

**SINTESIS OF PRESENTATIONS – XVII JORNADAS MIGRATORIAS**  
**SEPTEMBER 3RD 2015, SANTIAGO DE CHILE**  
**“MIGRATIONS, REFORMS AND NEW CONSTITUTION”**

The XVII Jornadas Migratorias are an initiative managed by the Instituto Católico Chileno de Migraciones (INCAMI) and the Scalabrini International Migration Network (SIMN), through the Scalabrini Foundation. It is sponsored by the Chilean Ministry of Foreign Affairs through the Consular Policy Direction, the Ministry of Interior and Public Security through the Migration and Alien Office (DEM), the Honorable Senate of the Republic represented by the Thematic Groups, the International Organization for Migrations (IOM) and the Migration and Interculturalism Network. The following document represents a synthesis of the main presentations carried out during the event that have a direct link with the migration policies thematic.



## MODULE 1 – Inauguration

### Father Idenilso Bortolotto, INCAMI Executive Vice President

The Jornadas Migratorias are part of the activities brought by the Chilean civil society participation within the South American Conference on Migrations (CSM) framework. This year's objective was to especially taking care of the challenges represented by the incorporation of migrations in the debate on a new Constitution for Chile, putting the emphasis on the rights and duties of migrant people and their families, assuring the access to fundamental political, social and cultural rights. Migration must be a sacred human right in the Chilean Constitution.

### Monsignor Galo Fernandez, Obispo Auxiliary of Santiago and INCAMI President

Migration in Chile is not a new phenomenon, but at the moment, we are facing new challenges related to it. The number of people arriving to our land in search of a better future is increasing. We are now near to a million of migrants. As a country, how do we manage this new humanitarian challenge? This is a question to which all nations must find an answer because the phenomenon is global and is increasing very fast. The last Jornadas Migratorias have contributed to the process of reaching the objectives, sometimes slow, even if we still have not had the chance to assist to the release of the expected new Chilean Migration bill.

### Ambassador Alejandro Marisio Cugat, General Director of Consular Affairs and Immigration

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Speech about the Governance of International Migrations as a concept that pushed the administration to understand and address the migratory affairs. This concept was worked within various instances of international and regional discussions and is considered as composed of four pillars: the migration policy, the migration norm, the migration institutionalism and the spaces of citizen participation. The progresses of the country with regards to international migration:

- Creation of a Migration Policy Committee to support the President in the creation of a new Migration Policy
- Creation of the Sub-Direction of International Migrations in January 2016 that participates as coordinator of the International Affairs and Human Rights groups and Policies and Emigration groups
- Gender and Intra Familiar Violence program that was exported to foreign consulates to support women and children in situation of vulnerability
- Execution of the Program of Consular and Migration Policy, with the objective of strengthening the consuls' capacities in public policies management
- Construction of a discussion space on migrations through the CSM, this year hosted by Santiago

**MODULO 2: Migration and New Political Constitutional Regimen**

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**Moderator: Professor Carmen Norambuena, USACH**

Working session dedicated to the migratory affairs in the processes of the Constituent Assembly and formulation of a new Fundamental Chart, defining the rights and duties, principles, directions and objectives from which is issued the migration policy.

**Presentation by Miss Katherine Constanza Vasquez Gallardo, graduate of Alberto Hurtado University, Social Worker at Instituto Católico Chileno de Migración (INCAMI): “Needs, rights and duties of migrant people in Chile”**

Reasons of immigration in Chile: Higher salaries, institutional, economic and social stability, more and better work opportunities. Main needs: that the public services consider the backgrounds and needs of migrant people to build integrated interventions that fulfill the needs in a wider and concrete way.

Recommendations for the State:

- To work addressing the rights perspective, recognizing rights on four pillars:
  - Participation
  - Identity
  - Access to networks: basic services, governmental and non-governmental activities, public spaces
  - Auto-management: capacity to organize, plan, secure the resources and people that allow reaching the objectives
- Concretize the MERCOSUR agreement
- Concretize a new migration bill adapted to the actual context
- Include an educational curriculum on inter-culturalism and human rights
- Consider the migrants and the organizations that work in migrations as main interlocutors
- Modernize organizations that provide services to migrants
- Analyze the excessive bureaucracy and the high cost of obtaining a regular migratory status
- Develop projects providing a social answer to the migrant people needs

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The invitation can be resumed as: Establish the migrant people’s rights in the Constitution, recognizing:

- The particular backgrounds and characteristics of people in situation of human mobility
- Their interests from a horizontal logic, what implies a consistency where everyone has his responsibility, rights and duties
- The capacities and social capital that the migrant people are bringing with them and that enrich the country

**Presentation by Mme. Fabiola Morales, Movimiento Acción Migrantes – MAM: “A look from the civil society on the debate and the formulation of a Migration Law. The new migration law: the migrant community’s contribution in Chile”**

The principles that must be included in the new Law and its instruments:

