafficking in persons and initiatives in promotion and protection of children’s and adolescents’ rights.<sup>233</sup> In May 2005, the I Meeting of RAADH under the framework of the UN Palermo Convention and Protocol, promoted the creation of a regional legislative database, in order to promote the harmonization of criminal anti-trafficking regulations.<sup>234</sup>

In June that year, the Mercosur’s Council of Common Market, the main body within the MERCOSUR, created REMPM. In November 2005, Mercosur and its associated States signed the *Montevideo Declaration against Trafficking in Persons*,<sup>235</sup> committing to adopt domestic legislation according to the international standards and to promote regional cooperation. In June 2006, during the IV Meeting of RAADH, the “Recommendation on

---

<sup>232</sup> Instituto Interamericano del Niño ‘Memorias Conferencia regional del proyecto sobre Tráfico de de niños, pornografía infantil en internet y marcos normativos en el MERCOSUR, Bolivia y Chile’ Montevideo, Octubre 2004, available at: <[http://www.iin.oas.org/proy\\_trafico\\_ninos\\_internet/iintpi/memorias.pdf](http://www.iin.oas.org/proy_trafico_ninos_internet/iintpi/memorias.pdf)> accessed 10 September 2021.

<sup>233</sup> MERCOSUR RAADH, Acta de Reunión Preparatoria de Altas Autoridades Competentes en Derechos Humanos y Cancillerías del Mercosur y Estados Asociados, 7 marzo 2005, MERCOSUR/RADDHH/ACTA N°1/05, available at: <[https://www.raadh.mercosur.int/documentos/actas-de-plenario/?cp\\_plenario=3](https://www.raadh.mercosur.int/documentos/actas-de-plenario/?cp_plenario=3)> accessed 10 September 2021.

<sup>234</sup> MERCOSUR RAADH, Acta I Reunión de Altas Autoridades en Derechos Humanos del Mercosur, Mayo 2005, available at: <<http://www.observatoriomercosur.org.uy/es/raddoc38.php>> accessed 10 September 2021.

<sup>235</sup> MERCOSUR, Declaración de Montevideo contra la Trata de Personas en el Mercosur y Estados Asociados, 18 Noviembre 2005, available at: <<https://www.acnur.org/fileadmin/Documentos/BDL/2013/9084.pdf>> accessed 10 September 2021.

the rights and assistance of girls, boys and adolescent victims of trafficking, smuggling, sexual exploitation and / or sale<sup>236</sup> was approved.

Efforts undertaken by the regional bodies and Chile's pending international obligations were part of the arguments that sustained the motion for Bill 3778-18.

**International law/Political will: *Shared concern for the need of better tools: external, direct, pressure point***

As stated in the history of the law, among the reasons given for the presentation of the bill, in addition to the recent enactment of the Palermo Convention, not only the deficient regulation of the crime of trafficking was taken into consideration, but also the need for better investigation techniques. Recent studies by the IOM showed that Chile was becoming a country of origin, transit and destination for people coerced to sexual exploitation. Criminal justice operators all agreed on the crucial need for better investigation regulations. In the Congress hearings, representatives from the Prosecutor's Office, international organizations and NGOs were all very critical about the lack of a proper definition, that left internal trafficking and trafficking for other purposes different from sexual exploitation with no sanction. In his intervention at the Senate, the Ministry of Justice highlighted as a key aspect of approving law 20.507, not only the international commitments, but also the need for appropriate legal tools for international cooperation in criminal cases.<sup>237</sup>

**Political will and civil society: *a match made in heaven: internal, direct, pressure point***

Prioritization of trafficking as a policy issue was possible due to the partnership created between NGOs and congresswoman Saa, who decided to sponsor a trafficking bill and relied in the technical assistance provided by civil society. In her speech in the final session when the bill was approved, congresswoman Saa publicly acknowledged and thanked the CSO that partnered with her along the whole process.<sup>238</sup>

---

<sup>236</sup> MERCOSUR RAADH, Reunión de Altas Autoridades sobre Derechos Humanos, Mercosur, Acta Plenario Final Reunión IV Argentina, 8 June 2006, MERCOSUR/RAADDHH/ACTA N°2/06, available at: <[https://www.raadh.mercosur.int/documentos/actas-de-plenario/?cp\\_plenario=3](https://www.raadh.mercosur.int/documentos/actas-de-plenario/?cp_plenario=3)> accessed 10 September 2021.

<sup>237</sup> Intervention of Minister of Justice Felipe Bulnes. Second Report of the Commission of Human Rights. Second constitutional proceedings, January 18, 2011. BCN, Historia de la Ley 20.507 (n 43) p. 167.

<sup>238</sup> I want to emphasize that this project was done with civil society. I pay tribute to Denisse Araya Castelli, director of the NGO Raices, who strives and supports the vindication of children who work in the sex trade. With her we began this work that, in the pre-legislative instances, had the participation of many sectors. There was even a meeting with more than two hundred people, with people from the Investigative Police, the Public Ministry, the Carabineros, civil and non-governmental organizations dedicated to the issue of sex trade and human trafficking". Intervention of Deputy María Antonieta Saa, Deputy Chamber discussion, March 8, 2011, third constitutional proceedings. BCN, Historia de la Ley 20507, p. 197-198.

## Adoption of legislation and policy and setting up of institutions or mechanisms

### Political will/ Gender representation in policy making bodies: *internal, direct, pressure point*

Political will was a key factor for the adoption of domestic legislation in accordance with international standards. In January 2005, Bill 3778-18 was introduced by a group of congressmen, led by congresswoman Maria Antonieta Saa, that aimed to fulfil the international anti-trafficking obligations and to establish norms for its prevention and more effective criminal prosecution. Said project, after a long parliamentary discussion, gave rise to Law 20.507 enacted on April 8, 2011. Congressman Saa sustained the processing of the bill for 6 years, supported by NGOs and international organizations that shared the same concerns. Congresswoman Saa did not have the support of the government when she introduced the bill,<sup>239</sup> and it was not till 2007 that SERNAMEG and the Ministry of Justice got actively involved in the discussion, contributed to improvements in the text and supported the bill till its approval.

The bill that gave rise to Law No. 20.507 was approved in all instances by high majorities and the support of all political sectors,<sup>240</sup> on Women's Day, March 8, 2011. During the last session of the bill discussion in its final constitutional proceeding before the Chamber of Deputies, congressmen congratulated Congresswoman Saa for her perseverance and courage in promoting the anti-trafficking bill.<sup>241</sup>

Political will has also been crucial in advancing efforts in trafficking for forced labour. The public agenda promoted by the Undersecretary of Labour after Chile became an ILO Pathfinder country in 2019, has been able to build on the previous work undertaken by SENAME in the issue of worst forms of child labour and the children's right agenda in general, connecting the national efforts to international initiatives.

---

<sup>239</sup> Family Commission report. Deputy Chamber discussion, April 4, 2007. BCN, Historia de la Ley 20.507 (n 43) p. 33-34.

<sup>240</sup> Claudia Cárdenas, 'Sobre ciertos problemas que se han suscitado en relación al delito de trata de personas', Defensoría penal pública (2013) p. 140 n. 3, available at: <<https://repositorio.uchile.cl/handle/2250/135844>> accessed 20 August 2021.

<sup>241</sup> "Quite eloquent and illustrative of political will are the final words of deputy Jarpa: "Mr President, first of all, I want to congratulate my colleague and friend María Antonieta Saa. I have had the opportunity to share with her for five years in the Family Commission and I have been able to verify her courage and vehemence to defend the rights of the most weakened people before society, not only women, but children, adults and women. Segregated people. I also want to congratulate all the authors of this bill, those who worked in the different commissions that studied it, and those of us who are going to approve it today". Intervention of Deputy Carlos Jarpa. Deputy Chamber discussion, March 8, 2011, third constitutional proceedings. BCN, Historia de la Ley 20.507 (n 43) p. 200.

