



CHILE

COMMENTS AND CONTRIBUTIONS FROM CIVIL SOCIETY FOR THE LIST OF ISSUES AND QUESTIONS RELATED TO THE FIFTH AND SIXTH PERIODIC REPORT OF THE STATE OF CHILE TO THE COMMITTEE ON THE ELIMINATIONS OF DISCRIMINATION AGAINST WOMEN (30th of January of 2012)

CORPORACIÓN HUMANAS – CENTRO REGIONAL DE DERECHOS HUMANOS Y JUSTICIA DE GÉNERO

CENTRO DE ESTUDIOS PARA EL DESARROLLO DE LA MUJER (CEDEM)

RED CHILENA CONTRA LA VIOLENCIA DOMÉSTICA Y SEXUAL

DOMOS

OBSERVATORIO DE GÉNERO Y EQUIDAD

CENTRO DE ESTUDIOS DE LA MUJER (CEM)

OBSERVATORIO CIUDADANO

General information:

-The Committee on the Elimination of Discrimination against Women, in paragraph 26th of the resolution on Concluding comments to the fourth periodic review, encouraged the State to expand its consultations with non-governmental organizations in the implementation of the Convention and the concluding comments, and in the preparation of the next periodic report.

We ask the Committee to ask the State if he complied with this comment, and if so, identify when, how and who consulted.

-In paragraph 30th of the Concluding comments mentioned above, the Committee requests the State the wide dissemination of the concluding comments among the population, public administration officials, politicians, parliamentarians and women's and human rights organizations.

We ask the Committee to require information on the State of the mechanisms or activities undertaken for the purpose of carrying out the aforementioned application.

-The State in its periodic report mentions among programmes and anti-discriminatory mechanisms of the State of Chile, the Equal Opportunities Plan 2000-2010 (paragraph 15) and the Council of Ministers for Equal Opportunities (paragraph 16). Asks the CEDAW Committee to ask the State if there is a Plan for Equal Opportunities among women and men 2011-2020, and if it has been released to organizations of civil society and citizens, and require a report on how many times the Council of Ministers has met since October of the year 2010, and what have been their main efforts.

Equality and non-discrimination (articles 1, 2, 3, 4 and 5)

- The CEDAW Committee, at its 36th session (2006), through its Concluding observations, urged the State of Chile to ratify the Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women (paragraph 25).

In the Fifth and Sixth Combined periodic report of the Chilean State, the Committee was informed that the bill of law on the CEDAW Optional Protocol entered the National Congress by Presidential Message with date of 06 March 2001, being approved by the Chamber of Deputies in August 2001, and replenished by the Executive in 2004 ordinary legislature, which is currently at second constitutional procedure.

In view to the State did not submit information other than accorded in the fourth periodic report before the CEDAW Committee, we urge this Committee require the State of Chile information regarding the actions or measures taken since 2006 to date, in order to speed the ratification of the referred international instrument.

Violence against women

-Even if violence is considered by Governments and States a problem of public character and fundamental importance, this is not evident in key issues such as total budgets and their expenditure on the different dimensions of intervention on violence against women, and the absence of a National Prevention Plan for Intra Family Violence –IFV- (domestic violence) that allows to perform a comprehensive monitoring of the actions taken by the various agents that come together in the implementation of law 20.066 on Intra Family Violence.

-A change of approach that has taken the IFV treatment in Chile with the arrival of Sebastian Piñera for President of the Republic can be stated from the review by organizations of civil society to the draft of the National Plan for the prevention of intra family violence. While there are agreements with regard to the basic needs of women and the relevant diagnoses, there is no accordance with the approach used to treat the problem. SERNAM has today a focus on overcoming poverty and strengthening the family, while the international agreement on Women Human Rights indicates that this issue should in particular be treated from an approach of rights and empowerment.

-Persists the fragile articulation between all State agents that must intervene by rule of law, Ministerial commitments and/or Programs for Management Improvement. Topic that impacts directly on the situation of vulnerability which finds woman victim of violence and the third parties linked to it (children, dependents, etc.).

-The judicial system has shown greater sensitivity to the problem, however his initial response has gradually weakened, decreasing the control and protection of the family and criminal system in cases of violence against women. Data are contradictory, they show a growing judicial prosecution in IFV cases, but with judicial outputs that do not give a quick and satisfactory response to women's lives.

-SERNAM assuming a protective approach towards family does not incorporate in its programs, or indications of law, a public proposal to violence young women face in their romantic relationships. This contradicts international treaties and conventions signed by the Chilean State to guarantee a life free of violence for women of all ages.

