



CHILE

COMMENTS AND CONTRIBUTIONS FROM CORPORACION HUMANAS FOR THE LIST OF ISSUES AND QUESTIONS RELATED TO THE SIXTH PERIODIC REPORT OF THE STATE OF CHILE TO THE HUMAN RIGHTS COMMITTEE

(April 26, 2013)

Overview

The Human Rights Committee, in paragraph 20 of the Concluding Observations of the fifth periodic report, recommended that the State widely disseminate these concluding observations.

We request that the Committee ask the State regarding the compliance with this recommendation, noting how, when and to whom the observations were reported and with what results.

Article 1. The Right to Self-determination of Peoples

In 2006, the Committee expressed concern over the claims of indigenous peoples, principally the Mapuche, which have not been met and the slow progress of the demarcation of indigenous lands, recommending expediting procedures for the recognition of such ancestral lands. Similarly, the Committee recommended to "consult indigenous communities before granting licenses for economic exploitation of the disputed land, and guarantee that in no case will exploitation violate the rights recognized in the Covenant" (paragraph 19).

It is worth noting that the constitutional recognition of indigenous peoples has been stalled of parliamentary discussion in the Senate since April 2009 (Legislative Bulletins N ° s 5324-07 and 5522-07, submitted), in addition indigenous peoples had not been properly consulted in accordance with international standards applicable to the right to consultation and presents serious problems with the contents of the bill.

We request the Committee require information from the State on the measures taken to incorporate in the fundamental Charter the constitutional recognition of indigenous peoples, were duly consulted.

In relation to indigenous territories, we request the Committee to require the State information regarding the annual budget for the restitution of land since 2006 to date and its execution, detailing the beneficiaries according to ethnicity, locality and sex. Similarly, it would be appropriate to request for the measures taken by the State to reduce the gender gap in relation to the size of property received by men and women. It is also important to know how the indigenous communities have participated in decisions about the design and management of the land policy.

Article 2. Ensuring protection of Covenant rights

Amnesty Decree Law 2.191

The validity of the Amnesty Decree Law No. 2191 constitutes a violation of a set of international obligations accepted by the State of Chile, which in 2006 was condemned by the Inter-American Court of Human Rights in the case of Almonacid¹.

Despite international recommendations to repeal the Decree, it maintains current obstacles to prosecute and punish serious human rights violations that occurred during the dictatorship, without any sign of any legislative debate to comply with international obligations. The bill declaring the nullity of the Decree Law No. 2191 of 1978 (Journal of Laws No. 4162-07), introduced by senators in April 2006, has not been debated by Congress.

¹INTERAMERICAN COURT OF HUMAN RIGHTS, "Case of Almonacid Arellano et al v. Chile" Judgment of September 26, 2006, Preliminary Objections, Merits, Reparations and Costs.

Meanwhile, the draft law establishing interpretive law adapting Chilean criminal law to international treaties on human rights (Journal of Laws No. 6422-07), which provides the invalidity of amnesties, pardons and limitations for crimes and offences which in accordance with international law, constitute genocide, crimes against humanity and war crimes, has not advanced in the legislative process.

We request the Committee to ask the State regarding the measures taken and legislative bills put forward to end the term of the Amnesty Decree-Law and other obstacles to prosecute and promptly and impartially punish the perpetrators of enforced disappearances, executions, torture and international crimes.

Human Rights Institutions

In the 2006 Concluding Observations, the Committee made note of the efforts for the creation of the National Institute of Human Rights, recommending the state "establish a national human rights institution as soon as possible, in full conformity with the Principles relating to the status of national institutions for the promotion and protection of human rights (Paris Principles) annexed to General Assembly resolution 48/134. To that end, it should hold consultations with civil society."(paragraph 6).

In this regard it should be noted that the law creating the National Institute of Human Rights was enacted in November 2009 and the Institute is working since July 2010. While recognizing that the establishment and operation constitutes progress in terms of the institutionalization of human rights in our country, it should be noted that the institute does not comply with the Paris Principles.