Political will can be identified as one of the determinants of capacity-building processes connected to gender representation in policy making bodies. In effect, it was political will what triggered the issuance of Presidential Decree 2821 in 2008 that created the MITP. During the administration of President Bachelet in 2006, the gender equality agenda was a priority. As part of the agenda, the Presidency required all ministries to commit to concrete actions to advance women's rights. Decree 2821 was part of the initiatives the MISP committed to, initiating the process of institutionalization of anti-trafficking policies. Political will sparked the creation of the first shelter for trafficked women, part of the commitments made by SERNAMEG in the Intersectoral agreement that approved the first NPA.

Interviewees highlighted gender representation in policy making bodies as a crucial determinant and something they had identified as an element of impact. One interviewee noted all the leading officers of the public agencies involved in anti-trafficking policies – mainly Prosecutor's Office, PDI, the Intersectoral Table, ministries – had been women.<sup>242</sup> And "two of the three judges were women in the last conviction [obtained with no victim's testimony]. Two out of three judges were women in the first conviction [in a trafficking case for sexual exploitation]".<sup>243</sup>

Paradoxically, it was noted by interviewees that the bill managed to capture the attention and obtain the support of congressmen, once it was framed as an *organized crime* issue more than a *women and children's right issue*.<sup>244</sup>

#### **International law: Commitment to International obligations: external, direct, structural**

In April 2004, the presidential message for the ratification of the UN Convention and Trafficking protocol expressly acknowledged that from the moment the country ratified both international instruments, was obliged to assume commitments and duties towards the international community<sup>245</sup>. In 2008, IOM recommended the criminalization of trafficking under the Palermo definition "as part of Chile's international obligations".<sup>246</sup>

---

<sup>242</sup> Interview with Mauricio Fernández, Money Laundering and Organized Crime Specialized Unit Chief, National Prosecutor's Office, Public Ministry of Chile (Santiago, 13 August 2021); Interview with Carolina Suazo, Deputy prosecutor, High Complexity Crimes Prosecutor's Office, Metropolitan North Central Prosecutor's Office, Public Ministry of Chile (Santiago, Chile, 12 August 2021).

<sup>243</sup> Interview with Carolina Suazo, Deputy prosecutor, High Complexity Crimes Prosecutor's Office, Metropolitan North Central Prosecutor's Office, Public Ministry of Chile (Santiago, Chile, 12 August 2021).

<sup>244</sup> Interview with María Antonieta Saa, councillor, Santiago Metropolitan Regional Council, former congresswoman, author of bill 3887-18 (Santiago, Chile, 12 August 2021).

<sup>245</sup> Report of the Foreign Affairs Commission, April 13, 2004, Deputy Chamber, first constitutional proceedings, Bill 3444-10 and Bill 3445-10, BCN, Historia del Decreto 342 (n 1) p. 10.

<sup>246</sup> IOM/Chile (2008a) (n 60) p 15.



Moya<sup>247</sup> and Carnevalli<sup>248</sup> point out how the international commitments and Chile's inability to adequately address the crime were key determinants, exposed as such in the discussion of the bill 3778-18, to adopt the antitrafficking law, something all interviewees agreed on.

The failure in addressing the crime prevented accessing effective international cooperation. This last point was highlighted in interviews.<sup>249</sup> Chile was failing to adequately address the crime and was unable to respond to international cooperation requests, compromising its international reputation. Interviewees expressed authorities listened to the reports on Chile.<sup>250</sup>

In his intervention at the Senate during the bill's last constitutional proceeding, the Ministry of Justice stressed the urgency to comply to international obligations: "this bill was approved in 2007 by the Chamber of Deputies, and at present it is good that Chile generate a culture of complying with the international conventions that it ratifies, particularly in a matter that is of concern to the international community".<sup>251</sup>

**External monitoring/Threat of sanctions: *The International pressure and influence of the U.S.: external, direct, pressure point***

Research on criminal justice policy in Latin America<sup>252</sup> has highlighted the influence of US diplomatic pressure in national legislation, and Chile has not been an exception. During the second constitutional proceedings at the Senate, congresswoman Saa was reached out by the US ambassador in Chile who expressed the concern of the US Department of State over the absence in Chile of a trafficking law. And since former US President Barack Obama's visit to Chile intended to reaffirm this type of actions in the region, it was crucial for the success of the visit to enact the law that was being discussed at Congress. From then on, congresswoman Saa and NGOs partnered with the US Embassy to lobby with the Senators about the need to approve bill 3778-18, as it was a serious transnational criminal threat. "The important thing was for senators to realize that these issues were important, and not second-order or women's issues".<sup>253</sup>

---

<sup>247</sup> Clara Moya, 'Los delitos de trata de seres humanos en España y Chile. Bien Jurídico protegido y relaciones concursales' (2016) *Política Criminal* Vol. 11, N° 22, Art. 6, p. 521, available at: <[https://scielo.conicyt.cl/scielo.php?script=sci\\_arttext&pid=S0718-33992016000200006](https://scielo.conicyt.cl/scielo.php?script=sci_arttext&pid=S0718-33992016000200006)> accessed 20 July 2021

<sup>248</sup> Carnevalli (n 223) p. 12.

<sup>249</sup> Interview with Carolina Suazo, specialized trafficking prosecutor, High Complexity Cases Office, Public Ministry of Chile (Santiago, Chile, 12 August 2021).

<sup>250</sup> Ibid.

<sup>251</sup> Second Report of the Human Rights Commission, January 18, 2011, second constitutional proceedings. BCN, *Historia de la ley 20.507* (n 43) p. 171.

<sup>252</sup> Díez-Repollés (2008) (n 53).

<sup>253</sup> Interview with María Antonieta Saa, councillor, Santiago Metropolitan Regional Council, former congresswoman, author of Bill 3778-18 (Santiago, Chile, 12 August 2021).

The official records of the parliamentary debates register the intervention of the Ministry of Justice, who addressed the Senate in January 2011, during the bill's last constitutional proceedings expressing that "both the former and the current United States Ambassador expressed to the Government of Chile their special concern that the political commitment be assumed and [the Government] believes that the time has come".<sup>254</sup>

**International law: *The influence of regional legal frameworks: external, indirect, structural***

Within the framework of the OAS, the Meetings of National Authorities in Trafficking in Persons were a point of pressure and encouragement to comply with the Palermo protocol and for the creation of the MITP. The Resolution *Hemispheric Efforts to Combat Human Trafficking: Recommendations and Conclusions of the First Meeting of National Authorities on Trafficking In Persons* adopted in May 2006, expressly encouraged countries to ratify the UN Transnational Organized Crime Convention and the Trafficking Protocol.<sup>255</sup> The commitments adopted by Chile in the context of these meetings were part of the arguments stated by the leading congresswoman during the discussions of the trafficking bill.<sup>256</sup>

Likewise, the attendance of a Chilean delegation to the first meeting in March 2006, sparked the creation in April of that same year, of an intersectoral working group to outline administrative actions on trafficking and involve civil society<sup>257</sup>. Promoted by the Executive Power and headed by the Undersecretariat of the Interior, this working group was the antecedent for the later creation of the MITP.

In the South Cone context, MERCOSUR has also been an instance of encouragement to adopt international instruments and standards. The provisions of the 2000 Complementation of the General Plan of Reciprocal Cooperation and Coordination for Regional Security Regarding Trafficking of Minors incorporated the commitments acquired by the states in the two UN protocols regarding trafficking in persons and smuggling of migrants.<sup>258</sup> Studies conducted under the framework of Mercosur were profusely cited during the discussions of the trafficking bill.<sup>259</sup>

**Civil society: *Data: internal, direct, pressure point***

Prior to the law, the only available data on the nature and scope of trafficking was produced by NGOs and international organizations. The work and research undertaken by civil

---

<sup>254</sup> Second Report of the Human Rights Commission, January 18, 2011, second constitutional proceedings. BCN, Historia de la ley 20.507 (n 43) p. 171.