-A situation which is alarming and which has failed to be adequately addressed by the State is related with police sexual violence used within the framework of social manifestations experienced during the year 2011 in our country. The State has not given any official information thereon, however the report of the National Institute of Human Rights "Status of Human Rights in Chile", picked up the allegations made by civil society and the victims of these attacks. The report alleged unnecessary police violence, sexual touches to women participating in the demonstrations, forced nudity, blows to the genitals, sexual abuse, etc. The victims of this aggression are girls and women manifesting and demanding respect for their rights, particularly proving again battered by police officers.

-Other vacuum shown in law says relationship to working women lack of protection in sexual safety matters. Sexual harassment is a form of discrimination against women, the regulation should be considered a broad definition of harassment that takes into account the various labour relations, the different types of work and should also be extended to other areas such as the educational. The current law on sexual harassment is limited to punish this type of discrimination and abuse, exclusively within the framework of a relationship of subordination and dependency, leaving aside the relationship employer/a-client - user. Although criminal law might be applicable in such situations, it does not consider sexual security as part of an employer's obligation to safeguard its employee's security.

Prostitution and trafficking (article 6)

- The CEDAW Committee, at its 36th session (2006), expressed his concern about *“the insufficiency of information on the causes and extent of trafficking in Chile as an origin, transit and destination country, the lack of national legislation and the absence of adequate measures to combat the phenomena of trafficking and exploitation of prostitution”* and urged the State of Chile *“to adopt necessary legislation and develop a comprehensive anti-trafficking strategy and plan of action to combat this phenomenon. Such a strategy should include qualitative and quantitative research and the implementation of preventive and protective programmes, including measures for the rehabilitation and social integration of women and girls who are victims of sexual exploitation and trafficking as well as the prosecution of traffickers.”*

For its part, in the Concluding observations of the Committee on the Protection of the Rights of All Migrant Workers and Members of their Families corresponding to the initial report of the State of Chile, in the 15th meeting of the Committee, in September 2011, it was noted that:

“46. While welcoming the adoption of Law No. 20.507 of 1 April 2011 on trafficking in persons and other measures taken to combat trafficking, the Committee notes that there are still cases of human trafficking in the State party.

47. The Committee recommends that the State:

- (a) Systematically collect disaggregated data on trafficking in persons;*
- (b) Ensure the enforcement of the law on trafficking in persons, including by allocating sufficient financial and human resources, and establishing a monitoring mechanism for the implementation of the law;*
- (c) Continue its campaigns for the prevention of trafficking in persons;*
- (d) Continue to provide systematic training for the police, law enforcement officers, judges, prosecutors, labour inspectors, teachers, health professionals and officials of Chilean embassies and consulates;*
- (e) Ensure that traffickers are tried and appropriately punished;*
- (f) Continue to provide all victims of trafficking with protection, as well as legal and medical assistance, including temporary residence permits, protection shelters and development of projects to help victims of trafficking rebuild their lives.”*

We believe that for the effectiveness of the before mentioned law, it is important that the State values the importance of including in a balanced way in the regulation and implementation of this law, tools to prosecute crime and protect the victims, including possibilities of regularizing their migration status in reason of being victims of these crimes not subjected to the successful prosecution of the same or be expelled from the country as at present.

According to the periodic report of the State, since July 2008 exists a Cross-sectoral integration table on Trafficking¹ with a cross-ministerial and cross-sectoral composition, responsible for coordinating actions and programmes in the field of prevention, suppression and punishment of trafficking, especially women and children.

In response to the above, we ask the Committee to require the State of Chile information on measures and actions carried out for compliance with the recommendations of the CEDAW and Migrant Workers Committees, such as also, on the number of times the Inter-sectoral table on Human Trafficking for Sexual Exploitation has met so far, and the actions and specific programmes adopted.

Political participation and participation in public life (article 7 and 8)

- In the Concluding comments of the CEDAW Committee to the fourth periodic report of Chile, the State was congratulated for the appointment of a cabinet formed by 50 per cent of women, the achievement of 48 per cent of women exercising the leadership of State departments and 50 per cent of women in the governorates. However, to date, the participation of women in public office has decreased significantly.

In this regard, requests the CEDAW Committee ask the State of Chile the percentage of women that there are currently in the cabinet, heads of State departments and governorates.

