



---

Index Number: AMR 01/6744/2023

Mexico City, 4 May 2023

## OPEN LETTER TO THE PRESIDENT OF PERU AND THE PRESIDENT OF CHILE REGARDING THE PROTECTION CRISIS AT THE BORDER

We are sending this open letter to express our deep concern for the situation faced by people in need of international protection at the border between Chile and Peru. This situation has arisen owing to the measures implemented by the governments of both countries in response to refugees and migrants attempting to cross the border in this area, including the deployment of military forces and the declaration of a state of emergency.

In Chile, Decree with Force of Law (DFL) No. 1 on the safeguarding of border zones, published on 20 February 2023,<sup>1</sup> grants military forces the power to carry out identity checks, registration and arrests. Furthermore, it stipulates that the military forces will collaborate with the police to monitor the entry and exit of foreign nationals from the country and to verify that foreign nationals are staying in the country legally. The aim of these measures, which are in force for a period of 90 days in certain border zones in the north of Chile, is to “assist with migration control and the detection of serious crimes, misdemeanours and minor offences”.<sup>2</sup>

In Peru, on 26 April 2023, the government declared a state of emergency that restricts “freedom of movement (...), freedom of assembly and freedom and personal safety” for 60 days in certain districts within the seven border departments of Amazonas, Cajamarca, Loreto, Madre de Dios, Piura, Tacna and Tumbes.<sup>3</sup> In addition, it empowers the National Police to maintain control of internal security with the support of the Armed Forces.

The implementation of these measures has unleashed a humanitarian crisis on the border between both countries in the past few weeks, where it is believed that around 300 people – mostly from Venezuela, with some from Haiti and other countries – are stranded. According to the information reported by organisations and the media,<sup>4</sup> many of them were trying to leave Chile to return to Peru or Venezuela or to make their way to the United States, owing to the precarious economic conditions of stay in the country as well as discrimination and the impossibility of regularising their migration status. On 20 April, the United Nations High Commissioner for Refugees (UNHCR) and the International Organization for Migration (IOM) warned<sup>5</sup> of the critical humanitarian situation faced by families with children and adolescents, people with chronic illnesses and those who are pregnant, left without food, water, shelter or healthcare in Tacna, a desert known for its extreme temperatures.

---

<sup>1</sup> DFL No. 1 empowers the Armed Forces to carry out belongings and identity checks, as well as detentions of those caught in the act of committing a crime or when there are signs that a person is committing a crime. In addition, it stipulates that the Armed Forces will collaborate with the police to monitor the entry and exit of foreign nationals from the country and to verify that foreign nationals are staying in the country legally. The decree also empowers the Armed Forces to carry out checks in public spaces to verify that a person has entered the country via an authorised crossing point with due permission. If a person cannot provide evidence of this or if the Armed Forces catch a person entering the country via an unauthorised crossing point, they can detain them in order to hand them over to the police. Finally, the decree sets forth a list of principles and rules that govern the use of force by the Armed Forces when implementing the decree. Ministry of the Interior and Public Security. *Decreto con Fuerza de Ley 1*, 20 February 2023, [www.bcn.cl/leychile/navegar?i=1189483](http://www.bcn.cl/leychile/navegar?i=1189483) (Spanish only).

<sup>2</sup> Decree 78 of the Ministry of the Interior and Public Security covers certain areas in the regions of Arica-Parinacota, Tarapacá and Antofagasta. Ministry of the Interior and Public Security, *Decreto 78-24*, 24 February 2023, [www.bcn.cl/leychile/navegar?idNorma=1189669](http://www.bcn.cl/leychile/navegar?idNorma=1189669) (Spanish only).

<sup>3</sup> El Peruano, *Decreto Supremo N° 055-2023-PCM*, [busquedas.elperuano.pe/normaslegales/decreto-supremo-que-declara-el-estado-de-emergencia-en-la-pr-decreto-supremo-n-055-2023-pcm-2172936-2](http://busquedas.elperuano.pe/normaslegales/decreto-supremo-que-declara-el-estado-de-emergencia-en-la-pr-decreto-supremo-n-055-2023-pcm-2172936-2) (Spanish only).

<sup>4</sup> See, for example, the director of the Jesuit Migrant Service (SJM) in the podcast by País ADN, ‘Recta final para elección de consejeros constitucionales’, from minute 30 (Spanish only).

<sup>5</sup> UNHCR and IOM, *Perú: ACNUR y la OIM alertan de la grave situación en Tacna para personas refugiadas y migrantes, Pronunciamiento conjunto*, 20 April 2023, [www.acnur.org/noticias/peru-acnur-y-la-oim-alertan-de-la-grave-situacion-en-tacna-para-personas-refugiadas-y](http://www.acnur.org/noticias/peru-acnur-y-la-oim-alertan-de-la-grave-situacion-en-tacna-para-personas-refugiadas-y) (Spanish only).

---

Amnesty International welcomes the measures that have been implemented and those under discussion that provide humanitarian aid and mitigate the risks faced by those stranded. The organisation also reminds the governments that, although it is their prerogative to control entry and determine their migration policy, the measures adopted must be in line with the obligations established in the international treaties ratified by both states, particularly those relating to people in need of international protection, to the use of force and the involvement of the armed forces in matters of security, and to non-discrimination.

## **1. On the obligation to ensure access to asylum and the rights of people in need of international protection**

Amnesty International wants to call attention to the fact that the arrival and transit of thousands of Venezuelans and Haitians to Chile and Peru in recent years is, above all, a symptom of a protection crisis that must be dealt with as such by their governments.