Furthermore it should be noted that an Ombudsman of the People does not exist in Chile and the bills pending in National Congress for its creation have been paralyzed since 2009, without the government granting the necessary legislative emergency.

We request that the Committee require information from the State on compliance of the creation and operation of the National Human Rights Institute to the Paris Principles, in a manner that secures its autonomy, independence, pluralism, stability and representativeness. In addition, reporting on the status of bills for the creation of the Ombudsman of the People and whether considered in such initiatives are specialized ombudsmen to protect the rights of women, indigenous peoples and migrants.

Article 3. Gender Equality

Anti-discrimination programs and mechanisms

The State in its Periodic Report mentions among the national programs and anti-discrimination mechanisms the Equal Opportunities Plan 2010-2020 (paragraph 20 and 24) and the Council of Ministers for Equal Opportunities (paragraph 20).

The Committee is requested to ask the State regarding the process of consultation with civil society for the development of the Equality Plan and which organizations participated in this process. In relation to the National Mechanism for the Advancement of Women (Servicio Nacional de la Mujer), consult the State which measures it has implemented to include women who face multiple forms of discrimination in its Equality Plan and other programs and policies of the body. Also, we request the Committee require the State to report how many times the Council of Ministers have met since its reinstatement, and what have been its main efforts.

Labor Area

In its sixth Periodic Report, the State reports a significant increase in female labor participation (paragraph 22). The participation of women in the labor market rose to 47.7%, but despite this increase, it remains below the regional average in relation to Latin America. Despite the encouraging official figures, the fact is that female employment growth hides the instability and insecurity that characterize the work of women in Chile, as it has been realized through self-employment, part-time and low-skilled positions.

We ask the Committee to require disaggregated information on the types of work performed by women, establishing what are their working conditions in terms of job security, access to employment contracts and other social benefits. Similarly, ask the State on measures to strengthen the supervision of workplaces and disseminate materials related to labor rights and occupational health in workplaces.

The Human Rights Committee expressed concern about discrimination against women in the workplace, especially in the private sector, recommending that the State "redouble its efforts to combat discrimination against women in employment, through such measures as reversing the burden of proof in discrimination cases to favour women employees, so that employers must explain why women hold positions of lower rank, have lesser responsibilities and earn lower wages"(paragraph 18).

The State in its Periodic Report accounts for the adoption of Law No. 20,348 which establishes equal pay between men and women who do the same work, which is an improvement. However, since the effective date of the said law the authorities have not noted the real impact it has had. According to the information managed by civil society, the wage gap between men and women has not substantially decreased. There is no record that they have taken concrete measures to give effectiveness to that legislation. It is essential to firstly require, detailed statistical information on the impact the law has had, and secondly, information on the concrete measures taken to provide effectiveness to these regulations, for example, those relating to the supervision.

In relation to seasonal work in the agricultural export sector, where mainly women work, precarious conditions exist for contracts, low wages, long working hours and occupational health and safety, thus many accidents continue to occur such as severe poisoning cases that threaten the life and health of the temporary workers. In this regard we request the Committee to consult the State of the measures implemented to: ratify the ILO Convention 184 on Safety and Health in Agriculture, strengthen the protection of labor rights of temporary agribusiness workers and develop a comprehensive system of supervision and oversight in respect of these rights.

An issue of concern is related to the lack of regulation that exists for domestic workers particularly those who are subjected to serious discrimination and are constantly violated of their human rights, as they have, for example, a longer workday than the rest of workers. It is, in that sense, important to know the measures taken by the State to ratify the ILO Convention 189 on Domestic Workers and to approve the draft law amending the workday, rest and composition of remuneration of workers in private homes (Bulletin No. 8292-13).

Violence against women

In regard to national legislation referring to the phenomenon of violence against women, it may be noted that Law No. 20,066 (Domestic Violence Act) does not refer to gender violence as abuse of power and accounts only for domestic violence, thereby obscuring the extent of violence against women and its many manifestations, both in public and private.