-The Committee, moreover, expressed in the Concluding comments of the last periodic report, its concern at the slow progress in the introduction of legal reforms in the field of women's political participation, in particular, by the draft law on quota submitted in 1997, aimed at promoting the right for women to participate in national public life. It also urged the State to intensify its efforts to reform the binominal system and adopt special temporary measures aimed at accelerating equality “de facto” among women and men to increase the participation of the first in political life.

It requests the Committee ask the State of Chile why to date still does not exist a legal reform that promotes women's political participation; what efforts have been made to modify the binominal system which is unfavourable for women's political participation; and if it has taken temporary special measures to increase the political participation of women, and what.

¹ Fifth and Sixth combined periodic report of the measures taken to give effect to the requirements of the Convention on the Elimination of all forms of Discrimination against Women. Paragraph 51

- In the periodic report of the State of Chile is reported that "there are currently 62 women officials in Chilean Foreign Service, representing 13, 9% of the men staff" reaching 388.

In this regard, it would be useful having information concerning the countries in which these women are post, and their positions.

Nationality (article 9)

- There is no reference in the periodic report of the State to article 9 of the CEDAW. Although it is stated as a subtitle, along with articles 7 and 8, no content is expressed in connections with it.

The Concluding observations of the Committee of Protection of the Rights of All Migrant Workers and their Families, made in the initial report to the State of Chile, at the 15th meeting of the Committee in September 2011 regarding the nationality, stated:

"32. The Committee notes that children of parents in an irregular situation are recorded in the official register as children of foreign nationals in transit and can opt for Chilean nationality within a period of one year immediately following their twenty-first birthday. However, the Committee is concerned about cases of children of parents in an irregular situation who can find themselves on the Chilean territory without a nationality.

33. The Committee encourages the State party to grant nationality to children who are born in Chile and whose parents are in an irregular situation, whenever parents are unable to transfer their nationality to the children. The Committee also encourages the State party to accede to the 1954 Convention relating to the Status of Stateless Persons and the 1961 Convention on the Reduction of Statelessness."

The statelessness situation of children of parents in an irregular situation is completely relevant from a gender perspective, as soon as Chile is characterized as a recipient country of migrants, mainly from the Andean Community and MERCOSUR, in which the foreign population of women exceeds the manly, stating a feminization of the migration.

-On the other hand, in terms of temporary residence, we are concerned about the arbitrary distinction that takes place between the foreign spouses of Chilean women and the foreign spouses of Chilean men. In this regard, we point out that decree law No. 1094, which establishes rules on foreigners in Chile, contains the following rule:

"Article 32: The foreign women, married to Chilean, which granted Chilean passport or incorporated in the passport of the spouse, entering Chile in accordance with the stipulations of the Consular regulations, shall be considered as a temporary resident for the purposes of this decree law."

- There is no similar rule in the decree law regulating the effects of marriage in respect of temporary residence for foreign spouses of Chilean women.

Education (Article 10)

In the last periodic report, the CEDAW Committee urged the State of Chile, on the one hand, to strengthen measures to prevent unwanted pregnancy among adolescents, and on the other hand, to take appropriate actions for the educational continuity of young mothers as monitoring the effectiveness of these measures and to report the results achieved in its next report.

In this regard, the report of the State gives an account of measures taken to ensure educational continuity of young mothers, including the Network for the Protection of Mothers, Pregnant women and Parents of the school system (paragraph 66), and nursery implementation in educational establishments (paragraph 99), however, is not explained what is or what functions fulfills the Network for the Protection of Mothers, Pregnant women and Parents of the school system, nor realize how many nursery have been installed in educational establishments, as neither indicates the number of young mothers who have been benefited. Finally, the concrete measures which have been taken to prevent unwanted teenage pregnancies are not indicated.

Employment (article 11)

- In its report of concluding comments to the fourth periodic report of the State of Chile, the CEDAW Committee expressed its concern about the significant wage gap between women and man.

While it is true that the State in its periodic report accounts the adoption of Law No. 20.348, which establishes equality of remuneration between men and women performing the same work, what constitutes a step forward, it is also true that since the enactment of the aforementioned law the authorities have failed to account for the real impact that it has had. According to the information handled by civil society, the wage gap between men and women has not declined substantially. There is no record that concrete measures have been taken to provide effectiveness to the aforementioned regulations. It is essential to require on the one hand, statistical information detailed about the impact of the law, and by another, information on the concrete measures which have been taken to provide effectiveness to the normative, for example, those referring to overseeing.

