



REPORT TO THE CEDAW COMMITTEE 2018

INSTITUTO NACIONAL DE DERECHOS HUMANOS

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SEVENTH PERIODIC REPORT OF CHILE TO THE CEDAW COMMITTEE-2018

Through this document, the National Human Rights Institute (NHRI) monitors the concluding observations formulated by the Committee on the Elimination of Discrimination against Women to the State of Chile in 2012¹, in light of the country's report in its presentation before the aforementioned Committee².

1. Violence against Women

In Chile, the rates of violence against women have not been significantly reduced in the period covered by this report, which is clearly evidenced by the case of femicide. According to the National Statistics Institute, the number of femicides perpetrated in 2012 was 34; 40 in 2013; 40 in 2014; 45 in 2015; and 34 in 2016. Even though there is no clear trend regarding the number of femicides, as of 2011 the rate has remained under 0.50: it was 0.37 in 2016, that is, 0.37 out of every 100,000 women in Chile are victims of femicide. It is worth recalling that Chilean legislation only considers intimate cases of femicide. In turn, the number and rate of attempted femicides increased in the years for which data is available: 76 cases in 2013; 103 cases in 2014; 112 cases in 2015; and 129 cases in 2016³. Thus, violence against women is not receding, in spite of multiple efforts by the State in the last few years. According to preliminary data⁴ on femicides perpetrated in 2017, the number was 43; an increase over 2016.

VIOLENCE AGAINST GIRLS AND ADOLESCENTS

The rate of reports for domestic violence against boys, girls and adolescents in 2015 amounts to 181.7 out of every 100,000 boys and girls in the country. The highest number of reports affects girls, mostly between 14 and 17 years old, with a rate of 633.3 out of every 100,000 individuals. For this age group, in almost 3 out of every 4 reports the victims are girls. As we can see in graph 21, the highest rates of reports concern women in every age group, with an average of 231.4 out of every 100,000 boys, girls and adolescents⁵.

Sexual violence: The national rate in 2015 ascends to 84.5 reports out of every 100,000 boys, girls and adolescents. Nevertheless, this average conceals the fact that reports for sexual violence against

¹ CEDAW/C/CHL/CO/5-6, November 12th, 2012.

² CEDAW/C/CHL/7, November 4th, 2016.

³ National Statistics Institute (INE), 2017

⁴ <http://www.minmujeryeg.cl/wp-content/uploads/2015/11/Femicidios-diciembre3.pdf>

⁵ Observatorio Niñez y Adolescencia, Fourth Report, 2016, p. 52.

girls reach a rate of 145 out of every 100,000 boys, girls and adolescents; this represents a sharp decline compared to 2014 (205.1). The highest number of reports concerns girls between 14 and 17 years old, with a rate of 235.2 out of every 100,000 inhabitants, against a rate of 15.7 reports related to sexual violence against boys in the same age group.⁶

Likewise, the NHRI is concerned about violence against girls and boys in State child care. These are the results of an observation mission by the NHRI in 2017⁷⁸:

- 197 out of the 405 boys and girls interviewed reported different violations.
- 1 out of every 3 respondents reported neglect.
- 1 out every 5 respondents reported physical abuse.
- 1 out every 7 respondents reported psychological abuse.
- 1 out of every 15 respondents reported sexual abuse or exploitation.

The observation dealt with questions aimed at identifying and quantifying the punishments and disciplinary actions to which boys and girls are subjected to in SENAME centers (by the personnel). Out of the 381 valid cases in this item, 321 boys and girls claimed to have been subjected to some form of punishment. In the case of girls, the annual prevalence is of 85%. In other words, 8 out of every 10 boys and girls in SENAME protection centers reported having been subjected to punishments by the personnel within the last 12 months⁹.

With respect to psychological abuse, out of a total of 373 valid cases, 170 boys and girls reported having been victimized by the personnel from the center. This equals a prevalence of 45.6% within the last 12 months. The calculation of prevalence for the case of mild physical abuse was based on 371 valid cases. Out of that total, 45 individuals reported having been subjected to mild physical assault, which equals a prevalence of 12.2% within the last 12 months.

⁶ Observatorio Niñez y Adolescencia, Fourth Report, 2016, p.52

⁷ The NHRI observation mission was carried out between January and April 2017 and considered 83% (171) of the centers in the SENAME (National Service for Children) national network. 405 children were interviewed (8 to 17 years old) and a self-administered survey was presented to 1,076 workers from the Direct Administration Centers of Specialized Reparation (CREAD) and Sename Partner Organizations (OCAS).