We ask the Committee to consult on the efforts made to amend the Domestic Violence Act and replace it with a comprehensive law on violence against women in order to cover all forms and

manifestations of this, including that which occurs in the public and private spaces, not just domestic violence, thereby removing the requirement of "habitual abuse" in order to investigate all acts of domestic violence and prosecute the perpetrators.

Concern regarding access to justice for indigenous women in the application of reparatory agreements in cases of domestic violence or interfamily violence (despite a legal prohibition applied for such an alternative to trial in cases of domestic violence). In application of Criminal Defense, and in response to articles 9 and 10 of the ILO Convention 169, criminal courts have accepted reparatory agreements between victims and defendants and dismissed the causes, decisions have been upheld by the superior courts. It is alarming that these judgements are not based on ancestral custom of Mapuche and have been issued in violation of international standards on women's human rights, which prohibits the impunity of these crimes.

We request asking for the measures implemented to ensure access to appropriate and effective judicial resources to investigate, punish and eradicate violence against indigenous women and the actions to eradicate discriminatory socio-cultural patterns that prevent indigenous women full access to justice, including training programs for members of the justice system and comprehensive prevention policies.

Article 6. Right to life

Criminalization of abortion

In 2006, the Human Rights Committee reiterated its concern about restrictive abortion legislation, especially in cases where women's lives are in danger, recommending that the State "amend its abortion laws to help women avoid unwanted pregnancies and not have to resort to illegal abortions that could put their lives at risk. The State party should also bring its abortion laws into line with the Covenant."(paragraph 8).

Currently, abortion is still illegal in all forms in Chile. The State has not installed a democratic debate on the subject, despite repeated recommendations that have been made by treaty monitoring bodies. Even in its sixth Periodic Report it openly acknowledges it is willing to violate international standards and recommendations, noting in paragraph 34: "In accordance with the position of Chile expressed in previous reports, indicate that the national legal system protects life 'of the unborn', being the prohibition of abortion in all its forms".

We request the Committee require information from the State on the measures taken and legislative bills regarding decriminalization of abortion on certain grounds in accordance with its international obligations.

Article 7. Prohibition of torture and cruel, inhuman or degrading treatment

Human rights violations between 1973 and 1990: Torture

In relation to the serious human rights violations committed during the dictatorship, the Human Rights Committee expressed concern at the lack of official investigations to determine direct responsibilities, recommending that these crimes do not go unpunished and to take any additional steps to establish individual responsibilities (paragraph 9).

The processing of cases of forced disappearances and executions during the military dictatorship is governed by a Court ruling of the Supreme Court, called "Act 81-2010"². This Act that features, mainly, the causes of disappearances and executions committed between September 11, 1973 and March 10, 1990, will be investigated by Jurisdiction Ministers or Special Visits. In this regard, concerned that the processing of cases for crimes of torture is not regulated either in the Act 81-2010, or another court ruling.

The absence of a state institution that encourages the presentation and development of complaints for crimes of torture committed during the military dictatorship explains that of the current 1,457 existing cases for crimes committed during the dictatorship, only 24 are related to crimes of torture committed against seven surviving victims. Of the 24 cases of torture that are instructed today, only five complaints are aimed to pursue criminal liability for acts of sexual violence as torture perpetrated against women during the military dictatorship. This shows that the state institutions have chosen to obscure the occurrence of these facts, not investigate and let the perpetrators go unpunished, which has meant that victims will be denied the right to reparation.

In the same sense, it can be noted that of the 104 sentences that the Supreme Court delivered between July 2007 and January 2012 for serious crimes committed during the military dictatorship, only three have been said to regard crimes involving torture.

We require the Committee to ask the State of Chile what actions have been made in order to investigate, prosecute and punish those responsible for the crimes of torture committed under the dictatorship, and in particular, sexual violence and torture perpetrated against detainees women.

