



**ALTERNATIVE REPORT SUBMITTED TO THE UN COMMITTEE ON THE  
ECONOMIC, SOCIAL AND CULTURAL RIGHTS FOR THE  
CONSIDERATION OF THE FOURTH REPORT OF THE REPUBLIC OF  
CHILE DURING THE 55<sup>TH</sup> SESSION  
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## General Comments

1. Corporación Humanas has become the coordinating institution for the elaboration of the present report, which presents the opinion of the participating organizations about the main problems that Chile confronts in regards to Human Rights and the International Covenant on Economic, Social and Cultural Rights, and about the recommendations to further the fulfillment of them.

2. The organizations that have been involved in the preparation the present report are: Corporación Humanas - Centro Regional de Derechos Humanos y Justicia de Género; Agrupación de Profesionales Indígenas Wuñelfe; Agrupación Lésbica Rompiendo El Silencio; Centro de Derechos Humanos Universidad Diego Portales; Centro de Estudios de la Mujer – CEM; Corporación Circulo Emancipador de Mujeres y Niñas con Discapacidad de Chile-CIMUNIDIS; Coordinadora Autónoma contra la Violencia; Corporación Chilena de Prevención del SIDA – ACCIONGAY; Corporación Opción; Fundación 1367 Comisión de Observadores de DDHH Casa Memoria José Domingo Cañas; Fundación Grupo Down 21 Chile; Fundación Iguales; Fundación Instituto de la Mujer; Fundación Observatorio de Género y Equidad; Movimiento por la Diversidad Sexual– MUMS; Observatorio de Derechos Humanos y Legislación. The information sheets and contact information for these organizations are attached to the end of this report.

## Article 1: Right to freely dispose of natural wealth and resources

3. The constitutional recognition to indigenous peoples was a commitment of President Michelle Bachelet, but its congressional discussion is at a standstill since April 2009 in the Senate and it currently awaits the debate about constitutional reform to be considered. This remains an outstanding debt of the current administration.

4. Similarly, it is necessary to review the implementation and the process of consultation and free, prior and informed consent of the peoples (FPIC). Regardless of the amendments and improvements made, there are important questions to tackle before reaching the international standard established by international law.

5. The so called “regulated administrative acts”- those acts that prevent the discretionary participation of the competent authority, such as mining licenses or water rights – do not require the consultation and free, prior and informed consent of the peoples in accordance to Supreme Decree N°40 of the Ministry of Ministry of the Environment, that regulates the consultation of indigenous peoples in the environmental impact assessment processes. This constitutes an open contradiction to what was indicated by former United Nations Special Rapporteur on the Rights of Indigenous Peoples, James Anaya and the jurisprudence regarding ILO Convention 169. These concessions of Natural resources are “likely to affect directly” the involved peoples, therefore they should take part in a prior consultation.

6. Moreover, Supreme Decrees N° 40 and N°66 of the Ministry of Social Development (that regulate the prior consulting process in matters not related to investments), do not consider the free, prior and informed consent of the peoples in cases of disposal of dangerous and toxic materials within indigenous territories (ancestral or entitled). Similarly, the prior consultation process contained in both decrees present significant and serious inconsistencies with the international standards.

7. Thus, the free, prior and informed consultation of Decree N°66 had a limited participation by representatives that not necessarily speak for their respective indigenous peoples. Furthermore, most of these participants abandoned the process during 2013 because of disagreement with the operating procedure.

8. The “consultation” process in the case of Decree N°40, did not have a broad and representative participation, and rejected all observations that accurately pointed out that the process itself was contrary to international standards. It dismissed 68% of the observations made by the indigenous peoples as “not related to the content” or “not relevant”, because they dealt with matters that the administrative authority had decided to exclude a priori - in contravention of ILO treaty 169 – as it was the case of the participation in the benefits of projects or the exclusion of geothermal energy concessions, as it was the matter in consultation.

#### **Recommendations:**

- a) **Design and implement an effective prior consultation mechanism in accordance to international standards, in collaboration with the institutions representatives of indigenous peoples.**
- b) **Include in the Constitution the recognition to indigenous peoples that considers a proper prior consultation.**
- c) **Implement institutional reforms, which have been consulted with the indigenous peoples, which allow effective political participation, especially of indigenous women.**

### **Article 2 Paragraph 2. Non-Discrimination**

#### **Anti-discrimination law:**

9. Non-discrimination and equality rights are present in the national legislation; in the Constitution (Article 19 N°2), in the Labor Law (Articles 2 and 19), in the General Education Law (Articles 2, 5, 10, 29, among others), the Law of Equal Opportunities and Rights of People with Disabilities and law N°20.609 that establishes measures against discrimination. Nevertheless, discrimination is one of the social problems prevalent in our country.

10. The National Survey on Human Rights of 2013 of the National Human Right Institute shows that 55% of the population declares that the human rights of lesbians and gays are not respected and that more than 80% declare having been felt discriminated in eleven of the twelve categories of potential discrimination included in the survey<sup>1</sup>.

11. In the same way, the “First Citizen Consultation about discrimination in Chile”, carried out by the Ministry General Secretariat of Government in 2013, determined that 31% of the respondents declare that have arbitrarily discriminated someone, and that 52% declare having felt arbitrarily discriminated by someone<sup>2</sup>. According to the results, the groups more prone to discriminate are men under 18 years old. Of those who admit having

<sup>1</sup> Available at <http://www.indh.cl/encuesta-nacional-de-derechos-humanos-2013>

<sup>2</sup> Available at

<http://participacionciudadana.segogob.cl/sites/default/files/Resultado%20Primera%20Consulta%20Ciudadana%20sobre%20la%20Discriminaci%C3%B3n%20en%20Chile.pdf>

discriminated others, the main motives are personal appearance (46%), ideology or political opinion (28%), nationality (25%), sexual orientation (22%), race or ethnicity (21%). The same results, when considering the levels of arbitrary discrimination in a civil service office, showed that 46% of the respondents declare having felt arbitrarily discriminated in a civil service office. This feeling of discrimination increases with the age of the respondents, and it is less intense in the Metropolitan Region (Capital City) when compared to the rest of the country.

12. In the same vein, the Seventh National Youth Survey carried out by the National Institute of Youth (INJUV) in 2012 indicated that 34% of young people has felt discriminated in their life in at least one of the following situations: in an educational institution, by someone in an authority position, when job searching or at work, in the street, at home, or at a friend's house<sup>3</sup>.

13. In regards to discrimination against women, the National Survey, "Women's Perceptions about their Life Situation and Condition in Chile 2014" carried out by Corporación Humanas, shows that 83,8% of women in the country consider themselves discriminated, and 75% considers that indigenous women are more discriminated than non-indigenous women<sup>4</sup>.

14. The Law N°20.609 came into force on July 12th, 2012 (this Law establishes anti-discrimination measures), and was charged with establishing a special action allowing the courts to know of discriminatory conducts committed by private as well as public institutions. They were also granted the capacity to adopt broad measures to render the discriminatory act without effect, providing that it cannot be repeated, or that the omitted act be realized, and stating for this given case a reasonable period of time to fulfill the courts mandate. Additionally, the court should apply to the people directly responsible of the discriminatory act or omission a fine between 5 to 50 monthly tax units, as a fiscal benefit.<sup>5</sup>

15. For the purpose of assisting in the enforcement of the law by the courts, the law established in article 2° a general definition of arbitrary discrimination, including specific "suspect" categories, like sexual orientation, sex, and gender identity.

16. However, despite the progress that the passing of such a law has meant, it must be pointed out that its regulations still show a serious deficit. This is because the main goal of the law is the establishment of a special action that will take effect once the discriminatory action or omission has occurred, leaving all preventing actions outside the scope of the law. Additionally, the categories of direct, indirect, multiple, aggravated, *de facto*, *de Jure*, structural and historical discrimination are not part of the regulations, as neither is any reference to the possibility of granting temporary special measures (affirmative actions) to ameliorate discriminatory situations.

