



SHADOW REPORT FOR THE REVIEW OF THE STATE OF CHILE BEFORE THE COMMITTEE ON THE RIGHTS OF PERSONS WITH DISABILITIES IN THE 15TH SESSION

-MARCH 2016-

SHADOW REPORT PREPARED BY:

Corporación Circulo Emancipador de Mujeres y Niñas con Discapacidad de Chile-CIMUNIDIS; Corporación Humanas, Centro Regional de Derechos Humanos y Justicia de Género; Agrupación Lésbica Rompiendo el Silencio; Agrupación Líderes con Mil Capacidades; Centro de Estudios de la Mujer –CEM; Coordinadora Autónoma Contra la Violencia; Corporación Chilena de Prevención del SIDA – ACCIONGAY; Corporación Coordinadora Nacional de Familiares, Usuarios y Amigos de Personas con Afecciones de Salud Mental –CORFAUSAM; Corporación Opción; Fundación Down 21 Chile; Fundación Henry Dunant América Latina; Fundación Instituto de la Mujer; Fundación Iguales; Fundación Observatorio Contra el Acoso Callejero -OCAC Chile; Fundación Rostros Nuevos; Litigio Estructural en Derechos Humanos –LEASUR; Movimiento Acción Migrante –MAM; Observatorio de Derechos Humanos y Legislación; Observatorio de Género y Equidad; Unión Nacional de Ciegos de Chile - UNCICH.

1. The preparation of the present report has been coordinated by CIMUNIDIS and Corporación Humanas. Besides these two organizations, the following members of the Network of Civil Society Organizations for Human Rights participated in the drafting of the document: **Agrupación Lésbica Rompiendo el Silencio, Agrupación Líderes con Mil Capacidades, Centro de Estudios de la Mujer – CEM, Coordinadora Autónoma Contra la Violencia, Corporación Chilena de Prevención del SIDA – ACCIONGAY, Corporación Coordinadora Nacional de Familiares, Usuarios y Amigos de Personas con Afecciones de Salud Mental – CORFAUSAM, Corporación Opción, Fundación Down 21 Chile, Fundación Instituto de la Mujer, Fundación Iguales, Fundación Observatorio Contra el Acoso Callejero – OCAC Chile, Fundación Rostros Nuevos, Litigio Estructural en Derechos Humanos – LEASUR, Movimiento Acción Migrante – MAM, Observatorio de Derechos Humanos y Legislación, Unión Nacional de Ciego de Chile – UNCICH.**

A. Purpose and General State Obligations (Articles 1 -4)

Article 1. Purpose.

2. Since the ratification of the Convention of the Rights of Persons with Disabilities (hereafter the Convention or CRPD) the state has not adjusted the local legislation to the treaties and international standards about the people with disabilities. It has neither publicly disseminated the right of the people with disabilities nor the national and international mechanisms for their protection. All this has had a negative impact in the exercise of their rights for the people with disabilities and has precluded the generation of jurisprudence, rules and regulations consistent with the Convention.

3. The State of Chile retains pejorative terms in laws and valid statutory instruments to refer to people with disabilities, as an example, the Art. 1447 of the Civil Code indicates that *“that are absolutely incapable insane, prepubescent minors, deaf and deaf mute people that cannot make themselves understood clearly”*. Likewise, it maintains laws that go in the opposite direction of the rights guaranteed by the Convention, among them, Art. 465 of the Civil Code: *“The adult that lives in a habitual state of insanity will be denied the administration of his or her property, regardless he or she has intervals of sanity. The guardianship of the insane can be testamentary, legitimate or dative”*; Art. 256 *“Cannot be judges: 1st those who are under interdiction because of insanity or prodigality; 2nd the deaf, the blind and the mute”; [...]* and Art 465 of the Courts Statutory Codes *“Cannot be notary public: 1st those who are under interdiction because of insanity or prodigality; 2nd the deaf, the blind and the mute”*; Law 19,620 of 1999, that promulgates the Norms for the Adoption of Minors *“ The child can be adopted, [...] when the father or the mother or the responsible caregivers are morally or physically disqualified to provide the personal care...”*; Law 19,947 of 2004, that establishes the new Law of Civil Marriage *“Will not be able to contract civil marriage: [...] 3rd Those who have impaired judgment; and those who, provided a properly diagnosed psychic anomaly or disorder are incapable in absolute terms to form the community of life that marriage entails”*, among others¹.

4. The previous legislation limits the exercise of the rights of people with disabilities in all spheres of life; impedes the free will, and limits the equal participation in all realms of life.

5. The Constitution in force in the country, promulgated during the civil-military dictatorship in 1980, does not make reference to people with disabilities. The current government has initiated the process of drafting a new constitution to be founded in democracy and with the participation of the

people. This becomes an opportunity to acknowledge people with disabilities as a specific group in society to whose rights must be guaranteed.

6. Recommendations:

- a) **Constitutional acknowledgment of people with disabilities according to the concepts and principles established in the Convention as part of the functional diversity of the human condition. Maximum emphasis should be given to the right to equality and non-discrimination, and the respect to their inherent dignity, including the right to make their own decisions.**
- b) **To adapt the national legislation to the standards of the Convention, and warranting the direct participation and involvement of the people with disabilities and their organizations giving proper consideration to their suggestions and comments.**
- c) **Ensure the social minimums to people with disabilities, educating for social and political participation, and empowerment through education in human rights, protecting and strengthening civil society organizations as a social guarantee for the sustainable development of democracy.**

Article 4. General State Obligations.

7. On February 2010 the Law 20,422 was promulgated establishing the normative about equal opportunity and social inclusion of people with disabilities (here after LIOISPD), that establishes as main principles independent life, universal access, universal design, intersectorality, participation and social dialogue. However, the law does not establish the necessary measures for the development of a national level institutionalization to guarantee that the principles become effective and efficient measures for the people with disabilities. At the same time, the law has not represented the full harmonization of the national legislation with the Convention.

8. Chile lacks a clear and institutionalized mechanism for the consulting and participation of the organizations of people with disabilities. The state insists in neglecting its obligation to provide systematic public information, including the elaboration of diagnostic reports, periodic studies of prevalence and statistical reports, about the people with disabilities that are disaggregated by age, ethnic or racial origin, with gender perspective.

9. Regarding the sources for the information available, the main source is the National Study on Disabilities (ENDISC) based on the International Classification of Functioning, Disability, and Health. The first study was carried out in 2004 and from the second, carried out twelve years later, only recently some results are being provided. On January 20th, 2016 some preliminary results about the adult surveyed population were reported. It has been announced that the rest of the results obtained will be informed during 2016. It should be noted that the survey is only representative of the population that lives in private homes. The estimates do not reflect people living in collective dwellings, institutions or homeless. Henceforth, new policy design will be elaborated based on a limited population of people with disabilities excluding precisely those groups more at risk and more excluded. Especially worrisome is the situation of people sentenced and serving time in jail that the ENDISC did not include.

10. The findings of the ENDISC II identifies- considering only the adult population over 18 years old – 1,523,949 people in a situation of mild or moderate disability, representing an 11.7% of the national total population and 1,082,965 people in a situation of severe disability, representing an 8.3% of the

population. We acknowledge that this second study means an improvement because it disaggregates the information by sex, age brackets, members of indigenous peoples and geographical area. However, until all data of the study is provided is not possible to report a thorough analysis as of to date.