Everyone has the right to seek asylum. Venezuelans and Haitians need international protection under the definitions set forth in international agreements such as the 1951 Refugee Convention and the 1984 Cartagena Declaration on Refugees. Both Chile and Peru have signed these agreements and have incorporated them into their national legislation.<sup>6</sup>

According to the Inter-Agency Coordination Platform for Refugees and Migrants (R4V), more than 7.23 million Venezuelans have had to leave their home country in recent years,<sup>7</sup> owing to gross human rights violations, a complex humanitarian crisis and even crimes against humanity, extensively documented by Amnesty International<sup>8</sup> and the Independent International Fact-Finding Mission on the Bolivarian Republic of Venezuela (FFMV).<sup>9</sup> This is one of the worst human mobility crises worldwide, alongside those of Ukraine,<sup>10</sup> Syria and Afghanistan. UNHCR<sup>11</sup> and human rights organisations such as Amnesty International have emphasised that Venezuelans must not be returned to their home country and that the Cartagena Declaration allows them to be recognised as refugees, particularly in the region.

UNHCR,<sup>12</sup> the Office of the United Nations High Commissioner for Human Rights,<sup>13</sup> the United Nations Committee on the Elimination of Racial Discrimination (CERD)<sup>14</sup> and Amnesty International<sup>15</sup> have stated that Haitians cannot be sent back to their home country, owing to the severe human rights and humanitarian crisis facing Haiti, which includes widespread violence, political instability, food insecurity and a healthcare system on the brink of collapse.

---

<sup>6</sup> In Peru, the definition of a “refugee” is set forth in Article 3 of Law No. 27,891 of 20 December 2002 – the Refugee Law. In Chile, this definition appears in Article 2 of Law 20,430, which sets forth provisions relating to the protection of refugees.

<sup>7</sup> R4V, *Refugees and Migrants from Venezuela*, statistics as of March 2023. [www.r4v.info/en/refugeeandmigrants](http://www.r4v.info/en/refugeeandmigrants)

<sup>8</sup> See, for example, Amnesty International, *Hunger for justice: Crimes against humanity in Venezuela* (AMR 53/0222/2019), 14 May 2019, [www.amnesty.org/en/documents/amr53/0222/2019/en/](http://www.amnesty.org/en/documents/amr53/0222/2019/en/)

Amnesty International, *Peru: In search of safety: Peru turns its back on people fleeing Venezuela* (AMR 46/1675/2020), 4 February 2020, [www.amnesty.org/en/documents/amr46/1675/2020/en/](http://www.amnesty.org/en/documents/amr46/1675/2020/en/)

*Venezuela: Joint Statement from Amnesty International and Human Rights Watch at the UN Human Rights Council*, 24 September 2021, [www.hrw.org/news/2021/09/24/venezuela-joint-statement-amnesty-international-and-human-rights-watch-un-human](http://www.hrw.org/news/2021/09/24/venezuela-joint-statement-amnesty-international-and-human-rights-watch-un-human)

<sup>9</sup> FFMV, *Venezuela: new UN report details responsibilities for crimes against humanity to repress dissent and highlights situation in remotes mining areas*, September 2022, [www.ohchr.org/en/press-releases/2022/09/venezuela-new-un-report-details-responsibilities-crimes-against-humanity](http://www.ohchr.org/en/press-releases/2022/09/venezuela-new-un-report-details-responsibilities-crimes-against-humanity)

<sup>10</sup> According to UNHCR, as of February 2023, more than 8 million refugees from Ukraine had been recorded across Europe. UNHCR, *Ukraine emergency*, [www.unhcr.org/emergencies/ukraine-emergency](http://www.unhcr.org/emergencies/ukraine-emergency)

<sup>11</sup> UNHCR, *Guidance Note on International Protection Considerations for Venezuelans – Update I*, 21 May 2019, [www.refworld.org/docid/5cd1950f4.html](http://www.refworld.org/docid/5cd1950f4.html)

<sup>12</sup> UNHCR, *UNHCR calls on States to refrain from forced returns of Haitians*, 3 November 2022, [www.unhcr.org/news/news-releases/unhcr-calls-states-refrain-forced-returns-haitians](http://www.unhcr.org/news/news-releases/unhcr-calls-states-refrain-forced-returns-haitians)

<sup>13</sup> Office of the High Commissioner for Human Rights, *Haiti: International community must act now to avert tragedy - Türk*, 3 November 2022, [www.ohchr.org/en/press-releases/2022/11/haiti-international-community-must-act-now-avert-tragedy-turk](http://www.ohchr.org/en/press-releases/2022/11/haiti-international-community-must-act-now-avert-tragedy-turk)

OHCHR, *UN High Commissioner for Human Rights Volker Türk concludes his official visit to Haiti*, 10 February 2023, [www.ohchr.org/en/statements/2023/02/un-high-commissioner-human-rights-volker-turk-concludes-his-official-visit-haiti](http://www.ohchr.org/en/statements/2023/02/un-high-commissioner-human-rights-volker-turk-concludes-his-official-visit-haiti)

<sup>14</sup> OHCHR, *Stop deporting Haitians on the move in Americas, UN Committee warns*, 28 April 2023, [www.ohchr.org/en/press-releases/2023/04/stop-deporting-haitians-move-americas-un-committee-warns](http://www.ohchr.org/en/press-releases/2023/04/stop-deporting-haitians-move-americas-un-committee-warns)

<sup>15</sup> Amnesty International, *USA: “They did not treat us like people”: Race and migration-related torture and other ill-treatment of Haitians seeking safety in the USA* (AMR 36/5973/2022), 22 September 2022, [www.amnesty.org/en/documents/amr36/5973/2022/en/](http://www.amnesty.org/en/documents/amr36/5973/2022/en/)

Amnesty International believes that for there to be a permanent resolution of this protection crisis in the region, solutions must be offered that fully guarantee the rights of refugees and migrants, and the organisation proposes a series of solutions focused on human rights.