⁸ The data are not compared between boys and girls, since the information evidenced that both are equally affected by punishments, except for the case of sexual abuse, which is specified in the corresponding item.

⁹ The following examples of more severe punishments—those involving deprivation of rights and/or physical or psychological violence—are noteworthy (percentages based on 401 cases from the total sample): a) not talking to them: 23.8%; withholding visits by family members: 15.0%; withholding food: 7.3%; moving them to a different center: 7.2%; locking them in a place they can't leave: 7.2%; applying "restraint" (such as immobilizing them in a way that makes it difficult to breathe): 12.3%; and leaving them in a room in order to restrain them: 3.4%.

In turn, 22 respondents reported having been subjected to serious physical abuse (such as kicking or cigarette burns). Those 22 cases reported equal a prevalence of 5.9% in a year.

On the other hand, out of a total of 401 boys and girls interviewed, 358 present valid data regarding sexual abuse. A total of 23 cases of sexual abuse related by the boys and girls themselves were identified. Such cases correspond to boys and girls who were victims of sexual abuse in their current or previous center of residence within the previous year, representing 6.8% of the total cases with valid data¹⁰.

Out of the total cases of sexual abuse identified, 79.7% were suffered by girls, while 20.3% of them were reported by boys. Most boys and girls who reported sexual abuse described having been touched in their private parts (55.3% of the cases), followed by cases of voyeurism (16.7%) and sexual advances (16%). Most boys and girls (52.4%) reported recurring abuse. In addition, younger boys and girls appear to be the main victims of such abuse. Thus, 66.1% of the boys and girls reported abuses that appear to have taken place or started before they turned 14.

Among the initiatives mentioned by the State in its report, the bill on the right of women to live free of violence stands out. The NHRI values this initiative, which is described in great detail by the State in its report. The NHRI is of the opinion that this bill should be perfected in technical terms, incorporating other kinds of violence, such as OB/GYN, symbolic and economic violence. It should also be accorded the necessary priority in order to become law. Likewise, it is imperative to allocate enough resources for its proper implementation, particularly in terms of training for judicial officials and assistance for victims of violence.

Finally, the State reports on a bill submitted to Congress in 2015 in order to criminalize street harassment. Nevertheless, the parliamentary process has been paralyzed since October 2016.

2. Involvement in Political and Public Life

In the period covered by the report (up to 2016), no significant changes occurred regarding the presence of women in leadership and decision-making positions. Less than one third (27.4%) of the

¹⁰ Most of the sexual abuse situations recorded took place in the current center of residence of the boy or girl (91.5%), and only 8.5% of them took place in a previous center.

people in such positions—that is, members of the executive and legislative branch or executive staff in public service and state-owned and private companies—were women in 2015¹¹.

The NHRI values the recent approval of Law 20.840, which includes a series of measures to encourage female involvement in politics, among other provisions. As an example, it incorporates a quota system, mandating that the total number of male or female congressional candidates by political party or pact cannot exceed 60% until the 2029 elections. In this regard, the latest November 2017 elections saw an increase in female representation in Congress: The current Senate, in office until March 2018, has 6 female members; a total of 15.8%. The new Congress will have 10 female lawmakers in the Senate, representing 23.2% of the total. In turn, the Chamber of Deputies currently in office has 19 female members. The number will increase to 35 in the next four-year period, which represents an improvement in female representation from 15.8% to 22.5%.

Along the same lines, the new Law on political parties mandates their internal deliberative bodies to be made up of a maximum of 60% of members from one sex, in an attempt to ensure more equality in internal representation.

The NHRI emphasizes that the percentages related to the Law on quotas only apply to the elections of MPs and senators, not to the equally significant elections of mayors and councilors, which should be considered as well. This becomes especially relevant considering the fact that, in the case of mayors, after the 2016 local elections only 11.9% of Chilean municipalities are led by women. This number is even slightly lower than the 12.5% seen in 2012; at the same time, 25.2% of women were elected as councilors in those elections¹². With this in mind, the NHRI **recommends** to make this law applicable to other elections.

¹¹ National Statistics Institute, 2015 National Employment Survey. In the executive branch, the percentage of women leading a ministry has fluctuated between 27.3% in 2012 and 34.8% in 2016. Even though the gap has narrowed in the years considered from 45.5% to 30.4% (Library of Congress, 1990-2016), the lack of inclusion of women in positions of power remains a matter of concern. In the business world, the figures are even more concerning: In 2016, only 12.8% of general management positions in big companies were occupied by women, while a scant 12.4% of board members in those companies were women (Fourth Longitudinal Survey of Enterprises (ELE-4), Gender Analysis of Enterprises, Ministry of Economy, 2017).