11. Regarding psycho-social disabilities, the National Socioeconomic Characterization Survey (CASEN) of 2013 identified 222.981 people. From these, 92,000 are in a situation of poverty, financial or multidimensional. From the Matrix of Inclusion 2015 of the Hogar de Cristo², from these 92,000 people around 11,000 have access to specialized professional help at least once a year, what accounts for a gap in access of a 87,6% for the poorest and more excluded people with psychosocial and mental disabilities.

12. The official information makes specific groups of the population invisible as is the case of the homeless people with psychosocial disabilities. The national assessment of the people living in the streets of 2011 identified 12, 255 people. 1,886 of them have some mental health problem (16.6%). The assessment allowed to define the social programs necessary to satisfy the specific needs of these people (that varies from person to person). The fact the little budget is allotted to carry out national studies keeps these and other groups invisible.

13. It is urgent to produce quantitative and qualitative information about people with disabilities. Particularly important are those most vulnerable, among them homeless people, those who live in institutions and those incarcerated. They are today technically and politically invisible because they can't complain, denounce or vote. It is imperative to carry out studies specific for the people who are psychosocially disabled.

14. **Recommendations:**

- a) **To strengthen the National Study on Disabilities (ENDISC) by carrying it out periodically, by including people that do not live in private homes – who are in fact those in a situation of vulnerability and exclusion – and by placing specific importance on the people with psychosocial disabilities.**
- b) **To include in the next National Census a specific disabilities perspective, with the participation of the organizations of the people with disabilities during the design and implementation stages.**
- c) **Establish all necessary measures for the development of a national institutions to focuses its efforts to effective and close supervision, penalization and reparation of the rights of people with disabilities when they are violated according to the principles of the Convention.**

B. Specific rights.

Article 5. Equality and non-discrimination.

15. It is urgent that the state promotes and encourages a culture of human rights and strengthens the respect to the principles of equality and non-discrimination. This process must be aimed to the society in general, but above all to the organizations of people with disabilities and their families. The constitutional process that has started in the country becomes an opportunity based on the presidential

statements that it must bolster civic education and participation which should consider access mechanisms for people with different disabilities.

16. The exercise and fulfilment of rights by people with disabilities demands the acknowledgment of their full legal capacity, recognizing them as subject of the law. Similarly, it is basic to design and implement support systems and devices to the families of people with disabilities, especially to those with single parents by means of state social guarantees, attuned to the specific home circumstances.

17. In Chile, as it has been informed to the various treaty bodies, there is discrimination against the indigenous peoples, the boys, girls and adolescents (hereafter BGA), to the LGTB people, migrants, and the people with disabilities. A study carried out in the Magallanes Region reports that *“the exercise of maternity in the case of the women with disabilities is a right that is intervened by the families, the health professionals and other people around them, given the facts that they usually have more prerogatives over the newborns than the mothers themselves. In this way their right to maternity is violated, as they have intellectual disabilities that place them at a disadvantage, with fewer opportunities to perform diverse activities and occupations”*³ Additionally, given the same condition of disability, there are more job opportunities and pay rates for men than for women, a phenomenon replicated in the population at large.

18. Article 8 of the LIOISPD mandates the state of Chile to establish measures against discrimination to guarantee the right to equal opportunities to the people with disabilities. This mandate has not been realized adequately.

19. On July 12th, 2012 the Law 20,609 went into effect. It establishes measures against discrimination and contemplates the possibility to take action against private parties and public offices to revoke a discriminatory action. The law establishes in article 2 a general definition of arbitrary discrimination, including “suspected categories”, such as sex, sexual orientation, gender identity, illness or disability. It is relevant to underscore the seriousness it conveys to make equal to a suspect category illness and disability.

20. Notwithstanding the progress that the passing of the law meant, its regulation is unsatisfactory, among other things because it does not contemplate preventive actions; it does not contemplate any concrete measure for protection or compensation to the victims. In spite of the fact that it defines suspect categories of discrimination, it does not reverse the burden of proof, and establishes a legal causal justification of the discriminatory act when it has been founded by the exercise of another fundamental right or another *constitutional legitimate cause*. It does not consider the creation of institutions devoted to the supervision and enforce the effective compliance with the principles of equality and non-discrimination.

21. According to the purpose of the Law, all the state administration bodies must enact and implement policies to guarantee to every person the fulfilment and exercise of their rights and liberties, free of discrimination, granted by the Political Constitution of the Republic, the international laws and human rights treaties ratified by Chile and that are valid. However, after three years after the enactment of the law, this objective has not yet been achieved. It becomes evident the need to have a responsible entity that can implement and evaluate the Law; that can design, implement, and evaluate public policy directed to prevent possible discriminatory actions. In this way it would prevent that the new legislation becomes reduced simply to a judicial action.

22. According to the information provided by the superintendent of Education, the complaints of discrimination in 2013 reached 824, being almost half of them based on discrimination of boys, girls and adolescents because of attention deficit disorder followed by discrimination for intellectual and physical disabilities⁴.

23. In relation to multiple and aggravated discrimination of the people with disabilities and LGBT people nothing has been done. Data about the LGBT population has never been collected in Chile. If the Kinsey report is considered, it could be said that 1 in 10 people belongs to the LGBT community. It is necessary to have clear information about LGTB people with disabilities to be able to assess the measures to prevent and punish the multiple discrimination it can represent.

24. Particularly serious is the situation of the intersex cases. In Chile there are no measures to prevent and prosecute discrimination against them. The limitations of the Law against discrimination have already been noted. Especially critical is the situation of intersex boys and girls, who by in large are victims of surgical procedures without informed consent. This has devastating consequences acknowledged as harmful practices by the Committee on the right of Child found in the periodic reports numbers 4 and 5 of Chile to this body of treaty.

25. Furthermore, during the last years the number of migrants to Chile has increased. According the public account of the Ministry of Interior and Public Safety of 2014, 441,000 migrant people exist in the territory, representing a 2.5% of the total population and the number is increasing rapidly. They continue confronting serious problems of discrimination both in the migratory routes – particularly at the point of entrance at the border – and in the access to their right in their daily life. The ministry reports progress in the areas of citizenship for newborns born in Chilean territory regardless of the legal migrant status of the parents, an agreement to provide access to health services through the National Health Fund (FONASA), incorporation and regularization of studies for boys and girls in the public schools of one municipality in the capital⁵. Regardless, these initiatives do not constitute a National Migration Policy, nor it reports the distinctions and special considerations when in addition to the condition of migrant other suspect categories of discrimination are added, such as disability.

26. One of the requirements to obtain a visa is proof of a work contract as an independent worker or employee, depending on the type of visa sought. This is obviously extremely difficult for people with disabilities. In Chile, most of the requests for refugee status or asylum are rejected which means that many people that enter the country as victims of domestic violence, human trafficking, natural disasters and people with disabilities have no protection because they are not granted the status of refugee. Hence, the importance of establishing a humanitarian visa – regardless that not all requirement for refugee status are met – for people with disabilities, victims of natural disasters, victims of domestic violence and human trafficking, in consideration to the their condition and situation of vulnerability.