-The Committee, in its previous examination, furthermore, requested the State of Chile to develop a comprehensive system to monitor the contracts of temporary and seasonal women workers and take measures to eliminate practices that disadvantage women in the social security system (paragraph 12).

The State in its fifth and sixth consolidated periodic report accounts the publication of law n°20.123 which regulates sub-contract labor system, the functioning of Transient Services Companies and Work Contract of Transient Services, what constitutes an improvement in the situation of temporary women workers, however, it doesn't give an account on the State's creation of a general supervision or control system.

-A matter of concern relates to the lack of regulation for women workers in private houses, which are subject to serious discrimination and which see their human rights constantly violated, since they have, for example, a more extensive workday compared to other workers. It is, in that regard, of the utmost importance the State of Chile's ratification of the Convention 189 from the OIT concerning domestic workers. The Chamber of Deputies, by means of Agreement No. 473 of December 2011, decided to request the President of the Republic to begin the process of ratification by Parliament of the referred Convention, so it is important to ask the State to report if they have made efforts to begin the ratification process.

Health (article 12)

- In the concluding comments to the State of Chile, on the last periodic report, the CEDAW Committee expressed concern over the inadequate recognition and protection of reproductive health rights of women in Chile, emphasizing that it remains a concern that abortion under any circumstances constitutes a punishable offence according to Chilean law. In this regard, it recommends that the State revise laws relating to abortion with aims to remove punitive regulations for women who undergo abortions; provide access to quality services to treat the complications of unsafe abortions; and reduce maternal mortality rates.

Today, abortion is still being penalized in all its forms in Chile. The State has not installed a democratic debate on it, despite repeated recommendations that have been made by treaty supervisory bodies². Even in its periodic report, it openly acknowledges that it is willing to violate the international standards and recommendations, noting in paragraph 94: "*(...) in relationship with recommendations 19 and 20, it is stated that our legal system protects the life that is by birth, being expressly prohibited abortion in all its forms*".

-Also, the Committee urged the State of Chile to take concrete measures to improve reproductive health services, in particular asking him to make more widely available and affordable all types of safe contraceptives and family planning methods, without any restriction.

Civil society organizations have detected that health services, in the practice, do not deliver contraceptive methods, in particular the PAE or morning after pill, without restrictions. Despite the passing of the 20.418 law on Information, Guidance and Assistance on Fertility Regulation, in the practice there are numerous obstacles to a free and timely drug access. In this regard, it is important requiring the state information on the measures it has taken to ensure free and timely distribution, throughout the country, of contraceptive methods, in particular those of emergency contraception.

² CEDAW Committee, paragraph 19 of the sub-paragraph of principal areas of concern and recommendations for Chile, CEDAW/C/CHI/CO/4; Committee on Economic, Social and Cultural Rights: Concluding Observations of the Committee, E/C.12/1/Add.105, 1 December 2004, paragraph 52; Committee Against Torture, Conclusions and Recommendations for Chile, CAT/C/CR/32/5, 14 June 2004, paragraph of sub-paragraph Reasons of Concern; among others.

-It also concerns the modification of the Regulation of the Examination for the Detection of Human Immunodeficiency Virus, under the current Administration (Decree No. 45 of 2011 of the Ministry of Health, modifies Decree No. 182 of 2005 Regulation of the Examination for the Detection of Human Immunodeficiency Virus, published in the official journal on November 19, 2011), stipulating compulsory examination of pregnant women, sexual partners inquiry of people diagnosed with HIV, the replacement of previous counseling for information delivery, and the elimination of counseling during the exam derived from occupational exposure. The establishment of exceptions to a fundamental right such as the voluntary nature of the HIV test involves a severe setback, and is entirely unacceptable, insofar as it constitutes the denial of a fundamental right only to certain people, pregnant women, being a new manifestation of gender discrimination. Compel pregnant women to conduct the exam, regardless of their will, imposes conditions and barriers to health care that can lead some women to stay away from health centers. These pregnant women will not receive medical care of the most importance during pregnancy and delivery, product of coercion exercised by health care providers.

Economic empowerment (article 13)

As regards poverty reduction strategies referred specifically to women, ask the CEDAW Committee request the State information on impacts and continuity of the National Program of Labor Enablement for Women of Low Resources and the program "Chile Solidarity System: Integral Social Protection for the Poorest 225,000 families of the country", both programs which were highlighted by the CEDAW Committee in paragraph 7 of the concluding observations of the previous periodic report.