¹² Source: INE, according to data from the Electoral Court. Furthermore, according to an UNDP report (Mujeres y Elecciones Municipales 2016: Representación en Alcaldías, November 2016), there were no female mayoral candidates in 179 Chilean municipalities for the 2016 elections, which represents 52% of the total.

3. Human Trafficking

Chile has gradually become a country of origin, transit and destination of human trafficking affecting men, women, girls and boys for the specific purposes of sexual exploitation and forced labor¹³. Between the enactment of Law 20.507 in 2011, which criminalizes human trafficking and smuggling of migrants, and December 31st, 2016, 29 cases of human trafficking were prosecuted and 206 victims were identified, of which 142 correspond to trafficking of workers and 64 to victims of trafficking for the purpose of sexual exploitation. In terms of the type of trafficking, 20 of the investigations are related to sexual exploitation and 9 of them to workers. The investigations were completed in 25 of the cases and there were 12 guilty verdicts: 9 for sexual exploitation y 3 for trafficking of workers. The low number of sentences is quite remarkable, considering how serious the charge is. Out of all the victims, 42% (87) are women, of which 24 were workers (28%) and 63 were sexually exploited (72%). For the NHRI, the fact that 15 of the identified victims are minors and 12 of them are female is a serious concern¹⁴.

In regard to comprehensive care for female victims of trafficking, the NHRI is concerned about the fact that border public services do not apply the appropriate referrals and the access to healthcare is not properly addressed by the State, considering the need to guarantee access to physical and psychological health programs for victims—regardless of their cooperation in criminal proceedings.

Furthermore, the cases brought to justice demonstrate the need of highly specialized staff to guarantee proper comprehensive care for victims, in order to ensure a successful investigation. Financial resources should be guaranteed to give adequate protection and support to the people affected (such as translation services)¹⁵, which includes facilitating their involvement in legal proceedings to provide information, if they so choose; nevertheless, proper measures should be put in place in order to avoid revictimization. If the victim chooses to stay in Chile, the State should facilitate family reunification.

The NHRI recommends the State to reinforce awareness campaigns, since one of the main problems in Chile is that people lack information or tend to downplay the existence of this crime. There is also a need to strengthen international cooperation with the countries of origin of human trafficking and organized civil society.

¹³ NHRI Annual Report 2015, p. 364.

¹⁴ All the information included is from the Mesa Intersectorial sobre Trata de Personas, Datos 2011-2016.

¹⁵ NHRI Annual Report 2013, p. 158.

4. Employment and Social Security¹⁶

Employment

The State, through its report to the CEDAW, notes a steady increase in labor market participation of women in the last few years. However, there are differences between men and women in terms of occupation. Most employers (77%) and freelance workers (59.3%) are men; while 97% of domestic workers and 70% of people working unpaid with relatives are women. Furthermore, a look at jobs created in the last 5 years reveals that 60.9% of them are unstable (part of the informal economy).

Moreover, gender discrimination plays a significant role in employment in Chile, being directly harmful to women. Wage gaps¹⁷ exist regardless of the specific economic activity performed by women, the job category in question or the positions they have access to. In 2016, the average and median income in the case of men was respectively \$601,311 and \$399,790. In the case of women, it was respectively \$410,486 and \$300,000. This translates into gender gaps of -31.7% in terms of average income in 2016 (compared to -31.6% in 2015), and -25% in terms of median income (compared to -24.8% in 2015), in both cases to the detriment of women. The situation is particularly paradoxical as the educational level of women increases; women with postgraduate degrees present the biggest gap.

In regard to Law 20.348, referenced by the State, such legal norm is not in line with ILO Convention 100, since the internal rule mandates the employer to comply with the principle of wage equality between men and women performing the same work, which differs from the aforementioned Convention; it stipulates that States must adopt measures in order to guarantee that every worker receives equal payment, regardless of sex, for work of equal value.

Under current legislation, female workers affected have to lodge a complaint directly with their employer before starting proceedings over infringement of labor rights. This only increases the justified fear of retaliation by employers against female workers.

¹⁶ For further information, see the Annual Human Rights Report 2017
<https://www.indh.cl/destacados/informe-anual/>

¹⁷ The concept of wage inequality or wage gaps between women and men refers to the difference in payment to women and men for their work. Its particularity lies in the fact that it's not a fair difference arising from different contributions in terms of the value of their work, and that it can only be explained according to the sex of the worker.

The NHRI is concerned about the inefficiency of such a law, which is evidenced by the extremely low number of reports by women¹⁸.