27. Recommendations:

- a) **Amendment of the Law 20,609 so it establishes preventive actions and concrete measures to protect and compensate the victims; it consecrates the reverse of proof when some of the suspect categories are met; it eliminates the causal justification of the discriminatory action when it is based on *the exercise of another fundamental right* or on another *legitimate constitutional cause*; and that it establishes the creation of the necessary institutions to supervise and enforce the compliance with the principles of equality and non-discrimination it proposes.**

- b) **To implement a system of reasonable adjustments to guarantee the right to equality and non-discrimination to the people with disabilities, ensuring particularly equality before the law, access to jobs, to education, to the retirement pensions system and to justice.**
- c) **To consider, in the current process of reform to the migration law, the situation of the people with disabilities by means of the creation of a humanitarian visa for migrants with disabilities and multiple visa for their companions or caregivers.**

Article 6. Women and girls with disabilities.

28. The changes in the administration of the government in 2010 and 2014 meant the absence of a Plan for Equal Opportunities for the 2010-2020 period, as each respective administration rejected the plan designed by the previous administration. Currently, there the Presidential Gender Agenda, but it does not make any distinction among women. Accordingly, there are no specific references to women with disabilities, their inclusion and their specific needs.

29. The National Service for Disabilities (hereafter SENADIS) is the government agency that coordinates the state policy in matters related to disabilities. Up to now the population of the women and girls with disabilities has not been incorporated in their plans and programs. It should be noted that even though one woman belonging to an organization of people with disabilities was included in the current drafting of a national plan on violence, the organization summoned could not afford the participation of its representative as no financial or logistical support was provided to accommodate traveling to the meetings and working groups.

30. Women and girls with disabilities are subject to multiple discrimination based on gender, age and disabilities and are considered today a group highly vulnerable to rights violations. Therefore, any policy to this group of the population must include a human rights approach and a gender perspective.

31. Regardless of the constant allegations of the organizations of the civil society regarding the special situation of vulnerability of women and girls with disabilities, there are no studies about the prevalence in this population of types of violence, particularly domestic and sexual violence. It becomes imperative that the Ministry of Women takes on this responsibility together with SENADIS and the Ministry of Social Development to create efficient public policy to detect, sanction and prevent these forms of violence.

32. Recommendations:

- a) **To ensure the consideration of women and girls with disabilities in the administration and public policy design of the new Ministry of Women and Gender Equity and the inclusion, participation, and acknowledgement of their specific needs and in consideration of other operant variables such as socioeconomic level, ethnic or racial origin, and sexual orientation.**
- b) **To carry out studies about the prevalence of different forms of violence that affects women and girls with disabilities that serve as the baseline to elaborate special protection plans to detect, prevent and sanction all types of violence against women and girls with disabilities.**

Article 7. Boys and girls with disabilities.

33. The draft law for the System of Guarantees of Children's Rights, currently under discussion at the Chamber of Deputies, establishes among its guiding principles equality and non-discrimination, and does include children with disabilities. Although this a framework law, when details about establishing social services and special protection programs are spelled out, there should be special additional funds allocated for children in this condition.

34. The qualification of disability in Chile is far from the international standards. There is still pending a regulation for the disability law, and currently all state support services are directed to the poorest sectors of the society, with no policy directed to all the children and adolescents with disabilities.

35. On the other hand the sterilization of girls with disabilities is worrisome, particularly those with psychosocial and intellectual disabilities, upon whom procedures are forced, violating their sexual and reproductive rights. Organizations of people with disabilities have made public criticisms that this occurs with ideologically falsified medical certificates, using public hospitals to carry out the procedures, by public servants and with the complicity of the relatives. This complaint was included in the report to the Committee on the Rights of the Child presented by the state to that body in 2015⁶.

36. The Committee on the Rights of the Child has corroborated the condition of generalized exclusion of the vulnerable children, making recently important recommendations to the Chilean State in September 2015. The Committee confirmed that there exist a large number of boys and girls in residential facilities that precludes a family environment and that does not offer support to the parents to prepare them to perform their role⁷.

37. In Chile there is no safeguard to protect the right of boys and girls to freely express their opinion. This becomes relevant in the cases of intersex children who are not considered in fundamental questions such as the designation of the sex and irreversible mutilating genital surgical procedures that are performed based on their physical differences that in many cases have the consequence of sterility of the children.

38. To confront the institutional limitations regarding the protection and promotion of the rights of the children and adolescents in Chile, a new initiative by the civil society to create a new under-secretary office for the child and the creation of an Ombudsperson for the child. According to what the madam President has indicated, both would be under the Ministry of Social Development, however nothing has been informed concerning the approach to deal with children and adolescent with disabilities. It is important to establish the proper line in the budget to implement the protection of child in this matter.

39. Recommendations:

- a) **To adjust the local legislation so it recognizes children and adolescents as legal subjects with autonomy and progressive legal capacity. To institutionalize mechanisms so they can express their opinion freely in all relevant matters, and to consecrate the duty of the state to protect the personal integrity in evolution of children and adolescents with disabilities.**
- b) **To adopt a policy to move children with disabilities out of institutions, including measures to prevent neglect and guarantee their inclusion in a family environment in a community.**
- c) **To include in the project of the under-secretary office for the child and the Ombudsperson the necessary units and programs to undertake the situation of children and adolescents**

with disabilities and intersex, including the proper budget allocations and the participation of organizations of people with disabilities and their relatives.

- d) To modify public policy on disability to broaden the scope to reach all children and adolescents and implement them according to the Convention of the Rights of the Child and the Convention on the Rights of Persons with Disabilities.**

Article 9. Accessibility.

40. Article 25 of the LIOISPD stipulates that *“All public services campaigns paid with public monies, electoral campaigns, presidential debates and national government broadcasts disseminated by television and audio visual means of communication, should be broadcasted subtitled, sign language and audible translation for the blind”*. However, public services campaigns do not comply with the law and information is not accessible for all people with disabilities, who in many cases are left in a detrimental situation of ignorance and communicatively dependent regarding information of all public services disseminated by audio visual means and television fund with public monies.

41. The Chilean Organization of Consumers and Costumers (ODECU) carried out a study about accessibility in public transportation in the Region Metropolitana and the results were reported in December 2015. The findings show that of the 27 subway stations evaluated, only 15 had total accessibility 54%, and of the 71 bus stops evaluated, only 47 (66%) were totally accessible for people with limited mobility. Based on these results, they propose among other measures, that the Ministry of Transportation, together with the administrators of bus lines, include accessibility and safety mechanisms for people with limited mobility in all buses. Additionally, they indicate the need to produce a manual of accessibility design for the public transportation in Chile to be used as guidelines for the managers of bus lines and for auditing by the Ministry of Transportation.

42. Recommendations:

- a) To comply with the existing regulation to guarantee the access to information of public interest to people with disabilities, and establishing a mechanism to audit and denounce and sanction the non-compliance.**
- b) To make all necessary changes to guarantee the accessibility of 100% of people with disabilities to the public transportation system in the country.**
- c) Subsidize the ticket on public transport for the disabled person and their companion.**
- d) Adhere and ratify the Treaty of Marrakech.**

Article 11. Situations of risk and humanitarian emergencies.

43. Protection for people with disabilities is not ensured in situations of risk and humanitarian emergencies and natural disasters that are common in the country, particularly for people with reduced mobility. For all practical purposed they are denied their right to be informed and to have access to the measures of protection elaborated and disseminated by the state.