17. If the purpose of the law is considered, all State administration bodies must elaborate and implement policies oriented to guarantee every person the enjoyment and exercise of the rights and freedoms acknowledged by the Political Constitution of the Republic, the Laws and all international conventions ratified by Chile and currently in force without

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<sup>3</sup> Available at [http://www.injuv.gob.cl/portal/wp-content/files\\_mf/septimaencuestanacionaljuventud2.pdf](http://www.injuv.gob.cl/portal/wp-content/files_mf/septimaencuestanacionaljuventud2.pdf)

<sup>4</sup> Available at <http://www.humanas.cl/?p=14017>

<sup>5</sup> Monthly tax Unit (UTM) equals \$43.068 Chilean pesos to March 2015 (US\$69).

arbitrary discrimination. However, after 3 years since its enactment this purpose has not yet been fulfilled. Evidence shows that it becomes necessary to create a responsible entity capable of designing, executing and evaluating public policy oriented to the prevention of discriminatory actions, thus preventing that new legislation becomes limited to the exercise of a judicial action.

18. Added to the above mentioned, it is necessary that the Law becomes implemented in all public service offices of the state, that also have to monitor its promotion and enforcement directly and with the support of civil society organizations.

19. The shortcomings of the Law against discrimination are also expose in the procedural aspects of it. In them, there are no rules that favor the victim along the process by means of reversing the burden of proof. In fact, the acknowledgement of some suspect categories in article 2 of the law is not complemented by a legal regulation that allows the court to attest the arbitrary nature of the action or of the discriminatory omission, if the defendant cannot prove that it is a situation of distinction, or legitimate, objective and reasonable difference.

20. Once the existence of the action or omission that involves discrimination has been attested, the judge can impose the measures that he/she deems appropriate to ensure the reestablishment of the rule of law. However, in regards to the applicable fines, it has been expressly defined that they will be of fiscal benefit and not the victim's (article 12). As a consequence, is must be indicated that the Law against discrimination does not include reparation or compensation mechanisms, and according to the general rules, it is up to the victim to initiate an ordinary procedure in a civil court to obtain compensation of damages.

21. Additionally, if the sentence attests that the complaint is not admissible, the court can fine the plaintiff with 2 to 20 UTM to fiscal benefit. This fact becomes relevant because this precautionary measure does not comply with the international principle of deference of the discrimination suspect categories.

22. The Law specifies in article 2, third paragraph, a broad ground for justification when discrimination is based on the exercise of another fundamental right, "*or on another legitimate constitutional cause*". This section should be eliminated because it considers as reasonable the distinctions, exclusions or restrictions justified in the legitimate exercise of another fundamental right and thus it could justify arbitrary discriminations.

23. In effect, Law N°20.609 only establishes secondary guarantees of judicial nature for acts of "arbitrary discrimination" by the state or private people, indicating a list of suspect categories. However, as the same law indicates that distinctions based on suspect categories part of the legitimate exercise of another fundamental right, as in the case of the right expressed in article 19 N° 11 of the Chilean Constitution, that is, the right to educational freedom, over which the of the Law against discrimination would have no effect.

24. Based on the information provided by the superintendence of education, allegations of discrimination for the year 2013 reached 824, being almost half of them based on that boys, girls and adolescents had been discriminated at school because of their attention deficit disorder. It is followed by discrimination based on physical and/or intellectual

disabilities<sup>6</sup>. As such it is still a pending matter to eliminate the third paragraph of article N°2 of Law 20.609 that establishes a priority of rights to be assessed by the judge.

25. The Law against discrimination has yet to demonstrate being an effective tool to solve the social problems that it is aimed to solve. This is proven by the limited use of the judicial action established by the rules that reached 120 lawsuits since July 2012 (when entered force) to march 2015<sup>7</sup>, out of which only 20 have reached a final sentence<sup>8</sup>.

### **People with disabilities:**

26. The use of the so called “Express Interdiction” by using Law 18.600 is of concern. With the only merit that a person with mental disabilities (without specifying the degree of the disability) registers in the National Registry of Disabilities, a declaration of interdiction can be requested and one or both parents be assigned as permanent legal guardians.

27. Historically health systems have been dominated by a medical model based on interdiction, assuming that people with disabilities are incapable to hold responsibilities and participate of decisions involving their own bodies. In this regards decisive actions are needed to disprove three myths that are prevalent in relation with people with disabilities: a disabled woman is an abnormal and incapable and asexual woman; a disabled woman is infantilized, what translates in interdiction, lack of autonomy and responsibilities; and with respect to the maternal role, it is considered incapable of carry out maternity.

28. Some studies provide an account of the control of their bodies that women with intellectual disabilities in Chile have. They show that on them a triple discrimination is practiced, (as a woman, as a mother, and as a person with disabilities). This is primarily practiced by health professionals by forced sterilization, loss of the guardianship and possibility of raising their children, and the marginalization from sexual and reproductive health regular checkups at the local primary health public clinics. Additionally this means a reduction of the possibilities of socialization restricting them to their home leaving them in a situation of vulnerability, abuse and sexual violence.

### **Migrants:**

29. During recent years, there has been an increase in the number of migrants in Chile. According to annual report<sup>9</sup> of the Ministry of Interior and Public Safety in 2014 there are 441,000 migrant people in the country, accounting for 2.5% of the population in the territory, and it still growing significantly. As a group they confront serious discrimination problems, in the migratory routes they follow –particularly at the border when entering the country – having access to their rights, and in their daily life. This ministry reports progress in the right to nationality for newborns borns in Chilean territory, independently of the migratory situation of their parents, on the agreement for access to health services in

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<sup>6</sup> Source: Statistics of discrimination from Superintendence of Education  
<http://www.supereduc.cl/denuncias/estadisticas/estadisticas-de-discriminacion.html> Also  
<http://www.emol.com/noticias/nacional/2013/03/21/589605/gobierno-alerta-que-discriminacion-contraninos-con-sindrome-de-down-subio-29.html>

<sup>7</sup> Source: Information platform of Judicial Power.

<sup>8</sup> Ibidem.

<sup>9</sup> Last visited 04/05/2015: [http://www.interior.gob.cl/media/2015/03/Cuenta\\_P%C3%BAblica-2014-web.pdf](http://www.interior.gob.cl/media/2015/03/Cuenta_P%C3%BAblica-2014-web.pdf)

FONASA<sup>10</sup>, and the participation and regularization of schooling for migrant boys and girls in the public schools in a district of the capital city in the country<sup>11</sup>. However, this reports do not constitute a National Migration Policy, and doesn't report the total impact reached.

30. During the last year, the Ministry of Interior has promoted important measures that represent progress in the enjoyment of rights by migrant people. However, it has been reported by agencies that monitor compliance with the treaties, that it is necessary to urgently reform the migration legislation, the decree in force is from 1975. Equally necessary is that the state ratifies Convention relating to the Status of Stateless Persons (year 1954), and the Convention to reduce the number of stateless cases and guarantee the right to nationality to every person born in Chile (year 1961), regardless of the migratory situation of the parents.

31. All of the above mentioned situations indicate that many issues remain to be addressed in terms of prevention and reparation of discrimination in general.

#### **Recommendations:**

- a) **Amend the Law against discrimination so it includes categories of direct, indirect, multiple or aggravated, da facto, de jure, structural and historical discrimination, in agreement with human rights international legislation.**
- b) **Eliminate from the Law against discrimination all reference that allows for legitimate arbitrary discriminations based on the exercise of other rights.**
- c) **Include in the Law against discrimination reparation in favor of the victim that allows actions in court to obtain reparation once the discrimination has been attested by the court.**
- d) **Make an express case in the Law against discrimination and other legal instruments, the possibility to decide temporary special measures (affirmative action) with the purpose to amend structural discriminatory situations and the possibility that they are toughened in the case that the victim is affected by multiple categories of discrimination.**
- e) **Introduce the definitions established by the international organs and courts regarding sexual orientation and gender identity, and specify the rest of the terminology used in the Law against discrimination in accordance to the legislation and practice of international human right law**
- f) **To enact law that gives origin to an autonomous institution that can elaborate national public policy and concrete measures for the promotion and protection of human rights related to equality and freedom from discrimination of every person that lives in the national territory.**
- g) **To adapt local legislation so it can effectively protect the rights of people with disabilities, guaranteeing the recognition of their judicial capacity and actual enjoyment of their autonomy, particularly in the area of health care.**
- h) **To expressly prohibit by law the permanent and irreversible sterilization with contraceptives objective of boys, girls, and adolescents with disabilities, preventing it even in face of the express authorization of the legal guardians or the approval of the sanitary authorities, to comply with international human rights treaties that regulate over this matter.**

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<sup>10</sup> National Health Fund. .