In order to remedy this situation, the State informs the CEDAW about a bill currently being processed in Congress. It is a parliamentary initiative. The executive branch has not attempted to prioritize the parliamentary process, so the date of implementation is uncertain. Since 2010, three other parliamentary initiatives have been introduced in order to amend the law, without major progress in Congress.

Social Welfare

Inequalities in the labor market end up affecting the standard of living of women when their working life comes to an end. Their social security contributions are lower. This is a result of labor market disparities (lower involvement, employment and salaries) and other factors associated to the distribution of domestic roles and work in their adult life. Women have longer periods without contributions—primarily because of unpaid care work—and unstable jobs, a lower retirement age compared to men, etc. All these factors, coupled with the mortality tables use to calculate pensions, which take into account the higher life expectancy of women, increase gender differences¹⁹. A large proportion of women choose to delay retirement by 7 years on average²⁰.

Thus, women are at a disadvantage with respect to men in terms of the retirement pensions they receive: 74.2% of them earn pensions below the poverty line, versus 45.6% in the case of men. What's more, 84.8% of them earn less than minimum wage²¹, compared to 61.2% in the case of men. The NHRI recommends the State, as part of the pension reform process, to introduce technical and financial elements in order to address discriminatory situations.

¹⁸ According to statistics from the Labor Office, between 2011 and 2014 only 21 reports were made for infringement of Article 62 bis of the Labor Code related to wage discrimination, involving a total of 48 female workers (one of them was a collective complaint, sponsored by a labor union). Evidence was found only for 11 of those 21 reports of violation of the right asserted. All of them were resolved through mediation, which was successful only in 3 of the cases. Only 3 of the remainder were brought before labor courts. According to the Labor Office itself, "even though the main goal of the law that was enacted in Chile is to reduce the wage gap between men and women caused by employment discrimination, it appears to be a weak instrument in comparison to international legislation". Labor Office, *La desigualdad salarial entre hombres y mujeres: alcances y limitaciones de la Ley N° 20.348 para avanzar en justicia de género*, July 2015.

¹⁹ Final Report, Presidential Advisory Commission on the Pension System, 2015.

²⁰ A comprehensive analysis of the subject can be found in the Annual Human Rights Report 2017. <https://www.indh.cl/destacados/informe-anual/>

²¹ In July 2016, the minimum wage was \$257,500, equivalent to US\$ 391.6.

5. Access to Healthcare²²

In the private health system, risk tables are applied to assess enrollees or potential enrollees. Those risk tables include factors such as age analysis, preexisting conditions and women of childbearing age, among others. The factors referenced mainly affect women. Even though the use of risk tables as an instrument to automatically adjust the price of healthcare plans was considered unconstitutional by the Constitutional Court in 2010²³, which mandated to repeal the rule authorizing it, such a practice is still applied by insurance companies and it mainly affects women of childbearing age and elderly people. This situation is produced by a lack of regulation; the executive branch has not introduced a rule to close the loophole generated by the Constitutional Court decision. The NHRI calls for this matter to be addressed.

In ISAPRES²⁴, women must pay more than men for the same benefits. Compared to the prices paid by men for their health insurance plans, women of childbearing age can even pay 2.5 times more. This forces them to settle for cheaper programs and consequently, they get lower coverage.

In the public health system, according to a report by the Undersecretariat for Healthcare Networks²⁵ on waiting lists for GES²⁶ and non-GES pathologies, as of January 31st, 2017 women are significantly affected by disadvantages in terms of access to explicit healthcare guarantees. As of that date, 11,464 guarantees of timeliness were delayed (that is, people in waiting lists beyond legal timeframes), with an average waiting period of 95.63 days. A breakdown by sex of such a delay of guarantees at the national level shows that 66.3% (7,596) of the individuals in that situation are women.

In addition, upon an analysis regarding the 29 public health services throughout the country, in 24 of them the number of women in waiting lists exceeds the number of men.

²² The Chilean public health system serves 13,468,265 people; 52.7% of them are women. The private health system serves a population of 3,308,927; 45.8% of them are women. In the case of private healthcare, only 35.3% out of that 45.8% are direct contributors, while the remaining 58.7% of those women are dependents of their husbands or spouses.

²³ Constitutional Court Ruling 1710-10-INC from August 9th, 2010.

²⁴ Health insurance companies

²⁵ Undersecretariat for Healthcare Networks, ORD. 1041, March 24th, 2017, for the Special Joint Budget Committee (non-GES waiting lists and delayed guarantees of timeliness).

²⁶ Explicit Healthcare Guarantees (GES) are guarantees defined in terms of access, quality, timeliness and financial protection regarding the 80 health conditions defined in the Law 19.966 of the Ministry of Health.