44. In the earthquake simulation drill performed by the National Emergencies Office (ONEMI) in the schools of the Region Metropolitana in November 2013, this office reported that the *“route that people with disabilities must travel is blocked in 41% of the schools assessed; 46% do not have an inclusive emergency kit, and 40% has not organized an external coordination to provide assistance to the people with disabilities, police, firefighters, municipality, and others”*⁸. The same report recommends to start by

identifying the special needs of the members of the school community to be able to prepare the necessary help in an emergency. There is no information if the situation has been resolved in the Region Metropolitana or at the national level.

45. In the earthquake simulation drill carried out in the Northern region of the country in 2013, ONEMI concluded that in the town of Huara, in the Region de Tarapaca, the stairs signaled as the evacuation routes are in poor condition and there is no access for people with disabilities . In the town of Mejillones, Region de Antofagasta, the evacuation route is *“in very poor conditions for the elderly, children, people with disabilities and pregnant women, as it is a dirt road obstructed by rubble, pieces of scrap metal and railroad tracks”*, and in Caldera, Region de Atacama, the evaluation indicates that *“there are few safety measures for people with disabilities”*⁹. Moreover, the drill performed in the Southern region of the country it was concluded that *“it is necessary to gradually improve the Tsunami evacuation routes establishing accessible roads without interruptions for people with disabilities. Considering the buildings defined as strategic points, on average in 40% of the cases, evacuation routes are not suitable for people with disabilities”*¹⁰.

46. The drills performed two years later show no improvement. In the drill carried out in the Region de Antofagasta schools, the conclusion is that 44% of the schools under an earthquake and tsunami threat that were evaluated have no internal warning system to be used by people with auditory disabilities, and 35% do not have an inclusive emergency kit. This situation is more acute in those schools that are only under a seismic threat, where a 44% of them do not have an inclusive emergency kit¹¹. The report indicates that *“In a 47% of the assessed schools it has not being defined any type of external support for the evacuation, the situation is similar in the schools under a seismic threat evaluated, it was observed that a 57% of them did not have external support to perform the evacuation. That is to say, no neighbors, members of the community, or others were found helping to carry out this task”*.¹²

47. Even though ONEMI and SENADIS have elaborated guidelines, these have not been properly publicized. There are no training and continuous education programs for the agencies in charge of protection of civilians about people with disabilities and the specific needs in situations of risk and emergencies. This is an obstacle to provide the proper response of evacuating and protecting. This situation is aggravated by the lack of information about the geographical dispersion of people with disabilities in the territory.

48. Recommendations:

- a) **To implement emergency plans and warning systems that are accessible to all the people with disabilities, offering the information in formats that are accessible such as Braille, sign language, easy reading, among others.**
- b) **Make sure that the health care facilities for people with disabilities are in safe areas free of flood risk and that have the necessary infrastructure to evacuate if necessary.**
- c) **Ensure the delivery of compulsory training to the personnel in charge of the protection of civilians regarding the rights of people with disabilities and the measures to adopt in emergency situations.**

Article 12. Equal Recognition before the Law.

49. It is troublesome to find still in force at local level the pertinent statutes of the Civil Code (especially Art. 456 about the guardianship of legally insane and Art. 1447 about legal capacity), and the Supreme Decree 570 and rules regarding the legal practices of interdiction and guardianship that cancels the condition of legal subject, and that cause the civil and political death of people with cognitive and psychosocial disabilities and that are checked in a psychiatric hospital.

50. On the other hand the Law 20,584 of 2012, known as the Law on the Rights and Duties of the Patient has consolidated the Interdiction and Guardianship, regarding people with psychosocial, intellectual, and physical disabilities. These legal provisions are completely opposed to the Convention and affect particularly to women and girls with disabilities, who are at a higher risk of sexual and other types of abuses given that they are under involuntary admission and who are subjected to forced sterilization, violating their sexual and reproductive rights.

51. Forces admission to Psychiatric Institutions reaches 20% and a bit less (17%) to General Hospitals, but there is no available information for private institutions. Physical containment and isolation practices reach a 56.9% in Psychiatric Institutions, compared to 8% in developed nations, according to the WHO 2012 report, cited by the Observatorio de Derechos Humanos de Personas con Discapacidad Mental, (Observatory for the Human Rights of the People with Disabilities), 2014.¹³

52. Additionally, considering the 78 requests of formal sterilization made to the State, 74 were involuntary requests and only 4 were voluntary. Voluntary imply the consent of the person involved. This practice affects mostly to women: 76 requests were for women and only 2 for men.¹⁴

53. Similarly, informed consent does not apply in the case of intersex children, who are not consulted about the practice of invasive genital surgery that are irreversible and mutilating that medically unnecessary and with devastating consequences for life.

54. The law 18,600, about the interdiction of people with psychosocial and intellectual disabilities has not yet been derogated. It affects their legal capacity, their right over property, inheritance, and salaries; besides it revokes their legal capacity to be part of a work contract according to the Labor Law in force in Chile and the Administrative Statute of the Civil Service, because it requires the authorization of a preceptor or guardian and they cannot freely administrate their assets as they are under interdiction.

55. According to the report of the Observatorio de Derechos Humanos de las Personas con Discapacidad Mental (Observatory for the Human Rights of the People with Disabilities) of 2014, law 18,600 not only does not recognize the legal capacity of people with disabilities, but approves two forms to deprive them of it; the court declaration of interdiction for mental disability by the mere fact of the certification of the disability and the registration in the National Registry of Disability; the designation, with minimal requirements as a temporary guardian of the properties that are owned to the individual who is the care giver of the person with intellectual disabilities. Civil law at his core structure divides people into capable and incapable, resulting in an impairing of people with disabilities in the legal acts, including probate and successions, civil marriage, adoption, property management and participation in the public world.

56. Recommendations:

- a) Modify the passive and dynamic dual concept enshrined in Article 1447, melting capacity of law and capacity for enjoyment, and derogate the procedure of discernment with medical certificate wich threatens people with intellectual and psychosocial disabilities.**

- b) **Repeal Law No. 18,600, reform Law No. 20,584, and derogate Regulation 570 on psychiatric hospitalization, bans and conservatorship, hospital and forced sterilizations, and replace the informed consent protocol with conventional standards in human rights**
- c) **Amend the internal Chilean legislation to the standards of the Convention so as to put an end to the interdictions and guardianships and to ensure the full legal capacity of people with disabilities, by means of the autonomous exercise and with support in the decisions as much is needed and requested by the person, during all his or her life.**

Article 13. Access to justice.

57. Regardless of the efforts of SENADIS to establish agreements with public and private institutions, and the allocation of resources and training to practitioners in the justice system to progress in guaranteeing the right of access to justice, there still remains the privation of the condition of procedural subject of some people with disabilities, which means they have to be represented by a third party in court proceedings.

58. On the other hand, in terms of access to courts, public prosecution, public defense, legal services office, and other collaborating bodies in the judicial system, there is not a single integral strategy to provide adequate for people with disabilities. In spite of some specific initiatives - that the State informs in its report to the Committee - those initiatives have not been evaluated so it is possible to identify the right practices that can become institutionalized and expand the whole judicial system. Likewise, there is no diagnostic analysis (at least not a public one) regarding the impact that these initiatives have had in the satisfaction and exercise of their rights for the people with disabilities. Therefore, today there are no support measures to allow the people with disabilities understand and practice their rights in the context of court proceedings so their access to justice is in effect guaranteed.