<sup>11</sup> Agreements with Santiago's Municipality on the Metropolitan Region.

- i) **Revise the migrations legislation proposal incorporating the international human rights legislation to it.**
- j) **Modify the interpretation of the concept of “transient alien” for the registration of boys and girls born in Chile that are children of foreign parents, granting the Chilean nationality regardless of the migratory situations of the parents.**
- k) **Request from the Chilean state the mass distribution of regular and up to date information to migrant women about their rights in the country, with special emphasis in those related to health, education and housing.**

### **Article 3: Gender Equality**

32. Important progress has occurred regarding gender equality with the creation of the Ministry for Women in January 2015 and the draft legislation sent to congress to decriminalization of abortion in the case of non-viability of the fetus, health risk to the pregnant mother or rape. However, as it was indicated by the CESCR committee in 2004, the *“cultural stereotypes about the role of both genders continue undermining the enjoyment in equal terms of the economic, social and cultural rights of men and women”* (paragraph 15). It remains an organization of the society that, sustained by cultural stereotypes, keeps women in a hindered position.

33. The difficulties that women face to enter the labor market and the inequalities in their educational performance are addressed later in this report. To them it must be added that few changes have occurred that affect the private real of life and that most of the transformation that have taken place in the country a related to the public realm. This is an indication of the difficulties to promote structural transformations that address the inequalities generated by the gender-sex system.

34. In the area of care work responsibilities, the law N°20.545 was enacted. It modifies the norm about maternity protection and includes parental postnatal leave, but during the discussion of the law an opportunity was missed to contribute through it to the transformation of the gender cultural stereotypes by not passing legislation enacting an inalienable post natal period for the father. In this way, the wording of the law did not allow to separate the costs of hiring women, transferring them to the society as a whole. On the contrary, it kept and reinforced the rigid and stereotypical gender roles differentiation between men and women regarding child care. After two years that the enactment of the law, according to data from the superintendence of social security, only 485 men out of a total of 169.184 authorizations have used this benefit, less than 0.3%

35. In the same manner, Chilean legislation does not protect the rights of workers with parental responsibilities. Thus, the regulation of the “right to nursery facilities”, stated in article 203 of the labor law code, that only acknowledges women that work in companies where more than 20 women work, becomes paradigmatic. Law proposals that expand the right to men and women workers has not prospered. This situation not only has an impact in jobs for women, but it also keeps the responsibility of child care in their hands and reinforcing gender stereotypes.

36. The under representation of women in politics that can be observed at every level of the public administration, reinforced by the separation of space and access to decision making processes between men and women remains a concern. In January, and after decades of discussion, a new electoral system was approved that will replace the historical

“binominal” system. The new regulatory framework will make compulsory to political parties to present more balanced lists of candidates. Over a period of four electoral processes the lists cannot be comprised by more than 60% of candidates of the same gender. However, this regulation –if passed – arbitrarily determines the duration of the affirmative action without specifying any mechanisms to evaluate its impact and decide to keep it or eliminate it. On the same token, it only has effect over elections for congress.

37. Women participation in decision-making or power positions in the judiciary system is limited. There is no national regulation or internal policy that promotes participation of women in the higher courts, (Supreme Court or appeal courts), or in the other organs of the judiciary such as the Public Penal Defense or the Attorney General’s Office where the national and regional head positions belong to men in a majority. The same happens in the constitutional tribunal and the Election Certification Board<sup>12</sup>.

38. The Access of women to decision making positions in public and private companies remains limited. This keeps the concentration of economic power in the hands of men.

39. Public officials of the different offices of justice receive little or no training regarding human rights of women. The ignorance of the international rules of human rights and the international standards regarding human rights of women, as well as the gender stereotypes of the different members of the judiciary system, remains a constant obstacle to grant women access to justice.

40. The institution for indigenous peoples (CONADI) has not included in their general policy and programs a gender perspective, nor has the agency for promotion of women (SERNAM) included a ethnic variable in their programs of intervention. All this implies the lack of an integral public policy directed to improve the condition of indigenous women and that are designed and implemented with consultation to the indigenous peoples.

41. Even though the percentage of women that have been benefitted by the subsidy to purchase lands has increased, they can only have access to smaller lots indicating that the most important gender gap has to do the size of land property that men and women can access.

#### **Recommendations:**

- a) Sponsor the enactment of equality laws that promote shared responsibilities in the domestic realm that facilitate the participation of women in the labor market, promote the access to salaried work and guarantee permanence of women in these activities by providing a social response to the needs of child and elderly care.**
- b) To reorient labor rights to the protection of workers with family responsibilities.**
- c) To substitute article 203 of the Labor Code referred to the company contribution to nursery facilities to include men and women workers, thus avoiding the cost increase for the hiring of women.**
- d) To modify the recent law that extends postnatal leave so it can be shared by both parents, including the inalienability of paternal leave.**

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<sup>12</sup> In the Suprem Court only 5 of 21 are occupied by women and in Constitutional Court 3 out of 13.

- e) To promote the presentation of an equality legislation that demands the balanced participation of men and women in public and private enterprises, as well as in all appointed and elected positions in the three branches of government.
- f) To promote and ensure the exercise of the right of political participation of indigenous peoples, with special emphasis in the participation of women, in accordance to ILO Convention 169 and the relevant international regulations in force.
- g) To ensure the balanced presence of men and women in the short lists to become part of the Supreme Court, Courts of Appeal, Constitutional Court and the Elections Review Board.
- h) To ensure that the short lists that are designed to have access to the positions of National Defense Counsel, General Attorney, as well as positions in the regional offices are integrated in a balanced manner by men and women.
- i) Elaborate and implement regular human rights training for the courts clerks and officials, specifically about women human rights and the international standards.

### **III. Matters relative to the specific provisions of the Covenant**

#### **Article 6: The Right to Work**

42. Nevertheless women participation in the labor market has increased year after year, is still 10 points less than the Latin American average. Besides, the type of participation in the labor market is different when the socio-economic level (SEL) of women is considered. At higher SEL higher participation in the labor market. As such, in the first decile (the poorest), participation in labor market is 27, 4% and in decile 10 (the richest), it is 67, 5%<sup>13</sup>.

43. According to the data of the National Institute for Statistics, women participation in labor market is higher in the informal sectors of the economy, which indicates a precarious labor condition for the female work force. Women receive lower salaries and hold less stable jobs in areas with higher female employment. The patterns of inclusion for women in the labor market are influenced by the structure of market segmentation, the policies of labor flexibilization, outsourcing, and the emergence in the market of job opportunities of lesser quality positions but that allow the possibility to achieve schedule compatibility. Together, they limit the possibilities of skill development that enable job stability and permanence as well as advancement within the labor market. As Fundación Sol has stated, employment for women is maintained with low formality, stability and continuity. These systems preclude the possibility of negotiation of employment conditions for workers and weaken the access to social guarantees.

44. In summary, women have little possibilities to find formal, stable and protected employment<sup>14</sup>. Employment for women has increased, but this has basically happened as a result of self-employment, partial employment and positions of lower qualifications. The

<sup>13</sup> CASEN Survey 2013.

<sup>14</sup> “La inestabilidad y precariedad: las dos normas del trabajo femenino”, Fundación Sol. <http://www.fundacionsol.cl/la-inestabilidad-y-precariedad-las-dos-normas-del-trabajo-femenino>

percentage of women working part-time has tripled. To this, it must be added the difficulties to accommodate child care, that remains the exclusive responsibility of women, all of which contributes to the material impoverishment of women, the worsening of their life conditions and the infringement of their fundamental rights.