Furthermore, if we take into account the most delayed pathologies, 3 out of the top 6 only affect women: comprehensive dental care during pregnancy, cervical cancer and breast cancer.

Waiting lists for analgesia during labor present a paradoxical situation²⁷, which is taken into account in the report by the Undersecretariat for Healthcare Networks. If the woman did not receive analgesia during labor, placing her on a waiting list would make no sense. Thus a breach of the healthcare guarantees granted by law is concealed.

Regarding non-GES pathologies, as of January 2017 the waiting list for specialty appointments includes 1,602,150 people; in the case of surgeries, there are a total of 268,570 people waiting. In the case of people on non-GES waiting lists, most of them were women (62%).

OB/GYN Violence

Violence against women within the context of healthcare manifests itself in many ways, particularly when it comes to care during pregnancy, labor and puerperium²⁸.

A study by the University of Chile School of Obstetrics²⁹ reports on care during labor in public health sector maternities:

- 90.8% of the women had a medically induced labor (use of oxytocin).
- 54.6% of them received continuous monitoring during labor.
- 59.1% of the women had their membranes artificially ruptured.
- 81.5% of the women did not receive oral feeding (fluids or light regimen)
- 95.7% of the women received parenteral hydration during labor.
- 69.6% of the women had the company of a relative during labor and 86% of them had company during the expulsive stage.
- 79.7% of the women were in lithotomy position (facing up) during dilation and the expulsive stage.

²⁷ One of the GES guarantees.

²⁸ Further information on obstetric violence and human rights can be found in the NHRI Annual Report 2016, starting from p. 231. <http://bibliotecadigital.indh.cl/handle/123456789/998>

²⁹ Assessment of the implementation of the model of integrated and humanised midwifery health service in Chile. Descriptive and cross-sectional study with a mixed approach (qualitative-quantitative) carried out in 9 maternities (in the public health system) throughout the country, between May and December 2013; with a sample size of 1,882 women, applying the following inclusion criteria: primiparous or multiparous women, dilated to 2 or 3 centimeters, in physiologic labor.

During the focus groups for the study, the women claimed to have felt ignored; that they didn't receive information and their opinions were not considered in the decision-making process regarding procedures and interventions. In the same vein, Chile has one of the highest rates of C-sections among Latin American and OECD countries³⁰.

6. Indigenous Women

The vulnerabilities that Chilean women are exposed to are exacerbated in the case of indigenous women. One of the biggest difficulties in achieving a comprehensive perspective of the situation of indigenous women in Chile is the lack of statistics generated by the State in order to account for the reality of their lives.

The NHRI is concerned about the fact that indigenous women are more severely affected by poverty than the rest of the female population. According to the latest statistics available, 29.8% of the women who claim to belong to an indigenous people suffer multidimensional poverty; ten percent higher than the corresponding figure for non-indigenous women (19.4%)³¹.

A study by Fundación Instituto Indígena (2014)³² points out that, in addition to having poor access to formal education, healthcare services and the labor market, the domain of political decision-making is virtually off-limits for Mapuche women. In terms of income, Mapuche women earn almost a third less than non-Mapuche women on average.

The 2015 CASEN survey³³ provides further information on discrimination against women, which is aggravated when they have indigenous ancestry. While the unemployment rate of non-indigenous women reaches 8.2%, it is of 10% for indigenous women. Moreover, the State reports the existence of rural education and literacy programs, but their actual results are not specified.

7. Women in Prison

³⁰ In 2012, the rates of C-sections were of 39% in the public sector and 72% in the private sector. 2012 is the latest year for which official private sector figures on reported C-sections are available.

³¹ CASEN 2015.

³² "Mujeres mapuche: Tierras, agua", Fundación Instituto Indígena, 2014,

³³ National Socioeconomic Survey carried out by the Ministry of Social Development.

As of December 31st, 2016, 3,319 women were in prison in Chile. Most of them are serving terms for drug-related offenses. Imprisonment of women creates serious problems, since most of them are breadwinners and their children are left defenseless. It is therefore important to evaluate alternatives to the imprisonment of these women.

When it comes to access to healthcare, even though the State reports the existence of a Health Department of the Chilean Gendarmerie, women serving prison terms face significant shortcomings in this regard. The NHRI conducted a study on prison conditions in Chile, which reveals a number of situations where the right to healthcare of women serving prison terms is not effectively guaranteed by the State. Some of the shortcomings are a shortage of professionals (especially gynecologists), long waits for referral to public healthcare services, lack of healthcare personnel overnight and during weekends, and deficient or non-existent infrastructure (particularly when it comes to gynecological care).