Police violence in social events

A significant number of people arrested during citizens protests in recent years claim to have been victims of torture or other cruel, inhuman or degrading treatment. The existence of a pattern of police sexual violence exercised against girls, adolescents and female protesters has been noted. None of the State powers have taken the necessary measures to prevent, prosecute, punish and eradicate police sexual violence against girls, adolescents and women in the context of peaceful demonstrations, nor have they given information on the subject. The 2011 and 2012 annual report of the National Institute of Human Rights³ includes some of the complaints by civil society and victims of these attacks, which consist of touching of a sexual nature, forced nudity and beatings to the genitals, among others.

Additionally, the fact that public defenders, who are those that should represent the detainees accused of crimes in demonstrations, are prevented from initiating a complaint with the military prosecutor against the police for torture or other cruel, inhuman or degrading treatment to their constituents. Currently, the Office of the Public Defender does not have the institutional framework nor the resources necessary to perform some action in the matter.

Finally, there is no public information on the phenomenon of police violence or abuse against persons with disabilities. The National Disability Service has no information and no studies have been done about it. Faced with requests for public information, the Service declared absolute ignorance regarding the subject. Although the phenomenon does not appear to be widespread, there is evidence of some cases of police violence and abuse against people with disabilities.

²81-2010 Act of June 1, 2010. Online Vid: http://www.poderjudicial.cl/PDF/Prensa_Com/CuentaPublica/discurso2011/6.1.32.pdf. [Accessed 16 April 2013].

³NATIONAL INSTITUTE OF HUMAN RIGHTS. Annual Report "Human Rights Situation in Chile 2011". [Online] Available at: <http://www.indh.cl/informe-anual-2011-de-derechos-humanos-en-chile>. Annual Report "Human Rights Situation in Chile 2012". [Online] Available at: <http://www.indh.cl/informe2012/Inf20INDH12%20Annual%20web.pdf> [Accessed April 17, 2013]

We ask the Committee to consult the State of Chile on the number of complaints that have received regarding police violence in social demonstrations, with disaggregation of gender, age, ethnicity and city, and ask what measures have been taken to prevent, prosecute, punish and eradicate police violence, with special mention of the police sexual violence against girls, adolescents and women in the context of citizen protests. It is also important to request the State for information regarding cases of police abuse against people with disabilities.

Police violence towards Mapuche communities

Faced with indigenous social protest over exploitation of natural resources caused by large investment projects in their territories and in claiming their ancestral lands, in recent years the state has responded with a policy of criminalization that has led to the jailing of dozens of Mapuche and from September 2010 has used violence against members of Rapa Nui. During the years 2011 and 2012 the pattern of police violence has continued, various episodes of police brutality in Mapuche communities which were violently raided by police resulting in children, women and elderly wounded or affected by the indiscriminate use of tear gas⁴. In this regard, concerns the criminalization of indigenous demands that lead to criminal judicial area what the State has the obligation to solve politically.

We request the Committee to ask the state what actions it has undertaken to end the criminalization of indigenous demands and to provoke a radical change in the ways in which it has addressed the conflict with indigenous communities. Also, require information on the actions taken to prevent, investigate and punish police violence towards indigenous communities, and to protect and provide assistance and redress to women and children victims of institutional violence.

Register of Complaints

We request the Committee require information from the State of the number of allegations of torture recorded in previous years and how many so far this year, reporting the proportion of these which are women, children of both sexes, adults and elderly, including information on allegations from indigenous people. Furthermore, requesting information on the results of the investigations, indicating how many allegations led to sanctions, what kind of sanctions, how many resulted without sanctions and how many are still in development.

Article 8. Prohibition of slavery, trafficking, servitude and forced labor

In its sixth periodic report, the State reported on the adoption of Law No. 20507 that typifies the crimes of migrant smuggling and human trafficking and sets standards for more effective prevention and criminal prosecution (paragraph 74).

While the adoption of this law is a step forward, state actions have focused on the criminalization of the offense, leaving the aspect of the prevention of human trafficking and the protection and assistance to victims as secondary.