In light of the increased number of people in need of international protection arriving in their countries, the states could use group determination of refugee status (also known as *prima facie* recognition) in order to respond to their protection needs and provide assistance.<sup>16</sup> Amnesty International urges Chile and Peru to use the broader definition of refugee from the Cartagena Declaration and to implement the group determination method without delay, since it would simplify and accelerate the processing of asylum applications.

Amnesty International reminds the states that they are obliged to ensure that people in need of international protection have access to their countries and to processes through which they can be recognised as having refugee status and that they are not turned back at the border in violation of the principle of non-refoulement. This principle prohibits states from returning or relocating anyone to a place where they could be persecuted or could suffer serious human rights abuses. The principle of non-refoulement is a peremptory norm of customary law: it must be respected at all times by all states and no derogation is permitted from it in times of emergency. Likewise, international human rights law prohibits the collective expulsion of migrants, given that it deprives them of their right to due process and to effective remedy against their expulsion. Forcible return, collective expulsion and rejection at the border violate the principle of non-refoulement.

The measures approved recently are not geared towards addressing the obstacles faced by people seeking international protection; on the contrary, they are exacerbating the protection crisis. Recent investigations by the organisation have demonstrated serious obstacles to effective access to asylum in Chile and Peru, as well as violations of the principle of non-refoulement. According to Peruvian organisations, since 2020, the system for receiving asylum applications in Peru has remained practically shut down, with only landmark cases involving persecution or those relating to serious health issues being processed.<sup>17</sup> In Chile, Amnesty International has documented how people in need of protection cannot access asylum or regular migration status, as well as the lack of resources in institutions charged with providing international protection.<sup>18</sup>

The information compiled by the organisation suggests that the impossibility of access to the process to be recognised as refugees in Chile, in violation of international law, and of access to other forms of regularisation inside the country, while at the same time impeding access to other needs and human rights such as fair working conditions, education and health, could be one of the reasons for people leaving Chile.<sup>19</sup>

Amnesty International urges Chile and Peru to amend without delay the current measures and practices that restrict or suspend access to the process to be recognised as refugees and to stop all illegal practices that restrict the human right to seek asylum. In addition, the states must ensure that the institutions charged with the care and protection of people fleeing their home countries for their lives have sufficient financial, technical and human resources in order to ensure the availability and effectiveness of the service.

In light of the announcements that there will be repatriation flights to Venezuela, Amnesty International also urges the authorities to carry out detailed analyses of the possible international protection needs of the Venezuelans and ensure that their return to Venezuela is voluntary, so as to ensure full respect of the principle of non-refoulement.

---

<sup>16</sup> UNHCR, *Handbook on Procedures and Criteria for Determining Refugee Status and Guidelines on International Protection Under the 1951 Convention and the 1967 Protocol Relating to the Status of Refugees*, para. 44.

<sup>17</sup> Amnesty International, *Perú: Comunicación al Comité de Protección de los Derechos de Todos los Trabajadores Migratorios de las Naciones Unidas previa a su 34a sesión* (AMR 46/5238/2022), February 2022, [www.amnesty.org/es/documents/amr46/5238/2022/es/](http://www.amnesty.org/es/documents/amr46/5238/2022/es/) (Spanish only).

<sup>18</sup> The organisation has confirmed that Venezuelans in need of international protection face multiple obstacles to accessing asylum in Chile, including refoulement and rejection at the border, by way of measures that facilitate their immediate return without having analysed their individual circumstances and in violation of the principle of non-refoulement. In addition, the authorities have implemented illegal practices that violate their right to seek asylum, such as the requirement to self-report irregular entry and verbally refusing access to the process without providing any justification. Amnesty International, *Chile: "No one wants to live in hiding": Lack of protection for Venezuelan refugees in Chile* (AMR 22/6437/2023), 7 March 2023, [www.amnesty.org/en/documents/amr22/6437/2023/en/](http://www.amnesty.org/en/documents/amr22/6437/2023/en/)

<sup>19</sup> Amnesty International, *Haiti: Not safe anywhere: Haitians on the move need urgent international protection* (AMR 36/4920/2021), October 2021, [www.amnesty.org/en/documents/amr36/4920/2021/en/](http://www.amnesty.org/en/documents/amr36/4920/2021/en/)

Lastly, given the challenges relating to this protection crisis, Amnesty International recommends international cooperation. The 1951 Refugee Convention and other agreements refer to this fundamental principle of international law, which can be demonstrated in multiple different ways, including through the provision of financial, technical or material assistance.<sup>20</sup> The organisation also warns that the measures implemented by the Chilean authorities in accordance with DFL No. 1 and by the Peruvian authorities in accordance with Supreme Decree No. 055-2023-PCM could encourage people to search for more dangerous routes, thereby increasing the risk of having their rights violated by criminal networks, including human trafficking rings.