59. As it was indicated in paragraph 29 of this report, there are no studies that identify the prevalence of violence against girls, youth and women with disabilities. Hence, it is not possible to establish the current situation in spite of recurrent complaints brought forward by the organizations of the civil society about this issue, and even less is known about the access barriers to justice in these cases.

60. There are significant difficulties for intersex people - particularly boys, girls and adolescents - to have access to justice because a majority of the medical profession advise the parents not to inform the children about their intersexuality and the surgical procedures that are administered to cosmetically "repair" it by obstructing access to the medical records and histories, resulting in the fact that many intersex people don't know about their situation. Furthermore, there are no legal and administrative measures to promote change in the paradigms of the medical profession and adopt a human right approach.

61. The Chilean judiciary has not received any education about intersexuality, being the reason why the justice operators have no tools to safeguard the integrity of intersex people as they do not know their reality.

62. Recommendations:

- a) **To facilitate the access to justice by making reasonable adjustments to the support system of women and girls with disabilities, especially in matters of sexual violence, domestic violence, human trafficking, sexual exploitation and guaranteeing the access to justice to people with disabilities and initiate court proceedings on their own.**

- b) To guarantee the proper support for people with disabilities that must face court proceedings by providing intermediary human and animal assistance, including readers, professional sign language interpreters to enable access to justice.
- c) To design and implement public policy and effective measures to prevent, denounce, penalty, victims' protection and reparation in cases of violence against women founded on their disability.
- d) To guarantee the right to the physical and psychological integrity of intersex people.

Article 14. Liberty and security of the person

63. Chile must move forward to eliminate the measure of deprivation of liberty for reasons of disability. Article 458 and following of the Code of Criminal Procedure regulates the situation of the people that are not held legally accountable for reasons of insanity and authorizes the temporary admission of the accused *he or she suffers from a serious alteration or insufficiency of the mental capacities that could represent harm to him/herself or other people*. This rule allows for the designation of not legally accountable to be applied to insane people in criminal processes, for reasons of disabilities and intersected with socioeconomic conditions, ethnic origin, and presumption of danger, abandonment or neglect, categorization of social risk, paternal or maternal inability, and other stereotypes and stigmas used to exclude, segregate, and deprive people with psychosocial and intellectual disabilities as well as deaf people from their rights, restricting them to psychiatric environments and asylums. This situation becomes more critical for people with disabilities that belong to ethnic minorities, forcing with the admission to an institution a process of acculturation of indigenous children from rural areas.

64. The state as a guarantor must make sure that the people that for whatever reason have been deprived of their liberty, do not lose the rest of their rights because of this deprivation. However, for people with disabilities deprived of their liberty, these rights are not respected. When are admitted to a detention center they are deprived of their pharmacological treatments, not only violating their rights but also putting the person's integrity and health at risk, which could result in irreversible damage to in their health condition.

65. Regardless of the progress in legislation during the last decade, a study requested by the Ministry of Health indicates that among the limitations of the mental health legislation in Chile, the following stand out: There is no recognition of the legal capacity of the people with intellectual disabilities; it is allowed to easily declare the interdiction of a person with intellectual disability and to name a guardian to administer his or her properties; it is stated that the right of a person with intellectual disabilities to know the information of the medical records can be denied by the treating physician, contravening the WHO standard; there is no initiative to establish an independent authority to supervise the involuntary admissions and other restrictions of rights or an appeals mechanism; there is no recognition of the exclusive right of people with intellectual disabilities to consent to irreversible medical procedures.¹⁵ The same study reports an increase *"between the years 2004 and 2012 of the measures of deprivation of liberty, as it is the case of involuntary hospital admissions, physical restraint, and reclusion in isolation cells, with high risk of violation of human rights"* and when *"data from the public system only is analyzed, there are 1,646 involuntary hospital admissions, which represents 15.5% of all admissions to psychiatric services in both, general and psychiatric hospitals"*.

66. To the above follows what is indicated in the report of the Observatorio DDHH Discapacidad Mental, *"the existence of informal for profit residential institutions that keep people with intellectual disabilities locked, socially excluded and in appalling conditions of hygiene, nutrition and shelter. These institutions are not audited by any state agency and there is no legislation that controls the operations to*

*protect the rights of the residents (because they are not considered health institutions by the current legislation, they are not controlled and audited by the health authority, with exception of situations of public outrage".*¹⁶ An extreme example is the case of violation of the "Hotel" in the town of Reumen where 10 people with psychosocial disabilities died burned alive behind closed doors¹⁷, which made visible the precarious and criminal conditions of the private precincts of forced institutionalization of persons with psychosocial disabilities. It is urgent to count with an updated cadaster of these kind of institutions, and to close down the ones that violate conventional standards.

67. Currently, although there is no specific data and number of cases, but all inmates that have been found not legally accountable are sent by the judiciary to hospitals with forensic units for their psychiatric admission. These are recent units, as forensic inmates before were sent by the court to psychiatric institutions without any consideration of their criminal behavior. The relations between the hospitals and the judges was one of conflict because of the recurrent complaints against the inmates and prison guards by the patients and hospital workers that had to live with them. Finally, the conflict between the hospitals and the judiciary was resolved when funds were allocated for these modern units for forensic patients.

68. However, there are many inmates declared not legally accountable and few forensic beds. Besides, there is no respect for their condition of person with intellectual and or psychosocial disability to receive the necessary therapy and rehabilitation for their health condition. It has been observed that although there is not medical reason to hold them in the hospital, their detention is prolonged without review of the competent court of guarantees.

69. There have been serious cases of human rights violation while the arrest of people with intellectual and psychosocial disabilities by the police and at the hands the prison guards. The case of Robinson revealed torture and severe abuse resulting in his death. The family denounced and sued the prison guard service for murder in 2015. In the case of Cristian Velasquez, 29 years old, from the municipality of Casablanca, Hospital of Molina in the VII Region, who was diagnosed with bipolar disorder, and happened as the result of prostration and worsening of the clinical condition caused by assault and the institutional refusal to provide the medical attention requested by the family in 2015.¹⁸

70. On another subject, it has reported that an intersex boy was removed from his family and admitted to a center of the National Service for Minors (SENAME) to make sure that he would be taken to the health services and be subject to a surgical procedure. Today, at age 4, he has already been mutilated without his informed consent.

71. Recommendations:

- a) To eradicate forced admissions of people with disabilities, and repeal all clauses, normative or any regulation that authorizes the practice of detention based on the deficiency, in spite of the presence of other factors, including Article 458 and following from the Code of Criminal Procedure.**
- b) Close supervision of hospital, clinics and residencies that maintain people with disabilities admitted or deprived of their liberty, to promote the externalization in normal environments in the community with the support systems.**
- c) To ensure that pharmacological treatments are not interrupted for people with intellectual and psychosocial disabilities that for whatever reason are deprived of their liberty.**
- d) Establish separate devices of deprivation of liberty contemplating reasonable adjustments into police and gendarmerie institutions for people with disabilities infringing laws, and legislate for alternative penalties to imprisonment for people with disabilities.**

Article 16. Protection from violence, exploitation and abuse

72. In the law 20,066 about Domestic Violence, the only reference to people with disabilities is when they are included as a group particularly vulnerable that the court has to protect in situations of imminent risk by means of precautionary measures resulting from the value of the complaint.

73. There is no 2015-2018 National Action Plan about violence against women that is known by the citizenry, so it is not possible to evaluate the inclusion of people with disabilities in it.