Rural and indigenous women (article 14)

- The main problems facing agricultural wage-earning women (rural and urban) derive from the recruitment contracts forms: contracts for short duration jobs, contractors that make women employment situation more precarious, low-wage, payment per item (calculated on the basis of production according to type of work and production area) that lead to serious physical and mental health problems in women, intensive working day without rest breaks and repetitive movements, deficient basic sanitation condition and workplace safety, lack of institutions to support child care, among others.

-Other relevant issues are the lack of workplace supervision and the low level of diffusion on matters relating labor rights and health, in workspaces.

-Wage-earning women are partially included in programs for overcoming poverty, as "Chile Solidarity", but there are no public policies aimed to attend labor market institutions or wage policies (facing a process of wage-earning poverty).

-The main problems of rural women remain the lack of access to assets for their productive activities (less access to land, to water exploitation rights and working capital), inequality in the access to local and national markets, low consideration of items such as food sovereignty.

Currently SERNAM left the coordination of the National Rural Women table, however, in some regions it continues to operate by pressure and initiative of organizations. There

is no consideration to rural women in SERNAM or other ministries, with the exception of the Ministry of Agriculture, mainly INDAP through its line of support and promotion instruments aimed at small men and women producers.

- In the case of indigenous men and women, there is a clear inequality before the law expressed in the application of the anti-terrorism law, which criminalizes the cause and Mapuche demand. In addition, it must investigate how compliance is being given to the application of Convention 169.

- In regard to the report issued by Chile in the case of indigenous women, there is only a general reference to the institutional mechanisms aimed to promote equal opportunities for indigenous women (Inter-institutional table of Gender and Ethnicity, Unity of Women and Gender of the CONADI). However it does not provide information with regard to women's access to the Fund for Land and Water, to the Program of Productive Promotion of the Indigenous Development Fund and the fulfillment's degree of the goals proposed in the PMG of gender of the CONADI. No reports are given on the results of the study of baseline's characterization of the situation of indigenous women.

- With respect to rural women in general the report of the State virtually does not provide account information on the actual situation and gaps in the field of labor, education and social welfare, among others. It is not reported, nor given continuity to previous statistics relating to credits, domain title regularization of irregular property, access to irrigation and forestry programs, among other. Generally in the report issued by Chile there is scant reference to rural women, even when on the international agenda there is concern about the conditions of inequality that affects rural women.

Equality before the law (article 15)

- In this regard, the periodic report of the State, only informs on the friendly settlement agreement for Sonia Arce and the Bill amending the Civil Code and other laws relating to marital society.

Recommendation number 8 of the concluding observations of the CEDAW Committee on the fourth periodic report in 2006, notes that one of the main areas of concern is the slow progress in the introduction of legal reforms referred to establish a new patrimonial regime that grants husband and wife equal rights and obligations, pending since 1995.

Pursuant that to date there is still no law to amend the discriminatory regime of marital society, is requested to the CEDAW Committee ask the State of Chile what measures it has taken in order to speed up the processing of the Bill which seeks to amend the conjugal society, still being processed.

It is pertinent to remind the Committee that the draft law referred, in addition, seeks to amend article 349 of the Commercial Code, still in force, in virtue of which provides

that married women which do not have a complete property division, requires authorization from the husband to celebrate a collective society³.

Marriage and family relations (article 16)

- Paragraph 21 and 22 of the concluding observations to the fourth periodic report of Chile by the CEDAW Committee, manifest concern since civil marriage law of the year 2004 increases the minimum age for marriage, both for boys such as girls, to the age of 16, and urges the State to continue reviewing its legislation in order to set the age at 18 years, and thus adapt its internal rules to the Convention on the Rights of the Child, to paragraph 2 of article 16 of the CEDAW and to the General Recommendation 21 on Equality in Marriage and Family Relations, of the same Committee.

The periodic report of the State points out that minors under 18 and over 16 years of age to enter into marriage, require the authorization of the relative who by law is called to do it, and they add that for any case, the number of marriage performed by couples under 20 is low.

Pursuant to which the State made no reference to concrete actions to review their legislation, and to that articles 106, 107 and 114 of the Civil Code contravene international obligations freely contracted by the State of Chile, asks the CEDAW Committee ask what measures the State has taken to study and reform the above-mentioned rules.

³ Article 349 of the Commercial Code states that: "May enter into contract of society any person who has capacity to be bound.

The minor adult and married women which do not have a complete property division need special authorization to hold a collective society.

The authorization of the minor shall be conferred by the ordinary courts and of the woman married by her husband".