<sup>255</sup> Consejo Permanente de la Organización de Estados Americanos, Comisión General, Resolución *Esfuerzos Hemisféricos para Combatir la Trata de Personas: Recomendaciones y Conclusiones de la Primera Reunión de Autoridades Nacionales en materia de Trata de Personas*, OEA/Ser.G/CP/CG-1675/06 rev. 5, 22 Mayo 2006, available at: <<http://www.oas.org/consejo/sp/COMGRAL/trata.asp>> accessed 25 September 2021.

<sup>256</sup> BCN, Historia de la ley 20.507 (n 43) p. 106.

<sup>257</sup> OIM/Chile, p. 219-220.

<sup>258</sup> ONG Raíces, OIM (n 43) p. 14.

<sup>259</sup> BCN, Historia de la ley 20.507 (n 43) p. 4; p. 9; p. 62; p. 245.

society was used and highlighted by congressmen both in the discussion of the Protocol ratification as well as during the trafficking bill processing.<sup>260</sup>

In 2001, Raíces undertook a first account of the situation of children involved in commercial sexual exploitation and sex trafficking detecting 17 children. In 2004, two women rights organizations lead a study on trafficking of women for sexual exploitation, confirming the existence of the crime as well as its deep invisibility. In 2007, IOM undertook an exploratory study on trafficking of adults for sexual exploitation in Argentina, Chile and Uruguay, detecting 99 victims in the country and confirming Chile as a country of origin, transit and destination, with internal and international trafficking occurring. In 2007, Raíces – with the sponsorship of IOM – released an exploratory study on trafficking for sexual exploitation of children and adolescents in three regions of the country, detecting 52 cases; the majority, internal trafficking of girls. In 2008, IOM undertook a new study in Chile on trafficking for all exploitative purposes identifying 147 victims.<sup>261</sup> Finally, in 2010, Raíces and ECPAT International undertook a study<sup>262</sup> on local dynamics on sexual exploitation of children, including trafficking. These organizations continued researching and updating the knowledge on the local manifestations of trafficking to date.<sup>263</sup>

**Conflict and natural disasters: *The 2010 Earthquake: internal, direct, pressure point***

In February 2010, Chile experienced an 8,7 earthquake and tsunami<sup>264</sup> that cause massive and severe damage all throughout the country, and particularly the south. This determined the withdrawal of urgency from the Executive of the bill legislative discussion, as governments efforts focused on reconstruction.

## Allocation of resources and capacity building

**Political will: *“Or the lack of...”: internal, direct, structural***

Although political will was crucial in the ratification of the Palermo Protocol and later approval of law 20.507, it lacked a genuine effort to enforce legislation and make structural change. This is evident when faced to the lack of dedicated resources and staffing to the public policy on the matter. No budget has ever been assigned to the Intersectoral Table and the only opportunity in which political will was powerful enough to allocate resources for the implementation of the NPA in the 2018 budget, the allocated resources were

---

<sup>260</sup> Chamber discussion, first constitutional proceedings Bills 3444-10 and 3445-10. BCN, Historia del Decreto 342 (n 1) p. 16.

<sup>261</sup> IOM/Chile (2008a).

<sup>262</sup> Araya, D. y Retuerto, I. (n 63).

<sup>263</sup> ONG Raíces (2017) (n 60).

<sup>264</sup> CEPAL, ‘The Chilean earthquake of 27 February 2010: an overview’ (March 2010) available at: [https://repositorio.cepal.org/bitstream/handle/11362/3161/S2010191\\_en.pdf?sequence=1](https://repositorio.cepal.org/bitstream/handle/11362/3161/S2010191_en.pdf?sequence=1) accessed 23 September 2021.

nevertheless reassigned before the end of the fiscal year to other matters, leaving the MITP with no available direct resources.<sup>265</sup>

Public policy and the work of the MITP has relied exclusively in the resources each institutional member of the Table allocates within its own budget. Specialized units within the Public Ministry and both national police forces are funded by the general budget, but there is shortage of resources and lack of personnel. Training among public institutions relies on the allocation, within their general training budget, of resources for anti-trafficking trainings, but as it is not seen as a priority, particularly to those ministries and public services that are not directly involved with the criminal justice system- resources are scarce. Political will has been present, though, in the extraordinary allocation of resources for protection of victims that have turned to be crucial for the public policy as a whole. That was the case of the creation of a shelter for trafficked women, the only one in the country, funded by SERNAMEG.

**Understanding trafficking: *Lack of reliable Data as a hinder: internal, indirect, structural***

In connection with the abovementioned, official statistics on trafficking exhibit very low numbers that, according to civil society and academia,<sup>266</sup> do not reflect the situation of trafficking on the ground. The information reported in the “Statistical Report on Trafficking in Persons in Chile” is self-reported by criminal justice operators, filtered by the requirement of being only formalized cases, that is, cases where prosecutors have formally press charges against defendants. Consequently, cases that might lack strong evidence or reluctance from victims to testify or any another impediment that might hinder obtaining a conviction, are not part of the measurement.

As allocation of resources is dependent of, among other factors, the magnitude of the criminal threat, the low figures in the number of victims plays a role in minimizing the actual seriousness and level of penetration of the crime and the subsequent funding for preventive and protection measures.

**Civil society: *Getting funds for all: internal, direct, structural***

In the period before the enactment of law 20.507, civil society was crucial to obtain resources to implement anti-trafficking initiatives in partnership with the State. Save the Children Sweden signed agreements with Carabineros and the MISP, to fund and undertake

---

<sup>265</sup> 2017 was an election year that resulted in the victory of the opposing political coalition and the defeat of the ruling administration. The new administration, coincidentally the Piñera administration that had pushed for the re-installation of the Intersectoral Table in 2012 and support the setting up of institutions and mechanisms, withdraw the allocated resources and reassigned them to the Plan Northern Border. The government that allocated resources in 2017 corresponds to the second administration of Bachelet’s government, the administration that created the MITP.

<sup>266</sup> Quinteros, Dufraix, Ramos (n 12).

awareness raising initiatives and research.<sup>267</sup> Official State documents cite these initiatives as part of advancements in State preventive measures. Curiously, the participation of local NGOs is not mentioned.<sup>268</sup>

In many instances, it has been civil society organizations who have provided freely seminars, conferences and training workshops to public officers.<sup>269</sup>

**Civil society: The important role of international civil society organizations´ guidance and funding: external, direct, pressure points**

Besides funding, the role of international CSO has proved to be crucial in two ways: by providing expert knowledge and by strengthening capacities in local NGOs, promoting the production of local research and its transfer to public entities. During the first OAS Meeting of National Authorities of Trafficking in Persons held in 2006, Save the Children Sweden presented the project “Prevention tools: the importance of the elaboration of regional maps as base instruments for the design of public policies, training and sensibilization”.<sup>270</sup> That same year, funded by Save The Children-Sweden, Raíces lead the creation of the first national mapping of sexual exploitation routes in collaboration with local police and replicated the experience in 2007. The two national mappings were later part of training seminars with local police and were profusely cited in official State documents as key advancements in the prevention of trafficking. NGOs were not mentioned.<sup>271</sup>

---

<sup>267</sup> In May 2006, Save the Children Sweden signed an agreement with Carabineros of Chile to organize the “First Latin American Congress of Police Security Forces regarding Missing persons”, introducing the topic among policemen. Denisse Araya, Iria Retuerto (n 29) p.132-133. In May 2006, the MISP signed an agreement with Save the Children Sweden to undertake two geographical and social mappings of trafficking routes in Chile, executed by Raíces. The experience was replicated the next year in the city of Iquique. Denisse Araya, Iria Retuerto (n 29) p. 131.

<sup>268</sup> BCN, ‘Trata de niños y niñas. Un desafío para los Derechos Humanos’, 19 de octubre 2010 (2010) available at: <[https://obtienearchivo.bcn.cl/obtienearchivo?id=repositorio/10221/9850/5/87407\\_No76-10-Trata-de-ninos-y-ninas.pdf](https://obtienearchivo.bcn.cl/obtienearchivo?id=repositorio/10221/9850/5/87407_No76-10-Trata-de-ninos-y-ninas.pdf)>\_accessed 21 September 2021.