45. The National Survey of Women of their perceptions about their life conditions carried out by Corporación Humanas in 2014 indicates that the area where women – indigenous and not indigenous – feel more discriminated is in the work area (95%). Similarly, 54,1% of women consider that to achieve higher degrees of equality the one thing that needs to be done is to equalize salaries. Only 7, 5% of women indicate that a positive measure is that “women should have access to jobs that can be performed at home (microenterprises)”. 95,4% of women consider that “a paid job gives women economic independence and personal accomplishment” and 92, 6% considers that “economic upkeep and house chores are of equal responsibilities for men and women”. Of those women that are paid a salary, this survey shows that 59, 2% of them declare to cover all, half, or more than half of the home expenses with their income. This call into question the traditional view that women’s income is a secondary source for the family upkeep.

46. Discrimination against people with disabilities allows for only 1% of them hold a decent job, 30% hold an informal or precarious job and most of women only unpaid domestic labor.

47. Discrimination and harassment against LGBTI workers are common practice. Discrimination often starts with the education, which makes future employment perspectives difficult. It then continues with job access and along the whole employment cycle. There are no legislative provisions that protect the rights of LGTBI workers specifically. There are general provisions that if applied tend to be deficient.

48. Discrimination, harassment and exclusion from the labor market often happen as a consequence of a behavior that does not conform to the preconceived notions of how men and women should behave. Often, women considered “masculine”, or men considered “feminine”, by their behavior or appearance, suffer discrimination or harassment for their apparent sexual orientation. The majority of LGTBI workers decide to hide their sexual orientation at their work place what causes stress and negative effects in productivity and career advancement.

49. Transgender workers seems to suffer the worst types of discrimination at their workplace. Among the problems they must face, for example, the impossibility to obtain identification documents that reflect their new name and sex, the reticence of employers to accept their new sex, and a higher exposure and vulnerability to intimidation and harassment by their colleagues. In many cases, transgender workers are completely excluded from formal employment.

#### **Recommendations:**

- a) **To promote the formalization of women labors, including a work contract, employee’s social security, broadening of work rights for informal women workers so they can better face the precarious nature of female working conditions. In the case of temporary salaried workers, it is necessary to amend the law to eliminate the contract with end of work and replace it with a contract by season.**

- b) To reorient work rights to the protection of male and female workers with family responsibilities.
- c) To substitute article 203 of the Labor Code referred to the contribution of the company to nursery facilities so that it includes male and female workers with family responsibilities to prevent making the hiring of women more expensive for the employer.
- d) To modify the recent law about the extension of the parental post natal leave so that the leave of absence can be shared by both members of the couple, including the inalienable leave of the father.
- e) To increase the participation of people with sexual diversity in the public and private areas, and if necessary, “to take special temporary measures”.
- f) To put into action public policy to eliminate the stereotypes of discrimination towards LGBTI people implementing awareness campaigns to that effect, particularly in the work space.
- g) To enact legislation about quotas for formal and decent job opportunities for men and women with disabilities.

#### **Article 7: Right to the enjoyment of just and favorable conditions of work**

50. In spite of the modifications introduced by the law 20.786 in 2014, private house workers maintain a hindered situation with respect to the rest of the workers. For private house workers that do not live in the private house, even though a working week of 45 hours is established, a 15 hours extension is allowed (paid as overtime with at least a 50% over the agreed salary) which becomes a working week of 60 hours. As a reference, in 2005 the regular working week was reduced from 48 to 45 hours for all general workers.

51. For private house workers that do live in the private house where they work the situation is still more detrimental in relationship to the rest of the workers. The working week maintains the option to be extended to 72 hours in a week. The differentiated treatment with respect to the working week and the lack of monitoring capacities makes it easier to generate indecent working conditions. The law grants authority to the Labor Inspection office to enter the house to monitor, but the homeowner can deny this possibility (article 146 ter of the labor code). Compounding to this is the difficulty that these workers have to demand their rights. The severance payment that the employer must pay in any case when a worker is fired must be augmented because it shows a substantive gap when compared to the rest of the workers<sup>15</sup>.

52. In relation to seasonal work related to the agro export sector, where most workers are women, there exist conditions of extreme precariousness in reference to contracts, low salaries, duration of the working week, hygiene; hence, work related accidents continuously happen with intoxications that threaten the life and health of the seasonal workers.

53. The enactment of Law N° 20.348 that established the equality of salaries to men and women that perform the same job, is an improvement. However, the salary gap between men and women remains and it can be explained because of the discrimination component

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<sup>15</sup> Lidia Casas, Helena Olea, Informe Anual sobre derechos Humanos en Chile 2014. Universidad Diego Portales, pp. 111-155.

that significantly reduces the rate per hour received by women, according the National Institute of Statistics<sup>16</sup>.

54. On the other hand, even though the draft of legislation initially included in reference to salaries that *“the principle of equality should be applied to male and female work for a service of equal value”*, -adopting the wording used in international law by the ILO covenant 100, and by most of the countries that have enacted legislation in this matter- the discussion in Congress decided to use the concept *“same job”*. The implication is a limitation, given that the labor market is already highly segregated, women in general do not perform the same jobs as men. That is to say, they do not work in the jobs nor they perform the same functions. This is why the legislation in Chile does not protect from job discrimination.

55. In the same token, the norm establishes that all employers with 200 or more workers must keep a written record describing positions or functions, and the number and names of people that perform them. Also, it must have a procedure to receive complaints related to salary inequalities as a previous stage before the complaint is presented to the courts. All female workers of small and intermediate companies are left without protection. The limitations introduced in the discussion in congress weakened the protection of women salaries, especially of those who work in the smaller companies and in sectors where job positions are highly segregated by sex.

56. Other difficulties for the enforcement of the law is the fact that for the female workers to demand salary parity against the male workers that perform the same job, it is necessary that they know how much they earn but companies tend to maintain this information in secrecy. So the right to salary equality becomes restricted to situations where the female worker knows the salary of each and every other worker that performs the same service.

#### **Recommendations:**

- a) **To adjust the work week of private house workers to the regular work week of general workers in the country and secure the monitoring of the working conditions.**
- b) **To toughen the protection of work right of seasonal workers in the agroindustry and create a general system of supervision and monitoring of compliance with the rights.**
- c) **To modify the Law of Salary Equality, incorporating sanctions, promotion and more resources to monitor its enforcement so the current salary gap can be effectively reduced.**
- d) **To include higher degrees of transparency in companies and organizations with regards to the information of salaries of men and women, so regulators can compare and identify salary gaps.**
- e) **To enact laws for the inclusion in the labor market of people with disabilities by using the employment-with-support practice.**

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<sup>16</sup> INE, “Mujeres en Chile y mercado del trabajo: Participación laboral femenina y brechas salariales”, Departamento de Estudios Laborales, Departamento de Estudios Sociales, Subdirección Técnica , 2014. Available at: [http://www.ine.cl/canales/chile\\_estadistico/estadisticas\\_sociales\\_culturales/genero/pdf/participacion-laboral-femenina.pdf](http://www.ine.cl/canales/chile_estadistico/estadisticas_sociales_culturales/genero/pdf/participacion-laboral-femenina.pdf)

## Article 8: Union Rights

57. The current legal framework allows workers on strike to be substituted (art. 381 of the Labor Code), and forbids strikes in the case of essential services without defining them with precision (art. 384). Similarly, it is worrisome that the article 385 of the Labor Code indicates that the State President could decree the activity to be resumed during a strike, when because of its nature, timing, or duration, the strike causes severe damage to the health, to the procurement of services or goods to the population, to the economy of the country, or to national security. In fact, article 254 of the Penal Code established sanctions in the case of the interruption of public services, or public sector workers abandonment.

58. At the end of 2014, the government of President Michelle Bachelet sent a draft of labor law reform legislation to Congress that addresses the need to respond to the questions previously described, and particularly to find a better balance in the labor and employer relationship to improve the wages negotiation process. This legislation project is currently under discussion in congress.