74. It is alarming that there are no proper safeguards and protection in the case of sexual violence and incest to girls and women with disabilities, especially in shelter and refuges where there are no mechanisms to provide adequate legal and psychosocial support to promote the legal claim and the investigation of these types of crimes. The limited information collected by the units of the investigation police (PDI), is organized by CAVAS the shelter for victims of sexual abuse (Centro de Acogida a Victimas de Abusos Sexuales), that only covers the Region Metropolitana. Data is not disaggregated by condition of disability, there are no indexes of incidence on people with disabilities.

75. At the national level the statistics of sexual abuse indicate that in 70% of the cases girls between 3 and 11 years old are affected and in 8% of those cases, the aggressor is part of the family circle. There is no information of the prevalence of this type of violence against women and girls with disabilities, but organizations of people with disabilities in children have corroborated that most of the cases of abuse reported by CAVAS are girls with disabilities as they become the perfect victim as they lack language, they are deaf or blind or have reduced movility.

76. The programs for sex education that are delivered in the formal education do not consider the issue of sex education for people with disabilities, increasing the risk of vulnerability to abuse and sexual violence.

77. Recommendations:

- a) **To incorporate a perspective of disability in the state response to violence against women and girls.**
- b) **To implement measures of prevention, protection and reparation for the sexual violence that women and girls with disabilities face in family and community contexts.**
- c) **Collect and organize information about violence against women with disabilities specifying the number of victims, courts proceedings initiated, sentences obtained, number of allegations presented and number of deaths.**
- d) **To include variables of Sexual and Reproductive Rights as well as violence against women and girls with disabilities in the ENDISC and other instrument to gather data and organize information, including a perspective of disability.**

Article 17. Protecting the integrity of the person

78. For decades the Chilean state has practiced prophylactic or sanitary measures of forced surgical sterilization to confront the problem of sexual violence that suffer people with disabilities, especially girls and women. In the area of public health, this practice that violates the sexual and reproductive rights is called "positive eugenics" of pregnancy of girls and women with disabilities. The office of the Ministry of Health created to administer the requests of families to practice "forced by regulated

sterilization” and other irreversible treatments, is called the National Commission for the Protection of people affected by Mental Illnesses (CNPPEM), constituted by commissioners selected directly by the ministry of health and an executive office of professionals and administrative personnel with paid positions. The role of the CNPPEM has been criticized by National Consumer Representative who dispute the systematic discrimination towards the users of mental health.

79. The commissioners can review multiple documents detailing sensitive information about people with disabilities to decide to approve or not the irreversible surgical procedure, among them the debatable but *sine qua non* component of the capacity to consent or of informed consent.

80. According to the report of the Observatorio de DDHH de las personas con discapacidad mental of 2014, and following the results of the WHO-AIMS of Chile 2012, the Commissions of Protection visited 40% of the psychiatric hospitals; 25,8% of the psychiatric services in general hospitals; the 12,9% of protected shelters and 17,1% of the protected residencies, following complaints and allegations received. These commissions do not act autonomously from the sanitary authority so they do not perform an external evaluation and their power is limited to report and make recommendations without the prerogatives to determine courses of decisive and impose sanctions. All this conditions limit the compliance with the standard of protection by this kind of institution.

81. Finally, when the authorization of the irreversible sanitary measure is approved, the health officials of the CNPPEM, frequently order to stay on record and officially inform the relatives of person with disability that the surgical sterilization does not protect the patient from sexual abuse and the protective measures against sexual violence remain the responsibility of the family, because besides sexual violence a higher risk or proneness to neglect is presumed.

82. It is also disturbing the existence of other normative derived from obsolete psychiatric practices that regulations and that have not yet been abolished, such as neurosurgical mutilations denominated “Irreversible treatment or psychosurgery for people with severe psychosocial disability”. In Chile, the norm of the Ministry of Health about this matter established that surgery is the last alternative for Refractory Obsessive Compulsive Disorder, only to be approved after the rejection of the intensive cognitive behavioral therapy. In spite of the effort of the executive secretary to retain the sanitary control of these surgeries, limiting them to public health services authorized to execute them, and excluding psychiatric hospitals, it hasn’t been able to establish the follow up protocols for the users of the health system resulting from the total lack of collaboration of the treating physicians, because relatives look for private clinics, and even relatives escaping beyond the borders, becoming the reason why in spite of the data available of the application of the norm, there hasn’t been a valid scientific discussion about this issue.

83. On the other hand, we presented our concern to the Committee regarding the norm T.E.C. or Electro Convulsive Treatments, derived from the Rule book 570. This norm has regulated during the last 13 years this invasive and arguably little effective invasive practice that was used in the majority of the mental health disorders or people with psychosocial disabilities, and now limited to Refractory Major Depressive Disorders. It has been attested that the perverse and cruel effects of the TEC does not properly consider the relationship between the therapeutic benefits, when for example the consent form questionnaire is applied to the “mental patient” that will receive the treatment, they are not informed about the high probability of generating cardiopulmonary arrest, among other risks.

84. Other negligent behaviors detected are derived from the lack of adequate medical specialists in the psychiatric units in the public system. This is critical because there is no trained medical personnel, and particularly anesthetists trained in the psychiatric practice that generates controversy. In this

regard, the organizations of people with disabilities have reported cases of medical negligence in the administration of anesthesia that can cause in the patients severe psychological traumas and diverse bone fractures.

85. Additionally, as it has been previously mentioned about the surgical procedures practiced to intersex people, it is of concern the practice of gonadectomy (excision of the sexual gland – gonads) to assign the female sex. It is said in the medical practice that surgically speaking “it is easier to make a woman than a man”.

86. Recommendations:

- a) **To forbid forced sterilization based on disability and defining and typifying as torture its implementation without informed consent.**
- b) **To forbid the refusal of access to health services to exercise sexual and reproductive rights due to disability, and to promote the access to sex education since childhood as a preventive measure of abuse, and for the healthy development of affectivity, sexuality and the wellbeing according to their age, as recently the Committee on the Rights of Child has recommended.¹⁹**
- c) **To assign urgency priority to the framework law about the Sexual and Reproductive Rights that has been stalled in congress since the year 2000, and to reinitiate the national debate with the purpose of complementing the existing legislation with the Convention and adopt the adequate public policy.**
- d) **To eliminate psychiatric institutional practice, that by not considering the informed consent of the subject could be construed as torture and cruel and degrading inhuman treatment, without any foundation in clinical methods, and lacking current validation by the scientific community, and no foundation in a human rights approach, such as the “Irreversible treatment or psychosurgery”, and other invasive surgical practices such as the Electro Convulsive Treatments; practices of isolation and prolonged physical restraint used with people with psychosocial disability, and the forced adaptation to the psychiatric discipline punishing the unique, original condition of each human person.**

Article 19. Living independently and being included in the community.

87. The Convention on the Rights of People with disabilities, as well as the Law LIOISPD recognize as a governing principle the “independent life”, the promotion of the State of the personal autonomy, the recognition of sign language as means of communication for the deaf community, and the demand for accessibility and use of public buildings.

88. It is urgent that the State generate subsidizes and social help for access to housing and social support for independent living of people with disabilities. In the case of people with intellectual disabilities it is important to reinforce the work with the families to maintain people as long as possible in their family and social contexts, avoiding that they have to look for shelters or protected residencies, that although they are better than the psychiatric hospitals, can be more institutionalizing than the family life.