<sup>269</sup> In 2020, Raíces was hired by the Ministry of Education to develop a national guide for teachers to prevent and detect child trafficking, the first initiative addressing trafficking in educational settings. The next year, NGO Libera received funds under an international project that gather Venezuelan and Argentinian NGOs to train public teachers in prevention and detection of trafficking. Although the Ministry of Education help in disseminating the activity, designed following the guide financed by the Ministry, it was NGOs who managed to organize and fund the whole training activity for public teachers.

<sup>270</sup> Informe del Relator de la Reunión de Autoridades Nacionales en Materia de Trata de Personas, Reunión de Autoridades Nacionales en Materia de Trata de Personas de la Organización de Estados Americanos, 14 al 17 de marzo de 2006, Porlamar, Isla Margarita, República Bolivariana de Venezuela, p. 7. OEA/Ser. K/XXXIX, RTP/doc.15/06 rev. 1, 16 May 2006, available at: <<http://www.oas.org/consejo/sp/COMGRAL/trata.asp>> accessed 10 August 2021.

<sup>271</sup> BCN, ‘Tráfico y Trata de personas. La nueva ley que sanciona estos delitos internacionales en Chile’, 20 de septiembre de 2012, available at: <[https://obtienearchivo.bcn.cl/obtienearchivo?id=repositorio/10221/15553/5/95447\\_No100-12-Trafico-y-trata.pdf](https://obtienearchivo.bcn.cl/obtienearchivo?id=repositorio/10221/15553/5/95447_No100-12-Trafico-y-trata.pdf)>\_accessed 21 September 2021.

## Implementation and enforcement of law, policy and practice

### International law: *Framing of trafficking as a hinder: external, direct, structural*

As described, the framing of the Palermo protocol and the understanding of trafficking as a crime of transnational nature has obscured the identification of internal trafficking and promoted certain paradigms about the typology of the crime that hinder detection. The overlapping of the crime of promotion of prostitution with internal trafficking of children has also interfered in the enforcement of the law, something permanently pointed out in the TIP reports.

### Structural factors: *Crimmigration as a hinder: internal, direct, structural*

From 2018 onward the migration crisis has been conceptualized under what academics' frame as *crimmigration*, following the US literature on the subject. The migration crisis caused by the Venezuelan exodus in the South American region has framed the way trafficking is perceived. The crisis and the State concerns over national security influence negatively the perception of migrants, and this, on its turn, interferes with the process of identifying victims.<sup>272</sup> REDTRAM has highlighted in its latest public statement, the need to avoid criminalizing migrants and provide adequate protection to victims.<sup>273</sup>

*Crimmigration* produces other additional negative effects that hinder states' efforts. The vulnerability of irregular migrants increases, creating favourable conditions for internal trafficking and labour exploitation to occur.<sup>274</sup> Widely publicized deportations have increased fear in the migrant population.<sup>275</sup>

The double nature of PDI's institutional function -investigation of crimes and border control- deepens the invisibility of the crime. "Border control dynamics observed in Tarapacá can be considered as social and political control efforts to select and securitize flows [...] Hence,

---

<sup>272</sup> Quinteros, Dufraix, Ramos (n 12) p. 5: "This approach to enforcing migration and border control policies has negative effects on the symbolic representations of specific immigrant groups. Unwanted migrants are mainly seen as potential enemies, which regarding trafficking becomes highly problematic since it contributes to the invisibilization of foreigners as legal subjects and potential victims. As a result, no cases or victims have been registered in Tarapacá even though the region is one of just two to have national specialized police units in human trafficking since 2012."

<sup>273</sup> REDTRAM, *Declaración sobre flujos migratorios mixtos*, 29 de abril de 2021, available at: <<https://www.aiamp.info/index.php/redes-permanentes-aiamp/red-de-trata-de-personas/documentos/declaracion-de-la-redtram-sobre-flujos-migratorios-mixtos>>

<sup>274</sup> Migrants face discrimination by a society that perceives them as a danger and endure exploitative working conditions under the menace of deportation and the hope of regularization.

<sup>275</sup> 'Gobierno concreta expulsión de 32 colombianos: este 2019 ya se ha deportado a 302 personas' *Bio bio Chile* (21 February 2019), available at: <https://www.biobiochile.cl/noticias/nacional/region-metropolitana/2019/02/21/gobierno-concreta-expulsion-de-32-colombianos-este-2019-ya-se-ha-deportado-a-302-personas.shtml> accessed 10 September 2021; 'La segunda en una semana: Gobierno concreta expulsión de 66 dominicanos del país' *CNN Chile* (09 September 2019) available at: <[https://www.cnnchile.com/pais/gobierno-expulsion-66-dominicanos\\_20190906/](https://www.cnnchile.com/pais/gobierno-expulsion-66-dominicanos_20190906/)> accessed 10 September 2021.

one can assert that the varying levels of visibility of human trafficking cases and victims are managed through the governmental operation of border and migration controls. Such operations have resulted in immigrants being portrayed as enemies rather than potential victims of exploitation, thus further contributing to the invisibility of trafficking and its victims".<sup>276</sup>

In addition, evidence points to the existence of a wide discretionary power for border control agents.<sup>277</sup> The interrelated operation of both the border control apparatus and the criminal justice system, seems to favour trafficking offenders, and subsequently promotes the profitable operation of transnational criminal networks with minimum risks.<sup>278</sup>

#### **Understanding trafficking: *Lack of reliable Data as a hinder: internal, indirect, structural***

As mentioned, lack of reliable data obstructs the effectiveness of policy responses by hindering the understanding of trafficking's scale and nature and the implementation of evidence-based responses. As data derives internally from the government's own processes, there is a selection bias in data collection that distorts the understanding of the phenomenon as it only includes those cases that are formally identified. Data collection faces definitional challenges, that impede identifying trafficking for forced labour and understand the crime of promotion of child prostitution as internal trafficking. The statistical data reflects the dominant frame of trafficking as a criminal justice issue, in connection with political priorities such as internal security and the protection of borders.

#### **Case law as a hinder: *discouraging investigations: internal, direct, structural***

As mentioned, lack of specialized knowledge and gender perspective in judges acts as a hinder for investigation and prosecution, as complex cases end up in acquittals.<sup>279</sup> Research has also highlighted how the Chilean criminal justice system's strong inclination towards a "justice of agreements" model has neglected discussion on how exploitation should be understood in the local context.<sup>280</sup>

---

<sup>276</sup> Quinteros, Dufraix, Ramos (n 12) p. 3.

<sup>277</sup> Ibid, p. 5.

<sup>278</sup> Ibid, p. 8: "From here, the criminal justice system bias operates from two different, yet closely connected perspectives. On the one hand, it inhibits the identification of potential victims due to the border control rationale centered on national security. On the other hand, as alternative sanctions are aimed at irregular migrants, the criminal justice system is prevented from enforcing deportation measures for trafficking offenders. Subsequently, the legal/illegal dichotomy of border control regulation penetrates the criminal justice system, thus contributing to the invisibilization of trafficking cases."

<sup>279</sup> Interview with Carolina Suazo, specialized trafficking prosecutor, High Complexity Cases Office, Public Ministry of Chile (Santiago, Chile, 12 August 2021); Interview with advisory attorney, National Prosecutor's Office, Public Ministry of Chile (Santiago, Focus group 24 September 2021); Interview with Police Chief inspector Anti-trafficking Brigade Giordano Lanzarini (Santiago, Focus group 24 September 2021).

<sup>280</sup> Quinteros, Dufraix, Ramos (n 12) p. 6.



**International Mechanisms: Regional bodies as instances of international cooperation: external, direct, structural**

Regional international organizations have created the venues for effective judicial cooperation to arise, that has resulted in successful convictions in complex cases. Mercosur was crucial in creating REMPM that later partnered with AIAMP to create REDTRAM, the regional network of specialized anti-trafficking prosecutors in 2011.