### Recommendations:

- a) **To guarantee an effective right to strike and collective negotiation, without the replacement of participating workers.**
- b) **Promote initiatives that strengthen union organization.**

## Article 9: Right to Social Security

59. The system of Pension Funds Administration institutions (AFPs) grossly discriminate against women, in addition to not comply with their basic goals, which is to provide decent pensions, conditioning a human right to the swings of the market. Discrimination against women happens by the use of life expectancy tables differentiated by sex. This is highly discriminatory because it classifies people according to groups and harms women because their life expectancy is longer<sup>17</sup>. The net effect of this discrimination is that to equal levels of individual capitalization, pensions for women are 30% lower than those of men.<sup>18</sup>

60. On April 29th, 2014, President Michelle Bachelet, created the Presidential Advisory Commission for the Pension System by Supreme Decree N°178 of the Ministry of Treasury. The goals of the commission are: to study the pension system established by the Law Decree N°3.500 and the Law N°20.255 of the Social Security Reform of 2008, to diagnose the current performance of these legislation; and to elaborate proposals destined to resolve the inefficacies that were to be detected.

61. The Movement for Sexual Diversity MUMS, presented to this commission a report about the different instrument of social security indicating that in Chile medical services and pension rights are not available to LGBTI workers and their partners in the same conditions than for heterosexual workers<sup>19</sup>.

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<sup>17</sup> Centro de Estudios de la Mujer, “El Sistema de Pensiones desde una Perspectiva de Género”, Audiencia Consejo Asesor Presidencial para la Reforma Previsional, 2006, en [www.cem.cl/pdf/pensiones.doc](http://www.cem.cl/pdf/pensiones.doc) (visitado en diciembre de 2009).

<sup>18</sup> CENDA. Riesco, Manuel; Díaz, Estrella; Durán, Francisco; Segundo, Donata. Informe “Cómo el sistema de AFP discrimina a las mujeres chilenas y cómo corregirlo”. Febrero 2011.

<sup>19</sup> Audiovisual register of public hearing N° 72 available at <http://www.comisionpensiones.cl/participacion-ciudadana/audiencias/>. Presentación disponible en [http://www.comisionpensiones.cl/?wpfb\\_dl=110](http://www.comisionpensiones.cl/?wpfb_dl=110).

62. The recently passed law that establishes the Civil Union Agreement introduces only partial modifications to the pensions law and to the National Health Fund that are not able to put in balance the rights of the common law partners (civil union) with the rights of spouses (marriage) which becomes relevant given the fact that LGBTI people do not have access to marriage.

63. Additionally the Chilean system is a pension system based on the capitalization of a personal saving account that given the high levels of discrimination, only enhances the effects of work segregation of the LGBTI people. They present, in general terms, higher periods with no personal savings and higher work changes which has the effect of a smaller retirement pension.

**Recommendations:**

- a) **To introduce the necessary legal changes to establish a public pension system and not a private one, based on solidarity, equality and non-discrimination.**
- b) **To eliminate the use of life expectancy tables by sex to calculate retirement pensions.**
- c) **To make equal the rights and benefits of the retirement pensions and health system for the LGBTI people.**

**Article 10: Protection of the family, mothers and children.**

64. The Chilean Constitution consecrates the family as the fundamental nucleus of the society and guarantees its protection. On its own account, the civil marriage law defines that the fundamental nucleus of the family is marriage, which is defined in the regulation as a legal institution that can only be obtained by couples made up by a man and a woman. Thus, the constitutional and legal protection of the family in Chile is sustained by hetero-normative model that leaves families that are different from this definition without any protection.

65. In January 2015, the Civil Union Agreement Law was passed, that regulates civil unions of couples of same or different sex. This represents a development in terms of protection to families of diverse origin, but not its full acknowledgment given the fact that this regulation does not regulate the legal situation of sons and daughters of the same sex couples, not the procedure in which same sex couples will be able to adopt children, and in the end it preserves the structural discrimination of same sex couples as they cannot have access in equal terms to the institution of marriage.

66. This lack of legal acknowledgement is even more evident in the case of lesbian couples that undergo assisted fertilization treatments with a donor's semen. In the case of heterosexual couples, the man that voluntarily accedes the procedure with his partner is acknowledged as father for all legal purposes and he cannot lose his legal rights based on the fact that he has not provided the genetic material. However, in the case of two women, maternity is granted only to the one who delivered the baby denying all the rights and duties to the other mother that willingly concurred to the fertilization procedure but who cannot exercise her maternity according to the law only based on being a woman<sup>20</sup>.

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<sup>20</sup> The case of two mothers who demanded recognition of their co-motherhood was brought to justice through an injunction filed with the Court of Appeals of Santiago on the Role 18948-2013, on April 12,

### **Joint Property Marital Regime:**

67. The reform to the joint property marital regime, promised by the state in Chile, and recommended by international organizations, is yet to be carried out. It refers to the default property regime that all marriages receive who have not otherwise expressly opted for another alternative regime – such as property separation or shared profit property – and that has traditionally discriminated women in their rights, as the joint property regime defines exclusively the husband as the only owner and administrator of the society properties defined by law. To him are given the properties of the wife for its administration and establishes some legal limitations only in the case of some larger transactions. Under this regime, women lack all rights regarding all assets of the couple and are legally barred to manage their own assets. That is to say, those properties that she possessed before getting married and those obtained during marriage, becoming subordinate to the husband by the mere fact of being a woman.

68. Given that this is a discrimination based only on the sex of a person, and expressly established in the legal codes, the Chilean State has received numerous complaints from international organizations for not complying with the obligation of guaranteeing equal rights to every person, without discrimination. Similarly, the state of Chile committed in front the Interamerican Commission of Human Rights to derogate all norms that discriminate women and to adjust all legislation to the standards of human rights established in the current human right covenants, in particular in reference to the principle of equality and non discrimination. All this, as part of Friendly Settlement Agreement reached in 2007 to put an end to the proceedings initiated in 2001, for having the country a discriminatory marriage regime that contravenes international commitments. In spite of this, there is not yet a new legislation that addresses this issue.

### **General situation of Children and child labor:**

69. In relation to the general situation of children, Chile has no yet adapted the legislation and practice to an integral approach for the protection of boys, girls and adolescents (here on BGA). There is no integral state intervention that promotes the strengthening of family networks for each BGA, but a system based on independent and partial interventions. The “Protection Homes” do not belong to an integral system of protection, on the contrary, serious abandonment and neglect, even criminal behavior has been reported committed by people responsible for this homes. Similarly, BGA spend a long time in these homes and are separated from their original families abruptly without any regard for their ulterior wellbeing.

70. Violence against children is a structural problem in our country. According to UNICEF, 71% of boys and girls declare living psychological violence at their homes and 29,5% serious violence. 75% of those who declare having been victims of sexual violence

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2013, alleging that refusal to recognize the maternity of the mother who didn't gave birth constitutes an arbitrary action that violates constitutional guarantees of equal rights and non-discrimination, the right to respect and protection of private life and the honor of the person and his family, right to mental integrity and rights of children. However, despite strict compliance with all the legal requirements for filing the appeal this was declared inadmissible. After the exhaustion of domestic remedies, the case was presented as individual petition to the Inter-American Commission on Human Rights and is still in stage of admissibility.

are girls, which makes clear the need to reinforce public policy oriented to fight discrimination against women.

71. According to the experience of Corporación Opción executing direct interventions for the care of BGA that have been victims of domestic violence, a primary glitch in the Domestic Violence Law currently in force is that it defines multiple subjects for protection, where the existent blood relationship implies a higher degree of severity in the acts of violence or abuse. From this definition of the subject or group to be protected the particular differences and characteristics associated to the violence become invisible. For instance, what is required to address violence against boys and girls, can be different to what is necessary in the case of violence in a couple where the victim is the woman and the aggressor her partner, or against the elderly by those who act as care givers.

72. An important anomaly refers to the coexistence of different court procedures with respect to a same family in the context of violence. Couples violence is overseen by a procedure in family courts or penal courts according to how it is qualified based on the reoccurrence and degree of violence meanwhile violence against children is overseen by a special procedure called Protection Measures for children victims of infringement of their rights. Many time the precautionary measures or protection actions for the family become more effective than the Protection Measures. If the emphasis is placed on couple violence, measures like the eviction of the aggressor from the premises are taken much more quickly.