In light of the foregoing, Amnesty International urges the states to adopt and implement the following measures:

- Provide people with access to international protection, including through group determination (*prima facie*);
- Fully ensure that people in need of international protection will have effective access to the asylum process through specific measures that correct the practices and policies documented by Amnesty International that violate human rights, particularly the requirement to self-report in order to access the asylum process, and bring them in line with international law standards;
- Comply with the obligation of non-refoulement and refrain from carrying out rejections at the border, collective expulsions or deportations without due process. In particular, comply with UNHCR's call to not forcibly return Venezuelans to Venezuela;<sup>21</sup>
- Increase the financial, technical and human resources available to institutions charged with providing assistance and protection;
- Turn to international cooperation in order to maintain protection space instead of adopting unilateral measures that have done little more than exacerbate the humanitarian and human rights crisis; and
- Reinforce or, where appropriate, establish routes for the safe passage of migrants, including those who wish to reunite with their family, those who have health needs or other humanitarian grounds, such as pregnant people, children, elderly people or those with chronic illnesses, and for those who wish to return to their home country, ensure the full respect of their human rights throughout the proceedings.

## **2. On the nature and characteristics of states of emergency according to international human rights law**

The international treaties ratified by Peru, such as the International Covenant on Civil and Political Rights and the American Convention on Human Rights, allow states to declare a state of emergency. However, international law stipulates that states of emergency must only be declared in exceptional circumstances that threaten the life of the nation.<sup>22</sup> The Human Rights Council has highlighted that "Not every disturbance or catastrophe qualifies as a public emergency that threatens the life of the nation (...). If states parties consider invoking Article 4 [on states of emergency] in other situations than an armed conflict, they should carefully consider the justification and why such a measure is necessary and legitimate in the circumstances."<sup>23</sup>

International human rights law is clear in emphasising that states do not have unlimited discretion in declaring a state of emergency; rather, they are obliged to ensure that the measures adopted are strictly limited to those necessary to respond, both in scope and in duration, to the requirements of the situation, to ensure that their implementation does not involve any discrimination, and to respect that derogation from certain human rights is prohibited even in states of emergency.<sup>24</sup> Furthermore, the declaration of a state of emergency as well as the measures implemented must be periodically reviewed in order to analyse whether the conditions justifying their implementation are still valid or whether the measures could be modified or lifted.

---

<sup>20</sup> UNHCR, *Expert Meeting on International Cooperation to Share Burdens and Responsibilities*, 27-28 June 2011, [www.refworld.org/cgi-bin/texis/vtx/rwmain/opendocpdf.pdf?reldoc=y&docid=4fabdf042](http://www.refworld.org/cgi-bin/texis/vtx/rwmain/opendocpdf.pdf?reldoc=y&docid=4fabdf042)

<sup>21</sup> UNHCR, *Guidance Note on International Protection Considerations for Venezuelans – Update I*, 21 May 2019, [www.refworld.org/docid/5cd1950f4.html](http://www.refworld.org/docid/5cd1950f4.html)

<sup>22</sup> International Covenant on Civil and Political Rights, Article 4, and American Convention on Human Rights, Article 27.

<sup>23</sup> United Nations Human Rights Committee, *General Comment No. 29, States of Emergency (Article 4)*, CCPR/C/21/Rev.1/Add.11 31 August 2001, para. 3, [tbinternet.ohchr.org/\\_layouts/15/treatybodyexternal/Download.aspx?symbolno=CCPR%2FC%2F21%2FRev.1%2FAdd.11&Lang=en](http://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=CCPR%2FC%2F21%2FRev.1%2FAdd.11&Lang=en)

<sup>24</sup> International Covenant on Civil and Political Rights, Article 4, and American Convention on Human Rights, Article 27.

Amnesty International notes that Supreme Decree No. 055-2023-PCM, passed in Peru, does not describe the type of threats or emergency that would justify the declaration of a state of emergency; it merely states that its purpose is to “re-establish internal order”.<sup>25</sup> Nevertheless, it should be stressed that it was approved in the context of tensions in recent weeks on the border with Chile in relation to the presence and transit of refugees and migrants, resulting from the implementation of decrees that authorised the militarisation of the Chilean borders in February 2023, as outlined above. The statements made by the Peruvian executive branch upon declaring a state of emergency also singled out and stigmatised Venezuelans and Haitians as the ones responsible for the insecurity and crime.<sup>26</sup> Amnesty International warns that such stigmatising and xenophobic statements could suggest that the state of emergency serves discriminatory purposes that are not protected by Peruvian law or international human rights law.

In light of these circumstances, the organisation also emphasises that the declaration of a state of emergency based solely on migration generally will not reach the high threshold required by international human rights law relating to the exceptional nature of a circumstance that could threaten the life of the nation. The transit of migrants and refugees along the border between Chile and Peru does not meet this standard and so does not appear to constitute an emergency of such a nature.

Therefore, Amnesty International urges the Peruvian state to:

- Repeal Supreme Decree No. 055-2023-PCM, which declares a state of emergency, and urgently lift the measures adopted that violate human rights, since Peru has not demonstrated that the situation at the border with Chile meets the criteria established by the international treaties ratified by the state relating to the exceptional nature of states of emergency.
- 3. On the exceptional involvement of military forces in matters of security and compliance with international regulations regarding the use of force**

In accordance with international standards pertaining to human rights, the power to use force must be sufficiently grounded in national legislation and must always be governed by the principles of legality, precaution, necessity, proportionality and accountability.<sup>27</sup>

International human rights law is also clear in emphasising that the maintenance of public order and civil security must be primarily under the remit of civil police forces. In this respect, as also stated by the Inter-American Court of Human Rights, the states must only turn to the military in extraordinary cases, such that any intervention is justified and exceptional, temporary and restricted to what is strictly necessary in the circumstances of the case, subordinated and supplementary to the work of civil police forces, regulated and supervised.<sup>28</sup> In addition, when military forces perform duties that are normally the concern of civil forces, they must be subject in every respect to the same rules and procedures that are established for officials charged with law enforcement.