The work with REDTRAM was crucial to convict in the first trial carried out without the testimony of the victim in 2021.<sup>281</sup>

## **Establishment of partnerships (including with civil society organisations and the private sector)**

**Political will: Securing a place for encounter: internal, direct, pressure points**

When Decree 2821 was drafted, it was an objective of the authorities of the time that the new entity, the MITP, had a multistakeholder nature, ensuring the presence of civil society and international organizations. Public officials interviewed recognized the need to include experts in the undertaking of policy on trafficking and “the expertise came from civil society”.<sup>282</sup> This was unprecedented: it was not a common practice to create public entities that included CSO. And in effect, the text of Decree 2821 has been used as a legal reference in the creation of other State multistakeholder bodies.

**Structural conditions: Politics and governance: The multistakeholder nature of the MITP: internal, direct, structural**

The multistakeholder nature of the MITP has been crucial in providing a space for institutions to meet, connect and partner. All the interviewees highlighted how the broad calling promoted by the MITP, actively incorporating civil society and international organizations, was a key factor in promoting initiatives that advanced State efforts.

Coordination promoted by the MITP made possible the implementation of the national Trafficking Victims Assistance Protocol and the creation of several preventive materials. It has also allowed CSO to partner with State institutions. NGOs have partnered with the Ministry of Health, the Ministry of Education, the Ministry of Foreign Affairs, SENAME,

---

<sup>281</sup> Experts from the Victims and Witnesses Unit of the Public Ministry of Perú testified before the Chilean judges who decided to convict the offenders. Trials not depending on witness testimonies had been declared as one of REDTRAM’s strategic objectives, and this last case showed the success of the initiative. Interview with Carolina Suazo, specialized trafficking prosecutor, High Complexity Cases Office, Public Ministry of Chile (Santiago, Chile, 12 August 2021).

<sup>282</sup> Interview with Fabiola Cifuentes, Executive Secretary, Intersectoral Table of Trafficking in Persons, Public Security Division, Ministry of Interior and Public Security (Santiago, Chile, 1° September 2021).

SERNAMEG, providing technical assistance and undertaking awareness raising and training initiatives, both paid and for free.

**Civil society: *Weaving the web: direct internal, pressure point***

Civil society has been an important factor in promoting and encouraging partnerships. It has been NGOs the ones who have reached out to State institutions to undertake projects and initiatives or reached out the private sector to raise awareness on the need to address trafficking in business operations and supply chain.

**International Mechanisms: *Regional bodies as instances of international cooperation: external, direct, structural***

As mentioned, regional international organizations have created the venues for effective judicial cooperation to arise, that has resulted in successful convictions in complex cases. In effect, Mercosur was crucial in creating REMPM that later partnered with AIAMP to create REDTRAM, the network of specialized anti-trafficking prosecutors, in 2011.

## **Monitoring and evaluation of anti-trafficking efforts and reporting**

**External monitoring: *US Department of State Tip Report: external, indirect, structural***

Till 2014, Chile had been ranked as a Tier 2 country by the US Department of State TIP report. Although the TIP reports were only briefly cited during the bill discussion,<sup>283</sup> they had an effect in guiding Chile's steps in its process of implementing the law and building capacity. The 2012 TiP Report, one year after the enactment of Law 20.507, recommended, among various measures, creating a national strategy or plan to combat trafficking. The 2013 TIP Report recommended enhancing interagency coordination mechanisms and communication with NGOs, particularly at the working level. In 2013, the MITP was reinstalled and by the end of the year, it had approved a NPA that involved public institutions, NGOs and international organizations. In 2014, the TiP Report ranked Chile for the first time as a Tier 1 country, qualification that maintains today.

**Structural conditions: *Governance and Politics: INDH Human rights report: internal, indirect, pressure point***

In 2009, through Law 20.045, the National Institute of Human Rights (INDH) was created, an autonomous public entity whose purpose is the promotion and protection of human rights in the country. The INDH prepares an annual report on the situation of human rights at the national level and makes recommendations for their due protection and respect. Said report must be presented to the State powers and additionally, it can be sent to the UN, the OAS

---

<sup>283</sup> During the bill discussion, representatives of SERNAMEG cited the 2005 and 2006 TIP reports as evidence that the crime existed in Chile and was actually occurring. Second Report of the Constitutional Commission, November 8, 2010, second constitutional proceedings. BCN, Historia de la ley 20.507 (n 43) p. 125.

and human rights defense organizations. The INDH has competence to initiate legal actions before the Courts of Justice for the crime of trafficking in persons.

Although the State's response to trafficking has been reviewed irregularly in the annual reports, the reports have addressed constantly the rights of women and migrants and their vulnerability to trafficking, monitoring the situation of their labour rights. This has been valuable information for NGOs and academia in their advocacy and research work.

**Civil society: NGOs reporting and academic research:** *internal, indirect, pressure point*

Civil society organizations and academia have played a role in monitoring and critically assessing anti-trafficking policies in their studies and research. They have participated in shadow reports before UN human rights committees. The impact of its influence depends in great part to its connection to committed political will.

**Structural conditions: Governance and politics: Absence of impact indicators of anti-trafficking efforts as a hinder:** *internal, indirect, structural*

NPAs are not tied to result or impact indicators and, consequently there is scarce information on the effectiveness of anti-trafficking measures. Compliance indicators tend to focus on formal fulfilment such as, for example, number of trained personnel, but not in the quality or effectiveness of the training itself. Academia has been critical about the state's data production processes and the consequent impossibility to assess the nature and scope of the crime.<sup>284</sup>

## Sustainability

**Civil society: The role of international organizations:** *external, direct, structural*

As mentioned, international organizations have been crucial in providing the support and funding required for NGOs and State agencies to operate, providing certain continuity in the provision of victims' services, and funding and technical assistance for anti-trafficking State and civil society initiatives.

**Political will/ Gender representation/ Structural conditions: The MITP: Keeping the priority alive:** *internal, direct, pressure point*

Despite not being funded, the work undertaken by the MITP has been able to ensure continuity of the State's anti-trafficking efforts and the permanency of the topic in the public agenda.

Three institutional measures were taken that have turned out to be strategic. In 2014, political will allowed the NPA and the coordination of anti-trafficking measures by the MITP to be incorporated as strategic objectives and strategic products of the MISP – expression

---

<sup>284</sup> Quinteros, Dufraix, Ramos (n 12).

of the achievements the Ministry and its Services are expected to obtain in the medium term and whose compliance is tied to the Ministry's budget allocation.<sup>285</sup> In other words, the fulfilment of the 2014-2018 NPA was tied to compliance indicators of the State performance. It kept that condition till 2018 and it matches the most productive period of the MITP in issuing and delivering preventive materials, guidance and protocols elaborated jointly by its members.<sup>286</sup>

The second institutional measure was the formalization of administrative proceedings that institutionalize the work of MITP and expanded its membership. Between 2019-2020, the MITP invited the Undersecretary of Labour and the Department of child labour, the Undersecretary of Human Rights and its NPA on business and human rights, and the Undersecretary of Childhood to join the Table as members. These new partners, as well as new CSO, were formally incorporated in Decree 1817 that replaced Decree 2827. From 10 official members, currently the MITP has 22 official members, gathering public institutions, international organizations and civil society.

The third and final institutional measure, highlighted by interviewees, was the signing of a formal interagency agreement in 2013, that assigned concrete actions to each signatory and order the creation of coordination mechanisms and protocols that are in operation till date.

**Gender representation in policy making bodies: *Leading ladies: Internal, direct, pressure points***

Interviewees highlighted the presence of women in leading positions at the legislative and administrative levels as well as in NGOs, as a key factor in advancing and sustaining anti-trafficking efforts. Since the MITP was reinstalled in 2012-2013, all executive secretaries or coordinators have been women. The representatives of the Public Ministry involved in REDTRAM and the MITP have been women. All NGOs participating in the process of the trafficking bill were lead and conformed by women. And most of the representatives of state institutions at the MITP level are women.