89. In the study, “Mental Health in Chile, Second Report”, they conclude that “*with the exception of the implementation of protected homes and residencies, and the transformation of the El Peral Hospital, psychiatric hospitals have not complied with the National Plan of Mental Health and Psychiatry to respond to the need of the user population of the respective Health Services by converting resources to be used in the education of ambulatory teams, day hospitals and psychiatric services in general hospitals. The short stay services in psychiatric hospitals have the drawback that they are not connected to other*

medical disciplines and lack with health technology supporting service of the general hospitals. The long term stay of 441 people in services of long residence in psychiatric hospitals is another weakness that the national system of mental health has not resolved yet."²⁰

90. Recommendations:

- a) To design and implement policy with permanent budget lines to help deinstitutionalize people with disabilities to reinforce the principle of independent living, and ensuring the feasibility of living in the exterior by the provision of support, including services for personal assistance.**
- b) To criminalize and typify the crime against humanity of enforced or involuntary deprivation of freedom because of disability under Article 7 of the Rome Statute.**

Article 23. Respect for home and the family.

91. Article 1447 of the Civil Code establishes that *"They are absolutely incapable those who are insane, the prepubescents, the deaf, the deaf mutes that cannot communicate clearly. Their acts do not produce any natural obligation, and admit no guarantees. They are also incapable the adult minors that are under interdiction to administer their properties. But the incapacity of the people mentioned in this paragraph is not absolute, and their acts could have value under certain circumstances and under some respects defined by the laws (...).* This norm completely infringes of what the Convention establishes, because it legally incapacitates to enjoy and exercise of deaf and "insane" people in relation to the possibility to get married, adopt, practice the right to inheritance, manage the property and in general participate of the public world.

92. Additionally, when the decision to form a family comes, is not only important to consider the aforementioned impediments to get married, but also the recognition in terms of sexual and reproductive rights. The sanitary authority has set criteria and procedures to execute surgical sterilization of people in condition of disability according to the Exempt Resolution 2326 of 2000, that establishes the guidelines for the health services about male and female sterilization, which in its last section refers to the sterilization of people of reproductive age that suffer from an incapacitating condition that impairs the judgement. Afterwards, the 1100 Exempt Resolution of 2004 was enacted by the Ministry of Health and approves the General Technical Rule 71, which contains the regulations for the procedure of surgical sterilization of adult people with psychic disabilities that affects the reproductive capacity, maternity and child rearing, and that re not able to provide consent. In the case of children and adolescents, this resolution states that it will not be possible *"to request a procedure of sterilization in minors with psychic disability because they have not completed yet their development, and if they require a contraceptive method, reversible contraceptive methods should be chosen"*. Even though this regulation means progress, these matters should be object of a framework law and not a ministerial rule.

93. The Law of Rights and Duties of Patients prescribes in article 14 that *"every person has the right to concede or deny the will to undergo any procedure or treatment related to its health care(...) this right must be exercised freely, voluntary and expressly and informed."* In the case of the children and adolescents, this will is presented by the legal representative. After, article 15 states that nonetheless the general rule, *"the manifestation of free will won't be required under the following conditions: c) When the person is in a condition that cannot express his or her free will and it is not possible to obtain it from his or her legal representative, because there isn't one or cannot be found."* Similarly, article 24 indicates that *"... if the person is in a condition in which he or she cannot express his or her will, the indications and applications of invasive and irreversible treatments, such as sterilization with*

contraceptive purposes, psychosurgery and other irreversible procedures, will require the favorable report of the ethics committee of the institution”.

94. The interpretation of the conditions that the law states has resulted in a medical practice that it is possible to permanently and irreversibly sterilize children and adolescents, under the request of their own legal representatives, or when it is not possible to get it from them, because they do not exist or couldn't be found, with only a favorable decision (or not) from the ethics committee of the institution, as their resolution is not binding and it is only a recommendation (as established in art. 17 paragraph 3). This serious violation of the rights of girls and adolescents has also been included by the Committee on the Right of Child that in their fourth regular report of the Committee on Chile, confirmed that is widely spread practice in Chile the sterilization and deprivation of the sexual and reproductive rights of the girls with disabilities.²¹

95. Recommendations:

- a) To repeal or abolish in the Civil Code the prohibition of marriage of people with intellectual or auditory disabilities.**
- b) Participative construction of a sexual and reproductive protocol for people with disabilities, including children with disabilities.**
- c) Make a crime of the forced or involuntary permanent sterilization of children, adolescents and women with disabilities, in agreement with Statute of Rome and the Convention of Belem do Para.**

Article 24. Education.

96. The report from the Observatorio de DDHH de las personas con discapacidad mental, that has already been cited, indicates that the study “Sistema de salud mental en Chile, Segundo Informe”, has allowed to measure, among other indicators, the percentage of schools that have at least one mental health professional, on full time or part-time bases. It is understood as a college professional that has received graduate education in this field (for example, psychologist, social worker, nurse, occupational therapist specialized in mental health; etc.) The importance of the mental health professional in a school relates to the potential role that can play in the individual situations, and the role that can play in the transformations of the school community to guarantee inclusion and the full development of the capacities. Along this lines, there a few schools in Chile that have at least one mental health professional, with a higher percentage in the municipal schools (18.4%), compared with a private subsidized schools (8.4%) and private with no subsidy (4.6%).

97. In spite the fact that during more than 14 years different integration policies have been implemented for children to attend “regular” education, including children with intellectual and psychosocial disabilities, and that additional funds have been allocated for municipal and subsidized schools to this effect, the degree of actual implementation is very limited. Hence, the situation is that out of 10 students that belong to these groups, only 1 is included in a regular or general school and the other 9 remain marginalized in special schools.

98. Special education for people with disabilities does not adapt to the different types of disabilities of children and adolescents and there aren't any programs of initial education for children and adolescents with disabilities. It is clear the incongruity between the Law 20,422 and the statements of the Convention, which becomes an obstacle for the effective exercise of the right of people with disabilities to an inclusive, quality, and equal opportunity education.

99. In this context, to foster the project of constitutional recognition of the people with disabilities could a trigger mechanism to reorient the current policies towards an inclusive approach. It concerns that sign language is not yet recognized as an official language. It is necessary to position an inclusive approach in the media and in educational decisions to make it part of general education, where special education can be a complement but not the single responsible.

100. Regardless that the “Norms and Rights of the Students” of the Ministry of Education, establish that to expel a student should be an exceptional measure, that should only be applied when there is a real and present risk for a member of the school community, 5% of the municipal schools, 8% of the private subsidized and 17% of the private schools regularly expel students that show disruptive behavior.

101. Chile is currently working towards an education reform that involves different legislative projects. In January of this year, the Law of Inclusion was passed that has as objectives to stop profit, selection, and co-payment in institutions that receive public funds. However, this measures are not applicable to special education schools or the regular schools with a project of school integration, because in this cases quotas are established for integrated students. They will maintain a discretionary selection process, defined by the own school, which will preserve exclusion and segregation.

102. In effect, the current reform in progress does not guarantee the right to education to all students, because it introduces exceptions to the universal non-selection in the case of special needs students, children with disabilities will continue to be excluded and discriminated against by the educational system without the same opportunities than their peers. This exception to the universal non-selection criteria undermines the founding principle of the reform that tries to guarantee a quality education for every student, without discrimination, and the core of the reforms proposed by the government. The result could be the proliferation of special schools that do not follow an inclusive educational system with an approach of rights.