Taking into account the context of human rights violations relating to the unnecessary and excessive use of force by state actors, including military forces, as documented recently in both countries<sup>29</sup> by Amnesty International, the measures

---

<sup>25</sup> Supreme Decree No. 055-2023-PCM, Article 1.

<sup>26</sup> On 26 April 2023, the President of Peru stated that “[Venezuelans and Haitians] are the ones who are regrettably committing these crimes, which is why we cannot talk about immigration without also talking about civil insecurity (...) the Constitution says that it is the Armed Forces who must protect our borders and our sovereignty, with the support of our Police Force.” CNN, *Boluarte declara estado de emergencia en las fronteras y responsabiliza a venezolanos y haitianos por el aumento de la delincuencia*, 26 April 2023, [cnn.espanol.com/video/dina-boluarte-peru-estado-emergencia-fronteras-aumento-delincuencia-migrantes-venezolanos-haitianos-fernando-del-rincon-conclusiones-cnne/](https://www.cnn.espanol.com/video/dina-boluarte-peru-estado-emergencia-fronteras-aumento-delincuencia-migrantes-venezolanos-haitianos-fernando-del-rincon-conclusiones-cnne/) (Spanish only).

<sup>27</sup> Basic Principles on the Use of Force and Firearms by Law Enforcement Officials, [www.ohchr.org/en/instruments-mechanisms/instruments/basic-principles-use-force-and-firearms-law-enforcement](https://www.ohchr.org/en/instruments-mechanisms/instruments/basic-principles-use-force-and-firearms-law-enforcement)

See also Human Rights Council, *Report of the Special Rapporteur on extrajudicial, summary or arbitrary executions, Christof Heyns, A/HRC/26/36* (2014), paras 56-58.

<sup>28</sup> Inter-American Court of Human Rights, *Case of Alvarado Espinoza et al. v. Mexico, Judgment of November 28, 2018, (Merits, Reparations and Costs)*, para. 182; *Case of Cabrera García and Montiel Flores v. Mexico, Judgment of November 26, 2010, (Preliminary Objection, Merits, Reparations and Costs)*, C. 220, paras 87-89.

<sup>29</sup> Amnesty International, *Peru: Authorities must immediately cease excessive use of force against civilians and prevent further deaths*, 10 January 2023, [www.amnesty.org/en/latest/news/2023/01/peru-must-cease-excessive-force-against-civilians/](https://www.amnesty.org/en/latest/news/2023/01/peru-must-cease-excessive-force-against-civilians/)

implemented by Chile and Peru raise serious concerns and do not appear to fulfil the requirements outlined by the Inter-American Court.

The organisation warns that the militarisation of borders and the use of military personnel to perform migration control duties seriously jeopardise the human rights of refugees and migrants; they lack the training and tools necessary for such a role, given that their training is fundamentally based around defeating the “enemy” and not ensuring the control and protection of civilians, which is a task performed by the police.<sup>30</sup>

Amnesty International expresses concern for the continuing absence of a legal framework that adequately governs the use of force in Chile.<sup>31</sup> Even though the executive branch has set forth principles that govern the use of force by means of the aforementioned DFL No. 1 and Decree 78, and other internal guidelines exist,<sup>32</sup> these are non-statutory documents that, therefore, do not fulfil the principle of legality.

In addition, Amnesty International notes with concern the powers granted to the armed forces to detain individuals caught in the act of committing a crime. Contrary to the provisions of Article 131 of the Code of Criminal Procedure, which states that in the event of a detention by the police at the scene of the crime, the Public Prosecutor must be informed within a maximum of 12 hours so that a judicial review of the detention can be performed, DFL No. 1 equates a detention by the armed forces with one made by any other person, in which case the person so detained must be handed over to the police within a maximum of 12 hours. Then, within 24 hours, the Public Prosecutor can overrule the detention or order that the detainee be brought before a judge. However, Chilean law establishes that if the detention at the scene of the crime is made by any person, that person must hand them over immediately to the police, the Public Prosecutor’s office or the nearest judicial authority. In this respect, by equating detentions by the armed forces with those made by any person, the decree removes the framework of a judicial review without delay by a Public Prosecutor or judge, as is required by international human rights law,<sup>33</sup> instead of subjecting the armed forces to the same rules and procedures that are established for officials charged with law enforcement.

Furthermore, by following the timeframes established in DFL No. 1, a detainee could be imprisoned for 12 hours in the hands of the military and a further 12 hours in the hands of the police before appearing before a judicial authority. Amnesty International cautions against increasing the amount of time before detainees are brought before a Public Prosecutor or judge, as this in turn could mean that refugees and migrants would be at a greater risk of summary expulsion, in violation of the principle of non-refoulement, and other human rights violations such as torture and abuse.