---

<sup>285</sup> MISIP, Balance Integral 2014.

<sup>286</sup> In addition, MITP members such as the Public Ministry and the Ministry of Labour issued instructions for the detection and investigation of trafficking cases for their prosecutors and labour inspectors (Official Instruction N° 575 of the National Prosecutor of 2016 and Exempt Resolution No. 2233 of the Labor Inspection Directorate). The Ministry of Health, in 2017 issued its 'Technical Guidelines on detection, care and first response in health to victims of trafficking, smuggling of migrants and sexual and commercial exploitation of children and adolescents'.

# Focus: The enactment of Law 20.507

*“The enactment of a law that specifically defines crimes of such magnitude and importance in the world such as human trafficking and smuggling of migrants in Chile is, without a doubt, an important advance”.*<sup>287</sup>

In 2011, after 6 years of parliamentary discussion, Chile enacted Law 20.507, a trafficking law that complied with the standards and obligations set up by the UN Palermo Protocol, introducing in the Penal Code in its Article 411 quarter the crime of trafficking as defined in Article 3 of said protocol. Prior to it, the country penalized the crime of trafficking in Article 367 bis of the Penal Code, but it only considered the hypothesis of international trafficking for prostitution not requiring means of fraud, coercion or abuse of vulnerability. The presence of means of coercion as well as the victim’s minority of age were sanctioned as aggravated figures of the crime. Internal trafficking and trafficking for forced labour and other exploitative purposes were not punished.

The enactment of Law 20.507 in 2011 was a landmark in the history of Chile’s anti-trafficking policies, a perception shared by all stakeholders. Not only improved Chile’s commitment to international law but provided enforcement officers with appropriate tools to tackle a crime that civil society and state agents acknowledge was happening. It sparked the creation of specialized bodies, protocols and mechanisms, promoted effective international cooperation and gave a new impulse to the implementation of measures on prevention, prosecution and protection of victims that has had continuity throughout the years.

## Determinants

The enactment of Law 20.507 was the result of civil society and gender representation in policy-making processes intersecting political will pressured by the international community and external monitoring bodies, particularly the US.

Since the early 2000s, civil society organizations lead and conformed mainly of women and international organizations pushed through research, advocacy and lobby for the adoption of the Palermo Protocol definition in national legislation and encountered in congresswoman Maria Antonieta Saa, the will to introduce a bill on the matter in 2005 and sustain and endure its processing throughout the six years the parliamentary discussion lasted.

---

<sup>287</sup> Denisse Araya, Iria Retuerto (n 29) p. 154.

The impulse to address the issue came from CSO working with children and migrants. Civil society's concern of the situation of children in sexual exploitation allowed to identify and document the first trafficking cases in 2001. International organizations working with migrants had also encountered and assisted trafficked victims and promoted in Chile and along the region the ratification of the UN instruments on the matter. ILO and OIM supported and assisted, technically and financially, initiatives undertaken by NGOs that advanced local knowledge on trafficking and raised awareness among public officers and the general public, with a view of enacting a modern law on trafficking. They also provided crucial technical assistance to State institutions and promoted joint work with NGOs. During the period 2001-2010 qualitative studies on the prevalence and nature of trafficking in Chile were undertaken by local NGOs and IOM that were crucial to justify the bill proposal in 2005 and were cited along the whole constitutional proceedings.

Funded by international organizations, regional civil society networks worked together to address the issue collectively and appeal to the regional state organizations such as OAS and MERCOSUR to address the issue in their political agendas. The regional bodies later adopted a series of measures, such as the creation of specialized political venues and bodies (RAADH, REMPM, REDTRAM) and the issuance of declarations were member countries committed to adopt the UN Convention and Protocol, that put pressure in Chile to comply with the international standards.

The partnership created between NGOs and Congresswoman Saa to introduce a trafficking bill was the initial crucial spark. However, the framing of the issue as one of exploited children and women had to evolve to harness political will, particularly in the last stages of its legislative discussion at Congress.

In effect, in the later stages of the legislative discussion, political will was fuelled by two main concerns: the pressure to comply with international obligations and the need to count with better investigative techniques, particularly regarding international cooperation. Crucial in this final stage was the influence of the U.S. A year prior to the visit to Chile of the president of the U.S. in 2011, the US Embassy partnered with the leading congresswoman Saa and NGOs to lobby among senators for the need to approve the bill in the context of the fight against organized transnational crime. The influence of the US and the visit of its president were also crucial to obtain the full support of the Chilean executive in the last stages of the bill discussion. The Minister of Justice himself attended to the final constitutional proceedings, where he shared the concern of the US and the international community of the need to comply with international obligations.

## Concerns linked to Law 20.507

The history of the law 20.507 shows how political will was finally harnessed by the claim of combating organized crime, displacing human rights concerns. This approach, that later tainted all public policy, has hindered detection of trafficking and effective protection of victims.

## Relevance of these examples as representative of broader determinants

The determinants identified in the process of the adoption of Law 20.507 are representative of broader determinants of anti-trafficking efforts identified in the literature.

Political will was integral to every stage of the legislative formation process, from the initial recognition to the prioritisation of the issue. It must be noted though, that the original impulse came from the Legislative: it was concern about the victims and the seriousness of the harm what motivated the presentation of the bill by a feminist congresswoman and supported by civil society. In this respect, the impact of gender representation in policy making processes cannot be stressed enough. However, and as literature shows, it was the State's concerns over national security and organized crime what finally shaped and influenced political will in the last stages of the bill's approval. The framing of trafficking as a transnational organized crime issue characterized the intervention and support of the Executive and guided the mobilization of political will once the law was enacted. Confirming the literature, this has led to a prioritization of prosecution, on the detriment of victim protection and addressing wider structural causes of trafficking.

Political will did not emerge in a vacuum. The initial impulse for legislation came from local NGOs and international organizations, confirming the influence of civil society organisations on advocating for change in national policies and legislation and holding governments to account. Expertise came from civil society's grassroots knowledge and specialised services. In that respect, the adoption of law 20.507 was a bottom-up initiative amplified by the cooperation of decision makers.

International law, as a determinant, acted twofold: On the one hand, it pressured the State to comply with its international obligations out of concern for its international reputation and enforcement effectiveness. At the same time, civil society was able to use international law as a leverage tool to pressure compliance at the regional level. Cooperation between NGOs nationally and internationally creating a common voice in joint advocacy and campaigns at the OAS and MERCOSUR level was an indirect yet influential determinant. The diplomatic influence of the US, through its presence in the region and the monitoring through the TiP report, played a final catalyser effect in the approval of the law.

Finally, and as a hindering determinant, it cannot be discarded that the framing of trafficking of law 20.507 and its scarce results in prosecuting trafficking for forced labour are not intertwined with Chile's dependence on migrant workers. On the contrary to the literature, this dependence has not resulted in stronger protections, but rather in the invisibility of its occurrence, to the detriment of victims.



# Focus: Intersectoral Table on TIP

*“As long as there is no institution, body or authority directly and openly responsible for coordinating intersectoral efforts to confront human trafficking in Chile, and it does not show a look and an attitude that contemplates the various edges that make up the complexity of this crime, The advances of the new legislation may be made invisible with the risk that the trafficking mafias continue to sophisticate their criminal methods and the victims will be increasingly helpless.”<sup>288</sup>*

While the bill was being discussed at Congress, in 2008, the president issued Decree 2827 that created the Intersectoral Table of Trafficking in Persons (*Mesa Intersectorial de Trata de Personas, MITP*), a multistakeholder commission of advisory nature, aimed at coordinating state efforts in prevention, prosecution and victim protection led by the MISP.