73. As there is no automatic link between the protection of boys and girls and the administrative procedures for domestic violence, only in some cases children are transferred to support programs or psycho-social intervention where there is also support for the adult that has been victim of violence and who acts as a care giver for the children.

74. In the penal area, it is important to indicate there are far and few cases that have reached a final sentence or penal sanction for cases of child abuse. The recovery from injuries (qualification that does not depend only if the injuries are serious or minor) associated to the age of children (the younger the faster the recovery), prevents many child abuse acts to be attested in court.

75. In relation to child labor, according to the results of the Second Survey of Child and Adolescent labor in Chile of 2012, that included boys, girls, and adolescents between 5 and 17 years old, shows that out of 3,328,000 of BGA in that age group 229,000 (6.9%) were working. This is an increment from the first survey of 2003 that showed a 5.4%

76. Out of the working BGA, 41% are between 5 and 14 years old, and 59% between 15 and 17 years old. 91% of them working in dangerous jobs or are under the legal age to perform them. For the first time child domestic labor is observed and it correspond to 10.4% of the working group and is generally performed by girls.

#### **BGA that belong to the sexually diverse groups:**

77. Chile does not recognize sexual diversity in boys, girls and adolescents. Regarding transgender boys, girls and adolescents, they are exposed to discrimination from a very early age, their gender identity is not accepted at schools, they have to wear male or female uniforms according to the legal status, and their identity name is not respected, in spite that in many cases they have expressed their gender identity verbally and bodily. Even though

some of them have access to psychological support in the process of social and family integration, the school remains a disqualifying and discriminatory entity.

### **Domestic Violence Law and “habitual ill-treatment”:**

78. Law N° 20.066 about Domestic Violence (here on DV), only considers the violence that occurs within families, with disregard to the gender violence as a phenomenon that affects women in every space of their lives. It establishes two models of protection in face of domestic violence, transferring the competence to the criminal justice only after the family courts have qualified the violence as “habitual ill-treatment”. It is the only offense in the Chilean legislation that prevents victims to denounce directly to the prosecution. This constitutes a denial of access to justice, which makes the infringement of rights even more serious. Moreover, this stipulation delays the opportune action of justice contributing to the lack of protection of those who ask from the judiciary the protection of their rights.

79. After 10 years of the enactment of Law N° 20.066, there is still no Integrated System that offers data about violence against women and that can support the enforcement of public policy. The current information does not provide differentiated data by sex or age to determine the violence against girls and women. Other shortfalls is the lack of statistical information available at the National Service for Women and Gender Equality, because it only counts femicides<sup>21</sup> that are contemplated in the Femicide Law, excluding the murders by gender condition of minors, of casual relationships – like sex workers -, or that are the result of an informal relationship like boyfriends and girlfriends, where there is no cohabitation nor children. Therefore, there is a deficit of data that does not reflect the reality of violence against women, which remains restrictive to the DVL.

80. In terms of prevention, even though Law N° 20.066 considers in article 1, that actions of prevention of violence should be implemented, to this date there are no programs financed specifically with prevention as the main objective. In spite that SERNAM considers a yearly prevention campaign, using mass media to create awareness about violence, and that during the first year of the new administration changes were introduced to incorporate explicitly violence against women, this is not enough given the magnitude of the problem. This is aggravated by the fact that these campaigns do not consider the participation of the organizations that deal with this issue.

81. In terms of protective measures, these are clearly insufficient as the press reports new femicides every week. In many cases, this is due to precautionary measures that were never enforced, difficulties that attesting “habitual ill-treatment” produces a delay in the precautionary measure, or that the protective system took too long to act, as there are long waiting lists in centers that deal with women victims of violence.

83. The “First Survey about Street Harassment” of February 2014, carried out by the Observatorio Contra el Acoso Callejero Chile (OCAC), indicated that out of the total of people surveyed, 71% has suffered an experience of street harassment that they consider traumatic. On average, these cases happen when they are 18 years old, taking place between 10 and 25 years of age. This information becomes relevant if the current DVL is reviewed that –among some other shortcomings – does not consider the discretion of violence against specific female subjects – women and girls – and does not consider violent sexual

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<sup>21</sup> Total amount of femicides in 2014: Sernam informed a total of 40 while feminist and women organizations stated a total of 58.

behavior in public spaces. According to data from the Attorney General Office<sup>22</sup> there were 140.441 cases of domestic violence, 110.547 were women victims and 6,028 of them were minors involved.

**Recommendations:**

- a) **Pass legislation about equal marriage.**
- b) **Amend the internal legislation aiming to regulate the legal status of sons and daughters of same sex couples, respecting the right to equality and non-discrimination.**
- c) **Enact the draft of legislation that modifies the marital Joint Property Marital Regime, acknowledging the full legal capacity of women and granting equal rights to spouses in regard to social assets in a regime of co-administration, applicable to marriages before the enactment of the law**
- d) **Pass legislation for the integral protection of children and implement a protection system with emphasis on rights, including universal and specialized policy, budgeting and incorporation of all of the state agencies.**
- e) **Acknowledge and respect the gender identity of transgender boys, girls and adolescents in educational and health institutions to permit a dignified social inclusion.**
- f) **Include LGTBI BGA in an inclusive and respectful education by formulating protocols for integration to the educational system.**
- g) **To adopt prevention and care policies for the victims of child abuse, particularly in the case of girls, boys and adolescents victims of sexual abuse.**
- h) **To reinforce the job of the National Committee for the eradication of child labor and to develop a national strategy for the 2015-2025 decade for the eradication of child labor with ample participation of the National Service for Minors and the civil society.**
- i) **To pass integral legislation about violence against women so it can include all forms and manifestations, eliminating the condition of “everyday abuse” to investigate and process the perpetrators.**
- j) **Revoke or abolish from the Civil Legal Code the prohibition of marriage between people with mental or auditory disabilities.**

**Article 11: Right to an adequate standard of living**

**The situation of Poverty:**

83. In his recent visit to Chile, the UN Special Rapporteur on extreme poverty and human rights emphasized the paradox of Chile, where the country that has reached noteworthy progress in economic growth and economic stability, but at the same time maintains worrying levels of poverty and extreme poverty and extremely high levels of economic and social inequality. OECD places Chile as one of the countries with larger inequality in its population in terms of income, and the third in reference to the percentage of poor population. According to the analysis of Fundación Sol, using data from CASEN 2009, the average autonomous income of the 10% of richest homes in the country, represents 46.2 times the average autonomous income of the 10% of poorest homes.

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<sup>22</sup> Anual statistics of the Prosecutors office in 2014.

84. The Social and Economic Characterization Survey (Casen), has delivered in 2015 the data collected from the survey of 2013 and indicates that in our country 14.4% of the population is at the level of poverty based on income and that 20.4%, in situation of multidimensional poverty (that is measured according to the variables of education, health, housing and social security).

85. In relation to the ethical family income, it constitutes a subsystem that determines a support program for the most vulnerable families, and that transfers monies for dignity, duties and achievements. However, as a system it is insufficient because it cannot meet the minimal needs of dignified conditions and respect of the human rights of people that live in poverty. It includes as a condition to deliver the support that boys and girls younger than 6 years old have their health checkups up to date and that boys, girls and adolescents of school age attend school regularly, and that they achieve good academic performance. The incentive to protect health and education is valuable, but its application generates distortions that discriminates against boys, girls and adolescents in the groups of highest vulnerability, who require a higher social support to meet the good academic results. Similarly, there are no state guarantee for early education or universal housing standards or inclusive neighborhoods for people with disabilities.

### **Drinking Water:**

86. The country has suffered severe cases of water shortage during the last several years. Among the causes is a cycle of almost 8 years of drought that reduces the available amount water and makes the problems of Chilean water management system evident.