We ask the Committee to ask the state what budget has been allocated for the implementation of the law; what protection and assistance has been provided to victims who are unable or unwilling to file a report and cooperate in legal proceedings; how much national coverage of shelters for victims exists; what guaranteed health benefits exist for victims; if a migration regularization protocol has been developed to expedite the process and eliminate the high economic cost of visas; the measures implemented to provide financial compensation, employment training and employment and social placement to those who were trafficked; the efforts made to develop quantitative and qualitative studies on internal and transfrontier trafficking in Chile, as well as phenomena related to trafficking:

⁴Interview with MapucheWinkulWenteMapu, raided by police in a violent manner repeatedly, available at:http://www.chilevision.cl/home/index.php?option=com_content&task=view&id=425954&Itemid=186

labor exploitation, sexual exploitation of girls and exploitation of women in the context of prostitution.

Article 10. Humane and dignified treatment in custody

Conditions of detention

We request for the Committee to require information from the State on measures taken to reduce overcrowding in every prison of the country, for both men and women, and for specific enhancements implemented in each one of them to improve the physical conditions and ensure the needs of those deprived of freedom, especially of food, health care, education and rehabilitation. Additionally, we request an inquiry on what measures have been implemented for prisoners younger than 18 years old in order to have adequate education, health and legal assistance, when required, and that no disciplinary action be applied without a due process. Information is required on access to employment training programs and social reintegration for men and women. Moreover, we solicit that the State be queried on the national mechanics used for regular visits to detention centers, their structure and functions, visits to date, results of the visits, recommendations given and implementation thereof. Similarly, we request that the State report on measures applied to eliminate the isolation cells as well as on the protocol on visitor supervision. Furthermore, we request that information on measures taken for the implementation and practice of the Optional Protocol to the International Convention against Torture (OPCAT) be provided.

Article 13. Status of aliens under the Covenant

The migration law in Chile does not conform to international human rights obligations and lacks a gender perspective in its design and implementation.

We solicit information be requested from the State regarding the efforts made to pass a new law on migration in full conformity with international standards of human rights protection, in particular with the provisions of the International Convention on the protection of the rights of all migrant workers and their family members. Correspondingly, that the State request information on measures taken to amend the legislation so that the children born in Chile of migrant women with irregular situations be able to acquire Chilean nationality by birth and not remain stateless. Likewise, we solicit the request of information on the access to social benefits and health care services, regardless of immigration status, particularly in the case of pregnant women, and the measures taken for the effective implementation of the Oficio Ordinario No. 3229, of June 11, 2008, on the access to health care for migrant workers, particularly informing health personnel on its provisions and establishing a mechanism for monitoring the implementation of the Oficio Ordinario. We also request the Committee ask the State if it has taken steps to protect and enforce the respect of labor, union and social security rights of foreigners, as well as the right to education their children. Similarly, we ask that the State relate the actions taken to combat discriminatory attitudes and social stigma towards the immigrant population through campaigns directed to the general public and public officers.

Finally, we request asking the State about the actions carried out in order to enable Chilean migrants living abroad to exercise their right to vote in national elections.

Article 14. Procedural Guarantees

Application of the Prevention of Terrorism Act 18,314

The Committee expressed its concern about the definition of terrorism contained in the Terrorism Act 18,314, and on the application of this law to members of the Mapuche people who have been charged with terrorism for acts of protest or social demand relating to the defense of the rights to their land (paragraph 7).

We ask that the Committee request information from the State on the number of cases in which it has invoked the Prevention of Terrorism Act in recent years, how many of them involved individuals belonging to indigenous peoples, the number of persons involved – according to sex and age, facts supporting the application and judicial outcomes of such processes, including information about detainees, sentences issued, number of persons under detention, their duration and other judgments.

Military Justice

In 2006 the Committee noted with concern the persistence of the jurisdiction of the Chilean military courts to try civilians for civil matters, as well as the wording of Article 330 of the Code of Military Justice, which could lead to an interpretation that would allow the use of "unnecessary violence"(paragraph 12).