From 2011 onwards – the year of the enactment of law 20.507, the MITP has led the anti-trafficking public policy in the country, gathering public institutions, international organizations and CSO to design and work on common and joint actions on prevention, prosecution and protection of victims. Its work has concretized in the way of NPAs, agreed upon by all members of the Table. Although the nature of the MITP is that of being an advisory entity, with no power to decide and impose measures or plans, it has been able to contribute substantially to increase institutional capacity, allocate scarce resources and promote coordination that has advanced the country’s efforts to combat the crime.

The creation of the MITP and its efforts in coordination, mainly its first NPA, the interagency agreement that approved it and the creation of a national victim’s referral and assistance mechanism, allowed the country to advance its rank in the TiP report in 2014, advancing from historical Tier 2 to Tier 1. Since then, Chile has been permanently ranked as a Tier 1 country.

## Determinants

The creation and advancements of the MITP have been the result of a complex set of factors that intertwine political will and gender representation in policy making processes; civil society’s influence and its cooperation with the State; and structural conditions such as a Chile’s centralized administration, legalistic culture, and a customary shortage of resources that has fostered innovation and coordination as the main tools to advance anti-trafficking efforts, mobilized mainly by women leaders.

---

<sup>288</sup> Denisse Araya, Iria Retuerto (n 29) p. 156.

Political will was present in the creation of the MITP in 2008 and in its reactivation in 2012. In effect, the issuance of Decree 2817 that created the MITP was part of the commitments of the MISIP to the gender agenda of President Bachelet in 2008. Later in 2012, the MITP was reactivated by the political will of the Piñera administration, that located the issue in its broader and prioritized agenda against organized crime.

However, even though political will in different historic moments followed different agendas and goals, the gender-representation effect can be traced to the nature chosen for this new body: the structure of the MITP considered the incorporation of civil society, something viewed as an innovation at the time, that turned out to be crucial for ensuring sustainability and expertise.

Gender representation in policy making processes has also mobilized political will to provide funding. Women Services have allocated resources for victims and the only time resources were allocated in the general budget was during a female presidency. The permanent presence of women in the leading positions of the MITP and its member institutions has been a factor in pushing forward anti-trafficking initiatives, even more so in the face of structural budgetary constraints.

The multistakeholder nature of the MITP has allowed to maintain a permanent dialogue with CSO and amplify its action by calling new members and addressing new areas, such as forced labour, a pending topic in the State's anti-trafficking agenda. Likewise, it has promoted partnerships as the way to counterbalance lack of resources and comply to international obligations.

Coordination promoted by the MITP made possible a series of advancements with no allocated resources: the implementation of the National Trafficking Victims Protocol; a regulated process for granting visas to trafficked victims; a system for data collection; and the creation of several preventive materials, such as guidelines, action plans and social media campaigns.

Civil society has played a crucial role in the strengthening of the MITP, by providing services in the framework of the National Trafficking Victims Protocol, and by sharing their expertise in identifying and protecting trafficked persons. Their views have been incorporated into guidelines and NPAs, allowing a systematic consultation between governmental and non-governmental actors in the development and implementation of anti-trafficking measures.

The advancements of the MITP also stand on certain structural conditions that have favoured institutionalization, despite the fact of being a not funded body. The signing of an interagency agreement was identified as a determinant in the stability and continuity of the work of the MITP and a manifestation of Chile's legalistic culture. And, in effect, the formal binding of a written agreement, with clear tasks and roles, allowed the work of the MITP to continue uninterrupted through four different administrations of opposing political parties.

The unitary structure of the State and its centralized administration has also acted in favour, allowing to replicate the MITP structure at the local level and leverage previous experience and organization of local victims' assistance networks to implement the Trafficking Victims' Protocol.

In perspective, if institutionalization is understood as a process through which the organizations and procedures acquire value and defined stability, it is possible to affirm that the sense of legal regularity embodied in the existence of plans, guidelines, regular meetings, joint activities produced and developed by the MITP in the first years of its functioning, contributed to the consolidation of its existence and won a place in the State structure that has proved to be successful, despite its limitations.

### Concerns linked to the intersectoral table

The MITP lacks allocated resources in the general budget. The focus on prosecution has prioritized government funding for police forces to the detriment of prevention and protection of victims. Without sufficient economic resources, the MITP has limited power to advance efforts in anti-trafficking policy. In that respect, the lack of funding exposes a general feature of public policy denounced by female legislators and NGOs: the customary shortage of resources in "women's issues" – mainly, protection of victims of exploitation, gender and sexual violence, women, children, and migrants.

Consequently, it can be observed that political will, necessary for the creation of the MITP and its reactivation in 2012, has not extended to implementation, and advancements had relied in the personal capacity of professionals leading the MITP and its member institutions and their own budgets. NGOs efforts are dependent on competitive tenders for sufficient funding.<sup>289</sup>

The recent reform of Decree 2821 by Decree 1817 of 2021, has prioritized the view of trafficking as a matter of transnational organized crime. In the context of unprecedented incoming migration flows and restrictive migratory policies, identification and protection of victims might suffer setbacks, something civil society and international organizations have constantly warned about.

Finally, the unsolved tension between the State and NGOs, if not properly resolved, could hinder trust and, consequently, effective mutual cooperation, wasting the opportunity of a partnership that has been proven to be mutually beneficial and successful in advancing State efforts.

---

<sup>289</sup> Raíces lost the latest bids called by SENAME for the management of their child sexual exploitation reparative projects, despite its status as an expert and founding organization of the public policy on trafficking, threatening the continuity of its work.

## Relevance of these examples as representative of broader determinants

The determinants identified in the process of the creation of the MITP and its continuity are representative of broader determinants of anti-trafficking efforts identified in the literature.

Political will was necessary to directly trigger change, mainly, create the body to coordinate and centralize anti-trafficking efforts and politically support its work in the following years. The influence of international law, and particularly the framing of trafficking of the Palermo Protocol, has allowed to secure political support by locating the issue under the agenda of combating organized crime.

However, and consistent with the literature on capacity and funding, political will has not extended to implementation, restricting the MITP's capacity to improve, enforce, monitor and evaluate its anti-trafficking policy. In that respect, political will has concentrated mainly in adopting international standards, following a trend that prioritizes prevention policies as the first choice and most efficient means of compliance with international obligations.

Among other broader determinants, the influence of civil society has played an important role, particularly in a context of cooperation with decision-makers. CSO in the MITP have allowed multi-disciplinary approaches, thus avoiding protection measures being determined by law enforcement alone. Their expertise has contributed to strengthen victims' assistance, in some cases even playing a subsidizing role.

It is possible to identify certain economic and structural conditions that have played a role in shaping the MITP priorities, unfortunately with hampering effects. The criminalization of irregular migrants and the framing of trafficking as an organized crime issue have hindered detection and prosecution of internal trafficking for forced labour, and made invisible trafficking for other exploitative purposes.

# COVID-19

## Impact on anti-trafficking efforts

The impact of COVID-19 on anti-trafficking efforts in the country has been broad.<sup>290</sup> The state has not responded adequately, neither at the police level nor at the justice level. It has impacted the dynamics of the crime itself, worsening conditions of vulnerability of potential victim population and has impacted the State's capacity to detect and prosecute trafficking cases and provide appropriate remedy to victims.