87. The Water Code is the law that determines the usage of water and that does not consider a priority system among the different usages, nor it considers an integrated management system of basins. In this context, the different usages of water have to compete among them and those that concentrate larger economic resources and larger access to information concentrate the rights of usage. That is to say, water for human consumption competes with industrial usage such as mining and agro export, and trading the water rights in a market that excludes those who do not have the resources to have access to it. The State has responded to this problem of scarcity putting into place an emergency system based on the water delivery trucks, and other measures. But according to data collected by the Ministry of Public Works, more than 400 thousand people receive water from these trucks that cannot be classified as drinking water and that do not meet the minimal standards established by the WHO. Deficiencies in water distribution have been observed, particularly in rural areas.

88. The lack of regulation about the usage and property of the water has generated episodes of serious confrontation between local communities and companies – mainly agro export, mining and energy– that have generated social conflicts of different magnitude. As an example, the difficult situation of the villages in the area of Salamanca (the Coquimbo Region), particularly the town of Los Caimanes, that during more than 10 years has been in conflict with Los Pelambres mining company.<sup>23</sup> The highest intensity of the conflict was

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<sup>23</sup> For more information visit <http://radio.uchile.cl/2015/01/30/caimanes-minera-los-pelambres-tiene-mas-poder-que-nuestro-propio-estado>  
<http://radio.uchile.cl/2015/03/08/sin-acercamientos-continua-el-conflicto-entre-caimanes-y-minera-los-pelambres>  
<http://ciperchile.cl/2015/01/28/caimanes-el-pueblo-que-la-minera-del-grupo-luksic-dejo-sin-agua/>

reached in 2015 that demanded a large presence of police in the route that connects Salamanca with Los Portones, the access area to the Los Pelambres Mine. People seized the route blocking the access to the vehicles to the mine and allowing passage to all other vehicles and people. The people is demanding that the company fulfills the sentence of the Chilean court that indicates that the mine must reestablish the natural flow of the waters. To do this the mine must modify the tailings dam that is located upstream, above the village of Los Caimanes. A mission of observers from the National Institute of Human Rights, reported that police intervention provoked the radicalization of the protest that initially was a partial and pacific occupation of the road. The final outcome was more than 40 villagers injured and a conflict that has not yet been resolved.

### **Industrial Activity and Pollution, Environmental impact studies:**

89. Just like what happens with the access to water, there is no sufficient environmental regulation in Chile that prevents industrial activity to collide with the rights of communities that live from agriculture and livestock activities.

90. The lack of regulation and control over industrial activities has fostered serious conflicts. For example, the current conflict in the area of Puchuncaví, where the lack of presence and regulation of the State has generated levels of contamination with clear consequences to the health of the industry workers as well as the people that lives in the surroundings.

91. The registry of victims delivered by local civic organizations indicate that between the years 2000 and 2015, there at least 180 workers who have died of heart attacks and different types of cancer to the pancreas, liver, lungs or brain, and that at least 46 workers has suffered some degree of work disabilities as a result of hearing loss, muscular atrophy and other. In addition, there are records of other events such as the one in La Greda school in 2012 where toxic fumes from the smelting furnaces generated intoxication of the students and teacher by inhalation of contaminants. The school had to close temporarily and eventually the school was moved to a nearby lot.<sup>24</sup>

### **Recommendations:**

- a) **To design an integral plan to reduce the poverty rate and inequality that includes the necessary inter-sector coordination to ensure the adequate access to education, health, housing, social security for everybody.**
- b) **To modify the legislation of water rights, making sure a priority order of water usage, guaranteeing access and enjoyment of drinking water by the indigenous peoples and communities that live off agriculture and livestock.**
- c) **Modify the legislation that regulates industrial activity and ensure the proper safeguards to the environment and especially to the areas where communities live off agricultural activity and livestock.**
- d) **To take the proper measures to mediate in the areas that are under conflict currently, particularly the cases of Los Caimanes and Puchuncaví.**

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<sup>24</sup> Full report on Puerto Ventana – Puchuncaví / Valparaíso, Chile, march 2013. <http://www.observadoresddhh.org/wp-content/uploads/2013/04/2013-02-28-Informe-visita-Puerto-Ventana.pdf>

## Article 12: Right to Mental and Physical Health.

### Sexual and Reproductive Rights:

92. The State has not established equal access to all women to sexual reproductive health. In the case of lesbian women, no mechanism has been established for them to have access to public services for insemination and assisted fertilization. The rule remains that this is a service for couples made up by a man and a woman, excluding even single women that need access to this mechanism. Similarly, health care for lesbians in public services is not guaranteed, they are omitted in the plans of sexual diversity where they are mentioned, but their needs and demands are not specified. Civil society organizations have pressed for campaigns for this population within the Ministry of Health.

93. In Chile abortion is completely penalized without stating the law any exception to carry it out legally, regardless of recommendations otherwise by organisms of treatie bodies (Human Rights Committee, CEDAW Committee, Committee against torture, Committee For Children Rights)

94. In spite of its illegality, a study by Professor Ramiro Molina, faculty of the school of medicine at the University of Chile, analyzed hospital patient releases from public hospitals for cases of abortion between the years 2001 and 2010, establishing an average of 34 thousand procedures per year. Of those, it was determined that 40% self-induced, and that for each abortion procedure that arrives to the hospital, 10 more remain not known by the system. The projection from these data is that there are between 130 thousand and 180 thousand abortions that happen outside the health system.

95. According to the evidence provided by the Tenth National Survey about “Perceptions of Women about their life situation and conditions” by Corporación Humanas, 79,2% of women agree with the legalization of abortion in cases when the life of the women is in danger, 74.2% when the fetus presents a serious malformation and 72.9% when pregnancy is the result of rape. Meanwhile 21% agrees with the legalization of abortion in any case and letting the woman decide.<sup>25</sup>

96. The illegality of abortion in Chile produces an inhibitory effect in health professionals and places women in a vulnerable situation, risking their health and exposed to evitable suffering. Although abortion is an offense that present little legal prosecution, a majority of those trialed and punished are women. Additionally, penal prosecution is very selective, affecting the poorest women.

97. Today it is under legislative discussion a draft of legislation to legalize abortion in three cases: life risk of the women, fetal non-viability, and rape providing to each of the cases proper health care. Although the draft proposal reflects progress regarding protection of the autonomy and respect for the human rights of women, it does not solve the problem since the data collected show that only one in three abortions fall into the three categories under discussion.

98. In the area of sex education, there is no continuity of the programs and their impact in the reduction of teenage pregnancy has not been evaluated, particularly in the socio

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<sup>25</sup> Tenth National Survey about “Perceptions of Women about their life situation and conditions” by Corporación Humanas

economic most vulnerable groups, as it has been recommended<sup>26</sup>. The CASEN 2009 survey shows information of the impact of teenage pregnancy per quintile of income, indicating that in the quintile I (poorest households) the rate of women, between 13 and 19 years old that is breastfeeding or pregnant is 38.5 per 1000, in Quintile V (richest) the rate is 2.4. Of them, 67.5% do not attend educational institutions, school dropouts show 10 percentage points difference between the poor and not poor segments<sup>27</sup>.

99. Programs of sex education does not consider sexual diversity, or the support and secular counseling for LGBTI adolescents that express doubts about their sexual orientation or gender identity. There is also a lack of support for people with disabilities in this area. There are no programs of sex and reproductive education for women and girls with disabilities, which increases the risks of vulnerability to abuse and sexual violence.

### **Childhood:**

100. In relation to Childhood, Chile does not have evidence about the mental health of boys, girls, and adolescents (BGA). Additionally, there is no information about the initiatives of the state has taken to take care of the mental health of BGA. On the other hand, there is evidence that one in five BGA suffers from some mental health problem conjoined with disabilities. This interferes with their development at the present stage of life and future stages.

### **Torture:**

101. In spite of different recommendations from the international community, the State of Chile has not yet defined the offense of torture nor has it implemented a National Mechanism for the Prevention of Torture. It has been attested that health workers and medical personnel do not know or not apply the Istanbul Protocol, so health institutions do not properly assist allegations of abuse and torture. This makes it more difficult to file complaints in courts of justice and access to a proper treatment and reparation proportional to the damage produced and its psychological, physical, cultural and social consequences that are serious and permanent.