The organisation also notes that the Chilean government recently ordered the deployment of military forces in the same regions in order to tackle irregular migration. Even though the measures implemented in January 2022 by means of the state of exception were initially established for a period of 15 days, these measures were consistently extended until March 2022.<sup>34</sup> It is concerning that less than a year later, the government is once more granting the armed forces powers to perform public security duties that restrict human rights in these border zones. The organisation reminds the Chilean state that it is their duty to comply with international standards relating to the exceptional nature of the use of the armed forces in matters pertaining to public security.

---

Amnesty International, *Peru: Lethal state repression is yet another example of contempt for the Indigenous and campesino population*, 16 February 2023, [www.amnesty.org/en/latest/news/2023/02/peru-lethal-state-repression/](https://www.amnesty.org/en/latest/news/2023/02/peru-lethal-state-repression/)

Amnesty International, *Eyes on Chile: Police violence and command responsibility during the period of social unrest* (AMR 22/3133/2020), 14 October 2020, [www.amnesty.org/en/latest/research/2020/10/eyes-on-chile-police-violence-at-protests/](https://www.amnesty.org/en/latest/research/2020/10/eyes-on-chile-police-violence-at-protests/)

<sup>30</sup> Inter-American Court of Human Rights, *Case of Montero-Aranguren et al. (Detention Center of Catia) v. Venezuela, Judgment of July 5, 2006, (Preliminary Objection, Merits, Reparations and Costs)*, para. 78; *Case of Zambrano Vélez et al. v. Ecuador*, Judgment of July 4, 2007, (*Merits, Reparations and Costs*), para. 51.

<sup>31</sup> See INDH, *Informe sobre las Nuevas Reglas sobre el Uso de la Fuerza para las Fuerzas Armadas en los Estados de Excepción*, 2020, [bibliotecadigital.indh.cl/bitstream/handle/123456789/1712/informe-ruf-estado-excepcion.pdf](https://bibliotecadigital.indh.cl/bitstream/handle/123456789/1712/informe-ruf-estado-excepcion.pdf) (Spanish only).

<sup>32</sup> For example, see the New Rules on the Use of Force by the Armed Forces in States of Emergency. In addition, in April, the government presented a bill to Congress to regulate the use of force. Ministry of the Interior and Public Security, *Gobierno ingresó proyecto de ley de Reglas del uso de la fuerza*, 11 April 2023, [www.interior.gob.cl/noticias/2023/04/11/gobierno-ingreso-proyecto-de-ley-de-reglas-del-uso-de-la-fuerza/](https://www.interior.gob.cl/noticias/2023/04/11/gobierno-ingreso-proyecto-de-ley-de-reglas-del-uso-de-la-fuerza/) (Spanish only).

<sup>33</sup> International Covenant on Civil and Political Rights, Article 9.3, and American Convention on Human Rights, Article 7.5.

<sup>34</sup> Ministry of the Interior and Public Security, *Decreto 35: Declara estado de excepción constitucional de emergencia en las zonas del territorio nacional que indica*, January 2022, [bcn.cl/33odl](https://bcn.cl/33odl) (Spanish only).

With regard to the Supreme Decree in Peru, Amnesty International cautions against the lack of clarity in relation to the powers of the Armed Forces in the framework of collaboration with the police, given that the decree only stipulates that “the National Police of Peru determines the zones in which said support is required”. This lack of clarity means that it cannot be ascertained whether the nature of the involvement of the military is strictly exceptional, necessary and proportional, as required by international human rights law, and this in turn could give rise to human rights violations and arbitrary actions to the detriment of refugees and migrants.

In light of the foregoing, Amnesty International urges the governments of Chile and Peru to adopt the following measures:

- Withdraw the armed forces from matters of public security, including carrying out identity checks of refugees and migrants;
- Immediately repeal Decree with Force of Law (DFL) No. 1 and Decree 78 in Chile and Supreme Decree No. 055-2023-PCM in Peru, since their provisions do not comply with international human rights standards and, consequently, their implementation could put the lives of refugees and migrants at risk and violate several other human rights;
- Ensure that all detainees are brought before a judicial authority without delay;
- Ensure that national laws have legislative rules that govern the use of force, in accordance with the principle of legality;
- Ensure that any use of force complies with international standards on the matter, particularly ensuring strict adherence to the principles of precaution, necessity, proportionality and accountability; and
- Ensure immediate, impartial, independent and effective investigations by civil authorities into all cases of unnecessary and excessive use of force, particularly but not exclusively those connected with the implementation of DFL No. 1 and Decree 78 in Chile and Supreme Decree No. 055-2023-PCM in Peru, while these decrees are in force.

#### **4. On the prohibition of all forms of discrimination**

The international treaties ratified by Chile and Peru prohibit any kind of discrimination.<sup>35</sup> This means that the states must guarantee the human rights of migrants, regardless of their migration status or situation, and must implement measures to prevent and combat their stigmatisation.

International and regional human rights bodies have called upon the states in the region to take measures to prevent and eradicate discrimination and xenophobia, particularly the kind directed at Venezuelan refugees and migrants.<sup>36</sup> However, over the past few years and especially in recent weeks, there has been a proliferation of statements made by public officials that stigmatise refugees and migrants, associating them with crime and insecurity, both in Chile<sup>37</sup> and in Peru.<sup>38</sup> Amnesty

---

<sup>35</sup> See, for example, International Covenant on Civil and Political Rights, Articles 2 and 26; International Convention on the Elimination of All Forms of Racial Discrimination; and American Convention on Human Rights, Articles 2 and 24.