Vulnerability of actual and potential victims has worsened. Victims are even more clandestine than before, and the use of digital media for the commission of crimes has

---

<sup>290</sup> Interview with Carolina Suazo, Deputy prosecutor, High Complexity Crimes Prosecutor's Office, Metropolitan North Central Prosecutor's Office, Public Ministry of Chile (Santiago, Chile, 12 August 2021); Interview with Paz González Lever, public administrator, Director Social Unit, Libera Foundation (Santiago, Chile, 12 August 2021); Interview with advisory attorney, National Prosecutor's Office, Public Ministry of Chile (Santiago, Focus group 24 September 2021); Interview with Police Chief inspector Anti-trafficking Brigade Giordano Lanzarini (Santiago, Focus group 24 September 2021); Interview with representative, Corporación ONG Raíces (Santiago, Chile, 3 August 2021); Interview with Fabiola Cifuentes, Executive Secretary, Intersectoral Table of Trafficking in Persons, Public Security Division, Ministry of Interior and Public Security (Santiago, Chile, 1° September 2021); Interview with Marcela Castillo, attorney, APR Program, Violence against Women National Unit, National Service for Women and Gender Equality SERNAMEG (20 August 2021); Interview with Mauricio Fernández, Money Laundering and Organized Crime Specialized Unit Chief, National Prosecutor's Office, Public Ministry of Chile (Santiago, 13 August 2021); Interview with Teresa Soto, national trafficking in persons focal point, Human Rights and Gender Department, Ministry of Health (Santiago, Chile, 6 August 2021); Interview with National Coordinator of Specialized Litigation, National Institute of Human Rights (Santiago, Chile, 30 August 2021); Interview with Chief of Department of Eradication of Child Labour, Undersecretary of Labour, Ministry of Labour (Santiago, Chile, 30 July 2021); Interview with Pedro Hernández, Sub-director International Migrations, Ministry of Foreign Affairs (Santiago, Chile, 8 September 2021); Interview with officer, UNHCR (Santiago, Chile, 21 July 2021); Interview with representative, international organization (Santiago, Chile, 24 September 2021); Interview with attorney, former member NGO, (Santiago, Chile, 27 September 2021); Interview with social worker, Prevention and networks officer, Corporación ONG Raíces, (Santiago, Chile, 10 October 2021); Interview with Camila Maturana Kesten, attorney, Corporación Humanas (Santiago, Focus group 22 September 2021); Interview with lieutenant, OS9 Investigation of Criminal Organizations department, Carabineros of Chile (Santiago, Focus group 24 September 2021); Interview with Claudia González Guiñez, technical advisor in gender, gender violence and trafficking in persons, Central Metropolitan Health Service directorate (Santiago, Focus group 24 September 2021); Interview with director of Puente Alto Mission, Madre Josefa Foundation (Santiago, Focus group 22 September 2021); interview with Ignacio Arévalo González, chief Research Department, NGO Asistencia Jurídica Migrante (PUCV) (Santiago, Focus group 22 September 2021); Karen Cárdenas Gajardo, Trafficking in Persons advisor, Northern Metropolitan Health Service (Santiago, Focus group 24 September 2021); interview with Marianela Rocuant Rossel, gender violence and trafficking in persons advisor, Regional Ministerial Secretary of Health, Metropolitan Region (Santiago, Focus group 24 September 2021); interview with Patricia Roa Ramírez, program officer, International Labour Organization (ILO) (Santiago, Focus group 22 September 2021); interview with academic (Santiago, Focus group 22 September 2021); interview with professional, Labour Directorate (Santiago, Focus group 24 September 2021); interview with academic, coordinator of ObservaLaTrata Chilean chapter, Universidad Católica de la Santísima Concepción (Santiago, Focus group 22 September 2021).

amplified, with a growth of sexual exploitation of children and adolescents in social networks or telematic forms.

Irregular migration, already happening in the context of restrictive migratory policies and the Venezuelan crisis, has intensified due to the closing of borders. The increase of undocumented population and the criminalization of irregular migrants anticipate an increase of internal trafficking, something of concern to enforcement officers, particularly in the face of lack of training in regions of the country other than the capital. The already existing invisibility of the crime is at risk of deepening, a view shared by all stakeholders. During 2020, official statistics show no cases of trafficking for sexual exploitation. According to state agents, this was due to the abandonment of victims in the context of confinements. Civil society, however, is more critical and considers the phenomenon as a failure in detection.

The pandemic hindered the ways in which the State traditionally responded to this phenomenon and forced a change in procedures, to the detriment of detection, prosecution and protection of victims. The pandemic has monopolized the attention of the State. State officers and health personnel have focused exclusively on the governance of the pandemic, which has significantly reduced the state's efforts in anti-trafficking policies. If trafficking had not been a priority before, the pandemic has worsened its status in the public agenda, further eclipsed by a focus on smuggling of migrants that in the context of mixed flows, impedes detecting victims. CSO that assist migrants have experienced a backlash from the State, that views them as counteracting migratory policies. The turn of the MITP's to a more organized crime/ prosecution focus by its recent reform by Decree 1817 also anticipates difficulties in addressing structural root causes and pre-existing vulnerabilities linked to intersectional discriminations.

The Covid 19 pandemic has severely limited in-person inspections, delayed investigative proceedings, decreased reporting, and suspended oral trials at criminal courts. Criminal justice operators anticipate that the delay and the greater permanence of the cases will generate other impacts, such as the saturation of the courts.

The MITP has continued its work coordinating victim assistance, but the difficulties in obtaining official certificates or passports in the case of foreign victims, have increased difficulties in the coordination of safe returns.

The pandemic has had unintended positive effects, particularly in prevention, as the digital transformation and the use of virtual gatherings have allowed to disseminate knowledge and provide training throughout the country, something previously restricted by budget constraints as training tend to be in person.

# Conclusion

Chile's advancements in its anti-trafficking policy have been the result of internal and external determinants intertwining direct and indirect pressure points. Advancements in anti-trafficking efforts have been a combination of political will connecting civil society's advocacy with a shared objective of protecting victims. The impulse for new legislation, compliant with international standards, raise out of concern of the exploitation of children. This common purpose and later joint action have been characterized by high gender presentation in policy making bodies.

In effect, most of the work and advancement of the anti-trafficking policy of Chile has laid in the shoulders of women. Humbler, but consistent and strategic actions led by women-led civil society organizations and female public officers and politicians, have been able to trigger and sustain political will and promote awareness raising and cooperation strong enough to adopt legislation, promote capacity-building and provide assistance to victims with no allocated resources.

International law and international pressure for compliance has also been a crucial determinant for State action. Its effect has been twofold: international law has provided opportunities for civil society to advocate for change, pressure at the regional and national level and promote capacity-building that created a basis from which to start once the trafficking bill, law 20.507 was enacted; and at the same time, has been the final catalyser for adopting new legislation.

The empirical evidence supports the hypothesis and indicates that prevention policies seem to be the first choice and most efficient means of compliance and that has been a trend in the public policy on trafficking. There is a preference in adopting highly visible international commitments or join global partnerships that present the country as a leader in the field and as fully committed to the eradication of trafficking and forced labour, but that are not subject to monitoring or evaluation. These commitments tend to materialize through activities of diagnosis, planning and design rather than implementation tied to result indicators and/or impact evaluations. Commitments in regard to forced labour have followed a similar path. The incorporation of Chile into the Alliance 8.7 and the ratification of the 2014 ILO Protocol has put the country into a selected group of states that commit to the most avant-garde international instruments. However, public policy faces a structural lack of resources that has hindered appropriate prevention measures and adequate response to victims.

Legislation is key, as it frames the metaphors through which we will perceive, interpret and act over the phenomenon of trafficking on the ground. The State's willingness to adopt and capacity to enforce measures has been shaped by the framing of the Palermo Protocol, privileging a focus centred on prosecution and organized crime, that in the context of increased migratory mix flows of Venezuelan nationals and entrenched gender and racial



discrimination, has had a harmful effect in detection and protection of victims, both nationals and foreigners.

The advancements in capacity-building have also been the result of a complex set of factors that intertwine CSOs work and influence, international law's impact, and structural conditions such as Chile's legalistic culture, a centralized administration and a customary shortage of resources in "women's issues", that has fostered innovation and coordination between institutions, in the national as well as the international level, promoting partnerships as the way to counterbalance the lack of resources and comply to the international obligations to prevent, prosecute and protect victims.



Charles Clore House  
17 Russell Square  
London WC1B 5JP

T 020 7862 5151  
F 020 7862 5152  
E [info@biicl.org](mailto:info@biicl.org)

[www.biicl.org](http://www.biicl.org)

A company limited by guarantee  
Registered in England No. 615025



**British Institute of  
International and  
Comparative Law**