102. In the period covered by this report, it has been attested that public demonstrations have been severely repressed<sup>28</sup>; most of the detainees alleged being tortured and abused by the police force, even boys, girls and adolescents alleged different forms of sexual violence, forced nudity, sexual molestation, and being hit the genitals<sup>29</sup>.

103. Mapuche and Pehuenche communities have being routinely raided by police perpetrating different types of abuse against boys, girls, adolescents, women and elderly people, this in spite of international recommendations in this matter. It is worth mentioning that indigenous women, especially Mapuche and Pehuenche, have been victims

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<sup>26</sup> CESCR, E/C.12/1/Add.105, párr. 58; Comité de los Derechos del Niño, CRC/C/CHL/CO/3, párr. 29; Comité para la Eliminación de la Discriminación contra la Mujer CEDAW/C/CHL/CO/5-6, párr. 29

<sup>27</sup> Social Development Ministry. *Encuesta de Caracterización Socioeconómica Nacional, Casen 2009*. [http://observatorio.ministeriodesarrollosocial.gob.cl/casen/casen\\_obj.php](http://observatorio.ministeriodesarrollosocial.gob.cl/casen/casen_obj.php) may 2013

<sup>28</sup> <http://www.observadoresddhh.org/wp-content/uploads/2012/02/2014-05-01-Informe-de-observaci%C3%B3n-A.pdf>  
<http://www.observadoresddhh.org/wp-content/uploads/2012/02/2013-03-20-Informe-2012-OBDDH-Casa-Memoria-1.pdf>

<sup>29</sup> <http://www.observadoresddhh.org/wp-content/uploads/2012/02/Informe-anual-2013.pdf>

of constant disproportionate use of force by state agents in the context of police operations, situation that has been acknowledged by the CEDAW committee in 2012.

104. In the case of people with disabilities, torture and cruel, inhumane and degrading treatment are manifested by custodial and protective institutions, psychiatric abuse, gynecological and of forced adaptation when using rigid protocols that do not account for the specific needs of a person with disabilities.

#### **People with Disabilities:**

105. The full respect of the rights of people with disabilities remains a debt to the country, particularly with respect to access to health care, education, employment and the full exercise of the civil and political rights. It is worrisome the lack of official statistics that allow to quantify the specific needs of the people with disabilities.

106. In the case of women with disabilities, it is of concern the high level of physical and sexual violence, as well as forced sterilization that are not accounted for, as there is no single national registry and remain invisible to the society. The State has not developed a national policy to take charge in an integral, opportune and pertinent manner the diverse forms of violence that women with disabilities face.

#### **HIV-AIDS:**

107. The campaign of AIDS/HIV prevention, which the State is obligated to carry out under the Law 19.779, was not executed during 2014.

108. Moreover, the campaigns executed during the previous years lacked technical components, becoming incapable of addressing the pandemic that in Chile shows characteristics of being concentrated in the homosexual population or MSM (males that have sex with males)

109. Between 2007 and 2011, 2,132 people died as consequence of HIV/AIDS, of which 84.24% were men<sup>30</sup>. In the five-year period 2008 to 2012, 10,519 people contracted the virus; 83.3% were men. Out of that percentage, 3,603 cases were notified of their condition at the AIDS stage.

110. Young people are the most affected group of this pandemic. This is reflected in the last five year period (2008-2012) when 34.55% of the people that contracted the virus were between 20 and 29 years of age (3,635 people) becoming the group with the highest prevalence.

#### **Recommendations:**

- a) **To decriminalize abortion and enact legislation for the three causes: risk of the life of the pregnant women, fetal unviability, and as a result of rape.**
- b) **Promote legislation reform so to revoke the obligation to denounce women that perform abortion on themselves, making sure the enjoyment of the patient's rights, especially regarding their private life and the secrecy of the respective clinical information.**

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<sup>30</sup> Ministerio de Salud, "Informe nacional: Evolución VIH/SIDA, Chile 1984-2012". Available at [http://epi.minsal.cl/epi/html/bolets/reportes/VIH-SIDA/InformePais\\_1984-2012\\_vih\\_sida.pdf](http://epi.minsal.cl/epi/html/bolets/reportes/VIH-SIDA/InformePais_1984-2012_vih_sida.pdf)

- c) To secure training for health professionals regarding the human rights obligations of women and its relation to abortion.
- d) To make sure that the content about human rights of women and sexual and reproductive health and rights are inclusive, and that they are included in the curriculum of the schools of health sciences.
- e) To develop a program of sex education based of human rights that includes the needs of LGBTI people in accordance to a Secular State.
- f) To respond to the needs that emerge from pregnant students and mothers, guaranteeing their permanence in the educational system and increasing the capacity of the teachers to detect situations of sexual abuse.
- g) To guarantee the access to health care to people with disabilities, including the prevention, treatment and rehabilitation during all life cycles and guarantee the respect of their sexual and reproductive rights.
- h) To implement measures of prevention, protection and reparation for the sexual violence that women and girls with disabilities face in family and community contexts.
- i) Implement effective instruments that are pertinent, regular, and replicable to measure and assess the situation of people with disabilities to produce reliable data about their access to health care, education, work, housing, justice, family and their exercise of their civil and political rights.
- j) To modify Law N° 19.779 that establishes regulations regarding HIV/AIDS to be able to face the pandemic from a perspective of protection, free from discrimination of the homosexual population and MSM affected by this illness.
- k) To establish measures that corresponds to the local definition of pandemic, instituting health integral policies for the people who live with the virus.

#### Articles 13 y 14: Right to Education

111. With respect to education, although coverage is guaranteed on the country, still remains a gap in socio economic terms as well as in terms of gender that have an impact in the lower scores of the poor and women according to the measures and selections tool utilized.

112. In similar fashion, there are persistent socio cultural patterns and stereotypes that generate areas of study in higher education “for women” and “for men” in conjunction that this has in the devaluation and lower income for women. In particular, it is of concern the insufficient emphasis given to equality and non-discrimination so equal results can be obtained in the future educational performance of young people.

113. There are also prevalent segregating stereotypes in special education against girls and boys with disabilities, preventing their promoting to employment or higher education, and promoting them to stay in lower –non-qualified positions or domestic work in conditions of servitude.

114. It can be attested the lack of a concept of integral education under state responsibility to produce and reproduce democratic society where the principles of equality and non-discrimination become prevalent. The strictly academic is overvalued and the obligation of implementing training projects to assure equality of results for boys, girls and young people is forgotten. In the current educational reform there is still the question if economic and gender inequality will be addressed, and if so, how this will be implemented. In similar

fashion is not yet known how the education –particularly of early stages- for people with disabilities will be addressed.

115. The Educational Reform is currently in debate, even though it includes structural changes about forbidding profiting and tries to end school discrimination, it has not considered active measures regarding the need to include within the educational system national guidelines for effective inclusion, freedom from discrimination and respect for diversity in matters of sexual orientation, gender identity, cultural pertinence, inclusion of people with disabilities, among others.

118. Technological advances demand highly trained workers with skills to learn new technologies. The previously described situation predicts a systematic lag of vast sectors of women who are not receiving adequate quality education, who are exposed to a sexist socialization, and who do not have access to quality alternatives and sources of financing that allow them to develop professionally and have access to better positions and better income for their work. Similarly, there is no concern for the technological gender gap that is detected at the level of the schools.

**Recommendations:**

- a) **To secure for boys, girls and adolescents a quality education free from discrimination based on the socio economic situation of the family, with emphasis in the education of human rights at every level.**
- b) **To include public policy that promotes an education free from stereotypes, inclusive and free from discrimination, that promotes the respect for sexual diversity and gender identity of everyone.**
- c) **To promote the implementation of specific programs of School Coexistence that include the explicit protection of groups at risk.**
- d) **To pass legislation for a public, free and quality inclusive education for all, including people with disabilities.**
- e) **To promote the implementation of programs of primary health care and primary inclusive education for boys and girls with disabilities oriented to develop autonomy with support.**
- f) **To educate and empower people with disabilities with a human rights perspective, for the early detection of situations of violence and abuse.**