<sup>36</sup> IACHR, *Resolution 2/18: Forced Migration of Venezuelans*, 31 January 2018, [www.oas.org/en/iachr/decisions/pdf/Resolution-2-18-en.pdf](http://www.oas.org/en/iachr/decisions/pdf/Resolution-2-18-en.pdf)  
CERD, *Concluding observations on the combined twenty-second and twenty-third periodic reports of Peru* (CERD/C/PER/CO/22-23), 23 May 2018, paras 36-37, [www.ohchr.org/en/documents/concluding-observations/committee-elimination-racial-discrimination-concluding-7/](http://www.ohchr.org/en/documents/concluding-observations/committee-elimination-racial-discrimination-concluding-7/)  
CMW, *Concluding observations on the second periodic report of Chile* (CMW/C/CHL/CO/2), 11 May 2021, [tbinternet.ohchr.org/\\_layouts/15/treatybodyexternal/Download.aspx?symbolno=CMW%2FC%2FCHL%2FCO%2F2&Lang=en](http://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=CMW%2FC%2FCHL%2FCO%2F2&Lang=en)  
IACHR, *IACHR Condemns Violent, Xenophobic Acts Against Venezuelan Migrants in Iquique, Chile*, 5 October 2021, [www.oas.org/en/iachr/jsForm/?File=/en/iachr/media\\_center/preleases/2021/263.asp](http://www.oas.org/en/iachr/jsForm/?File=/en/iachr/media_center/preleases/2021/263.asp)

<sup>37</sup> See, for example, *Director de Migraciones se retracta: "El ingreso irregular es un riesgo para la seguridad del país"*, 13 April 2023, [cooperativa.cl/noticias/pais/poblacion/inmigrantes/director-de-migraciones-se-retracta-el-ingreso-irregular-es-un-riesgo/2023-04-13/093932.html](http://cooperativa.cl/noticias/pais/poblacion/inmigrantes/director-de-migraciones-se-retracta-el-ingreso-irregular-es-un-riesgo/2023-04-13/093932.html) (Spanish only).

*Partido Republicano anunció un plan "Cero Narcotráfico" para complementar la lucha contra el crimen organizado y la inmigración irregular*, 24 April 2023, [partidorepublicanodechile.cl/partido-republicano-anuncio-un-plan-cero-narcotrafico-para-complementar-la-lucha-contr-el-crimen-organizado-y-la-inmigracion-irregular/](http://partidorepublicanodechile.cl/partido-republicano-anuncio-un-plan-cero-narcotrafico-para-complementar-la-lucha-contr-el-crimen-organizado-y-la-inmigracion-irregular/) (Spanish only).

<sup>38</sup> CNN, *Boluarte declara estado de emergencia en las fronteras y responsabiliza a venezolanos y haitianos por el aumento de la delincuencia*, 26 April 2023, [cnnespanol.cnn.com/video/dina-boluarte-peru-estado-emergencia-fronteras-aumento-delincuencia-migrantes-venezolanos-haitianos-fernando-del-rincon-conclusiones-cnne/](http://cnnespanol.cnn.com/video/dina-boluarte-peru-estado-emergencia-fronteras-aumento-delincuencia-migrantes-venezolanos-haitianos-fernando-del-rincon-conclusiones-cnne/) (Spanish only).

*Gestión, Congreso: Plantean 10 años de cárcel para extranjeros que ingresen ilegalmente al Perú*, 27 April 2023, [gestion.pe/peru/politica/congreso-plantean-10-anos-de-carcel-para-extranjeros-que-ingresen-ilegalmente-al-peru-noticia/](http://gestion.pe/peru/politica/congreso-plantean-10-anos-de-carcel-para-extranjeros-que-ingresen-ilegalmente-al-peru-noticia/) (Spanish only).

International notes with concern that such baseless<sup>39</sup> or out-of-context statements not only feed racism and xenophobia but also violate the right of refugees and migrants to non-discrimination. In addition, these kinds of messages increase the risk of refugees and migrants suffering racist violence and even gender-based violence through compound stereotyping, in the case of women and LGBTI people.<sup>40</sup>

In this context, there is cause for concern that carrying out identity checks for the purpose of migration control or crime prevention, such as those provided for in the aforementioned Chilean decrees, may develop into ethnic or racial profiling.<sup>41</sup> This kind of profiling constitutes a prohibited form of discrimination. Certain groups, such as migrants, refugees and asylum seekers, are at greater risk of racial profiling, similarly to people of African descent.<sup>42</sup> The Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance stated that:

*Police, immigration and detention officials frequently employ racial and ethnic profiling, in many different and pernicious ways. Government policies may also facilitate discretionary practices that allow law enforcement authorities to target groups or individuals on the basis of their skin colour, dress or facial hair or the languages they speak. Implicit biases also sometimes motivate profiling.*<sup>43</sup>

In a case in which it was concluded that the use of racial profiling in the context of migration control constituted discrimination, the Human Rights Council emphasised that:

*(...) identity checks carried out for public security or crime prevention purposes in general, or to control illegal immigration, serve a legitimate purpose. However, when the authorities carry out such checks, the physical or ethnic characteristics of the persons subjected thereto should not by themselves be deemed indicative of their possible illegal presence in the country. Nor should they be carried out in such a way as to target only persons with specific physical or ethnic characteristics. To act otherwise would not only negatively affect the dignity of the persons concerned, but would also contribute to the spread of xenophobic attitudes in the public at large and would run counter to an effective policy aimed at combating racial discrimination.*<sup>44</sup>

Amnesty International believes that the rules that authorise identity checks for the purpose of migration control or crime prevention and that are very broadly expressed leave a margin of discretion to officials, which could lead to abuses of power that could then pave the way for racism or other forms of structural discrimination.<sup>45</sup>