1. Free movement: New visa and migratory status systems
2. Equality in rights and duties, to respect the Universal Declaration of Human Rights (Art. 1 and 2), the International Covenant on Civic and Political Rights (Art. 2.3 and 26) and the American Convention on Human Rights (Art. 1 and 24)
3. Pro-person approach: human treatment at the borders and airports
4. Familiar unity: child protection through familiar relations
5. Transnational approach: links between the countries of origin and destination

**Presentation by Mr. Fernando Atria Lemaitre, Professor in the Law Department of University of Chile and the Law Faculty of the Adolfo Ibañez University: “The main elements of the Constituent Process”**

Mr. Atria Lemaitre underlines that the political problem represented by the definition of a new Constitution in Chile resides in the fact that Chile treats its political problems like if they were not of political nature. We treat them like if they were instrumental, even technical problems, on which the specialists have a privileged opinion, and this is what is happening now with migration. According to Mr. Atria, the problematic relation the Chilean has with the migrant has to see with how he understands himself as a people, if he understands himself in an open or more restrictive way, if he feels the need to defend himself from what comes from outside, etc.

Mr. Atria tells that the political form adopted by Chile is an utopia of a world without politic, a world where there is no need to discuss on education or on migrations, for example, from the point of view “How do we understand the fact that we want Chile to be a political community in the future? In which direction do we have to go?” or even “How to manage the resources to reach our objectives?”. Chile has a political culture that corresponds to a neutralized institutional form, what means that she seems to be more in a constitutional theory book than in the public discussion.

A new Constitution is not a difficult text to modify, because that text includes a lot of politically not important things; or that are important, but not included in the request for a new Constitution. The Constitution is a fundamental decision on the shape of the power, i.e. which form will the power adopt. In the democratic tradition, the Constitution had the function to give a democratic form to the political power, so that he has a democratic form in the sense of the Constitution. The Constitution is what gives the political form to the people so that he can act through these institutional forms so that through these forms, some decisions are taken in a representative way.

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The last 1980 Constitution has never had this democracy, this has always been clear. The Constitution includes a system of protected democracy, but the question is, protected from what? From its people, obviously. So, the fundamental decision of the 1980 Constitution is a decision of neutralization, that is, through the politic action, stop us from discussing and deciding on important questions of common life and it is for this reason that the political questions do not appear as political questions but like technical questions, so that the important political questions stay outside of the political area.

So, how can a constitution be modified? First, the Constitution cannot be modified through a constitutional reform process since the constitutional reform mechanisms are mechanisms according to which the fundamental decision on the form of the political power are conceived to protect it. So, the constitutional reform process exists specifically so that it is possible to modify the text, but without modifying the real Constitution, and this is exactly what has happened along our political experience. So, the constituent process must today be considered as the process of political and social discussion having as objective to actually bring one, as the fact that this request for a new Constitution reaches a major strength and magnitude so that can appear some options that were not available before. Finally, if the problem is a problem of neutralization, the solution must be through the creation of a consciousness and a request from the citizens for a non-neutralized political form that opens possibilities that are finally open today so that us, Chilean, can enjoy a better institutionalism that treats us like adults and not like interdicted, like they are treating us at the moment.

### **MODULO 3: Components for a Migration Law**

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#### **Presentation by Mr. Sergio Bueno Aguirre, General Consul of Colombia in Chile: “A decade of International Migrations”**

Mr. Bueno Aguirre’s presentation underlines the transit and destination country status that Colombia has since more than a decade and the changes and commitments of the country with regards to migration topics.

Sectorial Strategic Plan 2015 – 2018, Exterior Relations Sector:

- Strengthen the bilateral and multilateral agendas that priorities areas of sustainable development for the country
- Consolidate an efficient public management to the service of co-national and migrant foreigners through the strengthening of the migratory and consular attention
- To reach a migration with a “human face”
  - Institutional adjustments
  - Change in the social vision
  - Human talent (services, human rights security)
  - Migrations observatory

Migration policy in Colombia – The 1991 Constitution guarantees liberty of movement for Colombians and rights equity among national and foreigners:

- Decree 1239 (2003): Creation of the Inter-sectorial National Commission of Migration. Functions: Diagnostic, characterization, follow up, agreements, treaties, look after their application.
- Decree 3355 (2009): M.R.E. structure modification, capacity building on the consolidation of the integrated migration policy, adjustment of the structure with the new vision and context.