Following that recommendation, in December 2010, Law No. 20,477 was issued, amending military court competency. This Act represents an important advance in the exclusion of civilians and minors from the jurisdiction of the military courts when they are charged, but does not fulfill completely the international obligations that are expected of the Chilean State. This meaning, that as long as the military justice system for military offenses committed by military personnel continues without limitation, an extensive list of crimes stay within the competency of the military court solely due to having been committed by soldiers, without distinguishing between common crimes or military function crimes.

It is particularly concerning that the knowledge of allegations of police violence amounting to torture or other cruel, inhuman or degrading treatment, is delivered to the Military Court, whose lack of impartiality determines high levels of impunity for crimes committed by police officers and other uniformed persons (such as homicides, injuries, unnecessary violence, ill-treatment, sexual violence, among others), or the application of very short sentences that do not represent the severity of the crimes.

We ask the Committee to question the State on the measures taken and legislative proposals to reform Military Justice, limiting its jurisdiction to investigate and prosecute crimes committed by military functionaries and ensure due process.

Article 23. Protection of the family

In Chile, the law only recognizes and protects people who have established relationships based on marriage. People joined are not recognized and protected by the law. This lack of recognition and protection is aggravated in the case of unions between persons of the same sex, as Chilean law recognizes no effect nor offers any legal protection to these relationships, fostering discrimination. The legislative proposals on marriage equality made by members of congress have failed to be discussed, as has the presidential project from August 2011, the “Couple for Life Agreement” that would regulate both personal and financial belongings for different and same-sex couples, but that fails to recognize marital status.

We request that the Committee ask the State about the actions undertaken to promote a civil unions law that recognizes and protects the rights of persons of different and equal sex living together, giving these people the civil status of union as well as those intended to legislate for equal marriage.

Article 24. Child protection

In relation to teenage pregnancy, in its Sixth Periodic Report, the State accounts for "Women and Motherhood: Committed to Life" and the guidance provided to adolescent mothers (paragraph 121). However, in recent years, pregnancy in girls and adolescents has increased, concentrating mainly on vulnerable socioeconomic groups.

We ask that the Committee enquire on the number and the annual evolution of teenage pregnancies that have been disaggregated due to the socioeconomic status of their mothers; the concrete measures that have been taken to prevent unwanted teenage pregnancies; the actions for implementing permanent and continuous sex education plans through time so as to eliminate discriminatory and stereotypical content based on gender as well as the sex in sex education programs. Also, check on measures taken to protect those girls pregnant as a result of abusive relationships.

Article 25. Political Rights

In its concluding observations, the Committee noted with concern that the election system that prevails in Chile could prevent the public from having an effective parliamentary representation (paragraph 15).

Indeed, the binomial electoral system prevailing in the country for the election of senators and deputies, suffers from a fundamentally flawed legitimacy having been defined during the civil-military dictatorship. Its modification is extremely complex due to the high quorums that are required for constitutional reform, so any legislative initiatives to amend it have been unprolific. One of its main features is its orientation towards favoring the dominance of two main blocs, tending to generate draws in terms of representation and preventing representation of the minority. This has hindered plural and balanced participation of various political forces in the country, excluding significant sections of parliamentary representation⁵. The binomial system significantly hampers the representation of women in Parliament, who reach only 13% in the Upper House and 14% in the Lower House, figures that are well below the regional average of over 20%.

The under-representation of women in politics is not exclusive to the Congress and is observed at all levels of government. Regarding local power, in terms of Mayors, the representation figure is extremely low, coming in at a meager 12% and in regard to councilors at 24%. In the executive branch the female ministers represent 28% of the cabinet, and as for Foreign Service, Chile has but one ambassador. Regarding judiciary power, the Supreme Court, the highest court of justice in Chile, is composed of one chairman/woman and 20 Ministers, within which there are 5 women (24%). Similarly, it is concerning that the participation of indigenous women in political decision-making positions is almost null, and that they are not represented in parliament.