---

InfoBae, *De llamar a disparar a los migrantes en la frontera a "comer alfalfa": las polémicas frases del congresista Jorge Montoya*, 29 April 2023, [www.infobae.com/peru/2023/04/29/de-llamar-a-disparar-a-los-migrantes-en-la-frontera-a-comer-alfalfa-las-polemicas-frases-del-congresista-jorge-montoya](http://www.infobae.com/peru/2023/04/29/de-llamar-a-disparar-a-los-migrantes-en-la-frontera-a-comer-alfalfa-las-polemicas-frases-del-congresista-jorge-montoya) (Spanish only). In addition, in Peru, the 2021 presidential election campaign was characterised by the strong stigmatisation of Venezuelans within the country. Amnesty International, *Perú: Comunicación al Comité de Protección de los Derechos de Todos los Trabajadores Migratorios de las Naciones Unidas previa a su 34a sesión* (AMR 46/5238/2022), February 2022, [www.amnesty.org/es/documents/amr46/5238/2022/es/](http://www.amnesty.org/es/documents/amr46/5238/2022/es/) (Spanish only).

<sup>39</sup> A study carried out on crime statistics over 5 years concluded that "this massive influx of immigrants caused no effects whatsoever on victimisation (a result that is aligned with papers finding similar conclusions) (...), but a large increase in crime-related concerns and behavioural responses associated with those concerns. Given the precisely estimated null effect on victimisation, our results indicate that the impact on crime-related concerns cannot be explained by a similar increase in crime rates, suggesting that immigration triggers the formation of 17 misperceptions related to crime." Ajzenman, Dominguez and Undurraga, *Immigration, Crime, and Crime (Mis)Perceptions*, September 2020, [publications.iadb.org/publications/english/viewer/Immigration-Crime-and-Crime-MisPerceptions.pdf](https://publications.iadb.org/publications/english/viewer/Immigration-Crime-and-Crime-MisPerceptions.pdf)

<sup>40</sup> Amnesty International, *Americas: Unprotected: Gender-based violence against Venezuelan refugee women in Colombia and Peru* (AMR 01/5675/2022), 12 July 2022, [www.amnesty.org/en/documents/amr01/5675/2022/en/](http://www.amnesty.org/en/documents/amr01/5675/2022/en/)

<sup>41</sup> Although there is no universal definition for the concept of racial profiling in international law, the definitions adopted by several regional and international human rights bodies have many elements in common, such as a) it is committed by authorities charged with law enforcement; b) it is not motivated by objective criteria or reasonable justification; c) it is based on grounds of **race, colour, descent, national or ethnic origin or their intersection with other relevant grounds, such as** religion, sex or gender, sexual orientation and gender identity, disability and age, **migration status** or work or other kind of status; d) **it is used in specific contexts, such as migration control** and the fight against criminal activity, terrorism or other activities that allegedly break or may give rise to the breaking of the law. [Emphasis added]. CERD, *General recommendation No. 36 (2020) on preventing and combating racial profiling by law enforcement officials*, CERD/C/GC/36, para. 13, [www.ohchr.org/en/documents/general-comments-and-recommendations/general-recommendation-no-36-2020-preventing-and](http://www.ohchr.org/en/documents/general-comments-and-recommendations/general-recommendation-no-36-2020-preventing-and) See also IACHR, *Report No. 26/09, Case 12.440, Admissibility and Merits, Wallace de Almeida, Brazil, March 20, 2009*, para. 143.

<sup>42</sup> OHCHR, *General recommendation No. 36 (2020)*, para. 11.

<sup>43</sup> Human Rights Council, *Report of the Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance, Mutuma Ruteere*, A/HRC/29/46 (2015), para. 16.

<sup>44</sup> Human Rights Committee, *Communication no. 1493/2006, Williams Lecraft vs Spain*, Views adopted on 27 July 2009, para. 72.

<sup>45</sup> CERD, *General recommendation No. 36 (2020)*, para. 38. See also Inter-American Court of Human Rights, *Case of Acosta Martínez et al. v. Argentina, Judgment of August 31, 2020, (Merits, Reparations and Costs)*, paras 94 et seq.



As a result, in its General Recommendation No. 36, in addition to reiterating that racial profiling is prohibited, the Committee on the Elimination of Racial Discrimination calls for the establishment of a solid political framework and guidelines for decision-making for agencies charged with law enforcement, including a definition of what constitutes a reasonable and objective suspicion and an outline of legitimate criteria that can be taken into account when deciding whether or not to detain a person.<sup>46</sup>

Amnesty International urges the governments of Chile and Peru to adopt the following measures, which are intended to ensure full compliance with their non-discrimination obligation:

- Ensure that all authorities, including those in senior-level positions, refrain from using language that stigmatises, threatens, disparages or discriminates against refugees and migrants, such as Venezuelans and Haitians;
- Amend the rules governing the carrying out of identity checks so as to explicitly prohibit discrimination in identity checks, abolish preventive identity checks and ensure that all identity checks are based on individual and objective grounds; and
- Create an effective, independent complaints mechanism and introduce disciplinary measures in the event of misconduct.

There being nothing further to add, we remain at your disposal to elaborate upon any aspect of our communication.

Yours sincerely,  
Erika Guevara Rosas  
Americas Director

---

---

<sup>46</sup> CERD, *General recommendation No. 36 (2020)*, para. 38.