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- National Council of Economic and Social Policy: Principles: coherence and reciprocity, integrity and long term, concordance, fulfillment of individual prerogatives. Actions: strengthening of the Inter-Sectorial National Commission of Migration, improvement of the information on international migration, straightening of the consular service, security aspect (traffic and smuggling) and citizen participation.
- Resolution 5813 (2011): Plan *Fronteras para la Prosperidad*.
- Law 1465 (2011): National System of Migrations
  - Harmonized group of institutions, organizations, civil society, norms, processes and plans
  - Objective: design, execution, follow up of the migration policy in Colombia to strengthen the links with the Colombian people in foreign countries
  - Establish participation mechanism for Colombian in foreign countries
  - Creation of the Special Funds for Migrations
  - Formulation of the Return Plan by a Government’s initiative
- Return Law (2012):
  - Conditions: major of age, have stayed in a foreign country for at least 3 years, show interest, not being under a valid condemnation in Colombia or another country, not being more than 12 months outside Colombia after having returned
- Decree 834 (2013): Disposition in migration topics
  - Unifications of visas, viability of the changing of the migration status, permit for activities that are not related to work, validity of the foreigners identity card for five years.

**Presentation by Mr. Rodrigo Sandoval: “International Seminar - International migrations in Chile”**

Law Decree 1.094 (1975) characterized by the National Security Doctrine that specifies the interdiction to enter the country for some determined foreigners; and the Penal Law of the Enemy, that criminalizes irregular migration. Human Rights are the last preoccupation of the public opinion among sixteen priorities topics, according to a survey.

Mr. Sandoval describes the 2014 – 2015 migration paradigms talking about Migration as:

1. An absolute prerogative of the State – Interest of the States for the Human Rights perspective
2. Avoidable – Unavoidable
3. Threat – Opportunity

Why is it necessary to change the law?

- Lacks:
  - Inefficacy of the actual law
  - Outdated institutionalism (organization model and governance compromised)
  - Legal and administrative activism: the criteria of the government politic are being questioned by the legal authorities
- Commitment:
  - President Informative, Agenda, Government program, actors
  - Bilateral and international agreements
  - Human Rights treaties
- Capacity to generate a State policy
  - Pending modernization
  - Transversal politic

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- Chile in the path of development

An investigation demonstrated that: In ten years, according to the workforce evolution, it is expected that only 237 000 people of more than 15 years old will enter the labor market, what means that in the best case scenario, only 35% of the job positions would be filled when the adults will retire.

The 2014 – 2018 Government Program

Four main axes:

1. Chile as a welcoming country, open to migration
2. Migrants integration that respects their cultural specificities
3. International treatment of the migration topic
4. Capacity of regulation and administration

3 tasks:

1. Promotion and application of international instruments ratified by Chile
2. From the security and labor market regulation perspectives to a vision of inclusion, regional integration and Human Rights perspective
3. Strengthening of the migration institutionalism in regions and communities with an important migratory presence, for the development of better public policies

Law process: Consultancy process with the civil society:

- 621 registered organizations and institutions
- 8 meetings
- 458 representatives
- 6 cities
- 45 working groups
- 196 proposals regarding: legislative priorities, fears, new institutions, migration topic in general

<b>Civil Society Proposals</b>	<b>Recommendations from the Migrant Workers Committee and the international organizations</b>
<ol style="list-style-type: none"> <li>1. Migration as a fundamental right</li> <li>2. Human treatment for migrants</li> <li>3. Migrants rights in Human Rights material, integration and mobility</li> <li>4. Access to rights and social services in equal conditions than the Chilean nationals</li> <li>5. Equal treatment for foreigners facing the law</li> <li>6. Transparency in the information on rights and duties of migrant people</li> <li>7. Regularization as a fundamental element for inclusion</li> <li>8. Human treatment at the borders</li> <li>9. Non-criminalization of migration</li> <li>10. Children of migrants in transit</li> <li>11. Allow familiar re-unification</li> <li>12. Due processes</li> <li>13. Equality in the work conditions</li> </ol>	<ol style="list-style-type: none"> <li>1. Laws and institutions in accordance with the Human Rights standards</li> <li>2. Effective promotion and protection of Human Rights and fundamental liberties for all migrants</li> <li>3. Guarantee access to health, social security and education with a special attention to vulnerable groups</li> <li>4-5. Adopt positive measures and strengthen the measures already in place to fight discrimination</li> <li>6. Make sure that the practices of the public workers are according to the Convention recommendations</li> <li>7. Implementation of a national information system on migration</li> <li>8. Guarantee the accomplishment of the law against human trafficking</li> </ol>

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<p>14. Multiculturalism as a contribution to the country</p> <p>15. Regional conventions for accessing to social security</p>	<p>9. Avoid the criminalization of undocumented migrants in the speeches, the policies and the practices</p> <p>10. Give nationality to children born in Chile from parents with irregular migrant status and adhere to the Convention on the Status of Stateless People and the Convention to reduce the number of cases of stateless people</p> <p>11. Incorporate the familiar re-unification principles</p> <p>12. Apply correctly the legal framework of the expulsion processes</p> <p>13. Avoid arbitrariness restrictions on work, guarantee access to denunciation, investigation and sanctions of work abuses</p> <p>14. No recommendation</p> <p>15. Facilitate the transfer of the salaries and savings of the migrant workers</p>
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