In this regard, we ask that the Committee solicit from the State the percentage of women who are currently in decision-making positions within the 3 branches of government. Regarding Foreign

⁵ PARLIAMENTARY MONITORING, "Balance for the Legislative Power." Available on www.humanas.cl

Service, it would be helpful to have information on the number of ambassadors, female consuls and other high-level representatives, as well as the countries in which they are intended.

We beseech the Committee to ask the State of Chile why there is still no legal reform to promote women's political participation to date; what efforts have been made to change the binomial system, which is what makes the representation of all political, especially that of women, very difficult; and what have been the efforts performed to incorporate affirmative action measures designed to equalize the situation between men and women in public and political life.

In relation to political participation, it is worrying that there is no financial support granted by the State to civil society organizations, be they social organizations or NGOs. As a result, in recent years a large number of organizations have disappeared due to lack of resources, which affects the participation of citizens in the democratic process and the supervision and control of the authorities.

We ask the Committee to solicit from the State about the measures that have been taken to strengthen civil society organizations and prevent their disappearance, as well as the actions taken to track the law on Associations and Citizen Participation in Public Administration, in order to evaluate its effectiveness in terms of citizen participation and the representation of women in the instances that have come to their eaves.

Article 26. Equality before the law and non-discrimination

Discrimination against women in the pension system

In its sixth periodic report, the State accounts for the adoption of Law No. 20255 on Pension Reform. However, this legislation did not address discrimination against women in the current Chilean pension system.

In the individual capitalization system of the Pension Fund Administrators (AFPs), the use of life expectancy tables remains differentiated by sex, which is highly discriminatory and detrimental to women as their life expectancy is higher, which means that with the same amount of pension savings, a woman receives up to 30% less pension than a man⁶.

We ask that the Committee inquire of the State which actions have been taken to correct the pension calculation system used by the AFPs that take life expectancy tables differentiated by sex into consideration, punishing women who live longer than men.

Measures against discrimination

Law 20,609 on Measures against Discrimination was recently published. Unfortunately, this law has more symbolic content than effective tools to address discrimination. Basically, the new law establishes special judicial action against discrimination before the courts to which those who are sponsored by an attorney may resort. But the goal of preventing, punishing, eradicating and repairing discrimination is not clearly stated. Moreover, there is an apparent omission of a public institution for equality and non-discrimination, budgetary resources, preventive measures and affirmative action, among others, and worse yet, it presents the inclusion of a regulation that subordinates equal rights and non-discrimination with other constitutional guarantees.

⁶ CENDA. Riesco, Manuel; Diaz, Estrella; Durán, Francisco; Secondo, Donata. Report "How the AFP system discriminates against women in Chile and how to correct it." February 2011.

We request asking the State about the actions taken to correct the deficiencies presented in the Discrimination Act, particularly in terms of incorporating a public institution for equality and non-discrimination, budgetary resources, preventive measures, and eliminating the law that establishes a hierarchy of rights above equal rights and non-discrimination. Similarly, we would like for the State to be inquired as to if it has considered the possibility of applying temporary special measures as a necessary strategy to accelerate the achievement of substantive equality between women and men in all areas of the Pact, aimed particularly at women who are migrants, rural, indigenous, lesbian, transsexual, transgender and other women who face multiple forms of discrimination.

Patrimonial regime

In its Concluding Observations, the Committee recommended that the State "accelerate the Senate's adoption of the act repealing conjugal partnership as a legal regime and replacing it with an act of spouses' joint property" (paragraph 17).

In this regard, paragraphs 27 and 28 of the Periodic Report of the State, report on the legislative process of the bill amending the Conditions of Conjugal Property (Bulletin No. 7567-07).

Given that to date there is not yet a law to amend the discriminatory regime of conjugal partnership, we request that the Committee solicit the State of Chile on what measures have been taken in order to accelerate the processing of the bill that seeks to amend conjugal partnership, recognizing full legal capacity of women and equal rights to men and women regarding social properties in a co-administration regimen without equity reserved for the husband, both for marriages already formed as those to be established once the law is in effect.