103. Pre-school education, is compulsory since 2013 from the second transitional level and creates a system of cost from the initial level and inclusion and integration are arbitrary in each school.

104. Recommendations:

- a) To make into law the prohibition to discriminate in education for reasons of disability, including the refusal of reasonable adaptations as a form of discrimination, as well as the explicit clause that forbids the denial to students with disabilities to register in regular education.**
- b) To move forward in the elimination of special schools and to strengthen the inclusion of the diversity of children in an inclusive educational system, especially of children with disabilities, implementing adequate programs that would make it possible.**

Article 25. Health.

105. The Chilean state does not ensure the right to doctor-patient confidentiality and the right of the patient to make informed decisions in the case of the people with disabilities, blind, deaf and particularly women belonging to those groups. There isn't a Mental Health Law in agreement with international standards in this matter that has been demanded for a long time by the organizations of people with disabilities. During the last 14 years only the Supreme Decree 570 has been enhanced in the regulation of admission to institutions of people with mental disorders, the institutions that provide care, and associated sanitary norms.

106. The National Mental Health Plan is out of date since 2010. The process of a new draft for the 2015-2025 period is appreciated, but there are persistent doubts regarding the scope of participation of the organizations of people with disabilities, particularly when the Convention requires close consultation with the members of the civil society. This Plan has not been consulted with the Presidential Advisory Commission on Disability.

107. The report of the Observatorio de DDHH de las personas con discapacidad mental of 2014 asserts that regarding the resources for health care of people with intellectual and psychosocial disabilities, the norm for community centers for mental health (39) established a standard of 1 center per each 40 thousands FONASA users, to enable health care provision close to the territories where people live. Currently, in spite of a significant increase in the number of centers, from 0 in 1990 to 83 in 2012, we are far from the proposed standard, and reaching a coverage of 1 center per each 164.940 FONASA users. It is necessary to increase the number of centers almost 4 times to meet the standard and solve the over demand of care that happens today.

108. It is precisely in the Health Services where the sexual and reproductive rights of intersex children and adolescents are gravely violated with the practice of unnecessary invasive genital surgery without consent. The UN Special Rapporteur, on the right of every person to enjoy the highest level possible of physical and mental health in 2009, (A. Groover), and the UN Special Rapporteur on Torture and Other Cruel, Inhuman or Degrading Treatment in 2013, (J. Mendez), agree in the need to promote the respect of the informed consent of intersex people, and therefore, the end to the unnecessary surgical procedures and their harmful consequences.

109. On the other hand the provision of health services in the public system represents a barrier for the deaf community and with visual impairment, and in particular for blind and deaf girls and women because among other things: the administrative staff and health personnel do not have the resources and modifications for deaf people, people with hearing loss, and blind people; the system does not contemplate the right to decide the form of communication with neutral and competent interpreters that can transmit the information about the reason for the consultation properly; the treating physician does not inform nor explains personally, as a direct patient, to the deaf person or with hearing loss or the blind person, the process of the visit, the diagnosis, the treatment or the need to avoid certain contraindications; it is required from the deaf or blind person to be accompanied by a relative, friend or another person that can interpret for them, this not only collides with the principle of independence, but also involves problems with privacy and confidentiality.

110. Recommendations:

- a) **To guarantee the sexual and reproductive rights of people with disabilities, particularly of women, girls, and intersex people eliminating the practice of genital surgery at early age.**
- b) **Repeal all legal and administrative rules that authorize and or allow the involuntary confinement of people for reasons of disabilities.**
- c) **To expand the provision of health services, particularly for children mental health and their care givers, as it has been indicated by the CDN 2015**

Article 27. Work and employment.

111. There is no adequate protection from work abuse perpetrated using the practice of indefinite labor rehabilitation, known as “protected work” or “learning contracts”. There are incentives that private companies associated to hospitals use, to be benefitted for including as workers people with disabilities, with the option to assume the reservations of the Law 18,600 that allow them to pay salaries lower than the legal minimum in effect in the country to people with psychosocial and intellectual disabilities.

112. This situation touches particularly to women, who are paid around 30% less than a man for the same work. Even more, if it is the case of women with disabilities. According to the ILO 2010, only 1% of the people with disabilities have a contract.

113. According to the CASEN 2013, people with psychosocial and intellectual disabilities that do not work reaches 77% a number that climbs to 83% in the more poor groups. The fact that a person is working, does not mean that it is a quality job or that receives the necessary social protection. Similarly, ENDISC II indicates that 44% of the adult people with light or moderate disability does not work, a number that gets to 75, 7% in the case of severe disability.

114. Informal and independent work is the most utilized alternative by the majority of the people with disability that works, and the situation is worse in the case of women with disabilities. According to ENDISC 2004 and validated by ILO 2010, the majority of women with disabilities are not part of the work force because they only perform “house work” or “unpaid family work”. ENDISC II does not include desegregation of the type of work as the first 2004 version did, hence it is not possible to make a comparison to date to know is the situation is stagnant or not.

115. Recommendations:

- a) **To implement job strategies with support, productive employment, seed support, assistance and support to companies that hire people with disabilities, particularly intellectual and mental disability.**
- b) **To guarantee inclusive education and job training without discrimination and with the allocation of sufficient funds.**
- c) **To enact legislation about quotas of formal and decent job positions for men and women with disabilities.**
- d) **To repeal the norms that authorize to pay less than the legal minimum to people with disabilities, guaranteeing an ethical minimum to all people without distinction for different capacities.**

Article 28. Adequate standard of living and social protection

116. Great gaps in coverage have been identified for all the population with disabilities in education, inclusive health and social security. On the other hand, the current system of social security generates disincentives to look for work because the welfare pension of a person with disabilities is cancelled when a person finds a job, even though the cost of living of a family that includes members with disabilities is higher.

117. According to a study of the Fundacion de las America, 2012; the Services of the State that manage social security, discriminate against poor people with disabilities because to enjoy their right to

the social security disability, they are compelled to do the “execution of the legal interdiction” or “voluntary surrender” their legal capacity, for the “privilege” to enjoy the Basic Solidary Pension.

118. In matters of housing, although we don't know that adjustment made by the Ministry of Housing and Urban Planning (MINVU) that added additional scores to people with disabilities to apply to housing state subsidy, or if there any additional funds for the modification of such a house, otherwise the additional scores would be insufficient because it only helps access to ownership of the house. As it has been described by the representatives of the organizations of people with disabilities, their expectation is to be able to have access to the house of their neighbors, relatives, and friends.

119. Recommendations:

- a) **To resolve the weakness of the accuracy of the socioeconomic statistics associated to people with disabilities and create a realistic calculation of the actual social expense for the whole population of people with disabilities.**
- b) **To establish universal norms for inclusive house and neighborhoods to guarantee the inclusion and sociability of the people with disability.**
- c) **To establish a social policy with guaranteed allocated targeted monetary social assistance for people with disabilities to secure an adequate standard of living, including the costs related to the disability. The different components of this policy should be measured periodically to assess their pertinence, efficiency and efficacy. To establish social mitigation measures for the all the vulnerable population in periods of economic contraction.**
- d) **Guarantee that the people with disabilities that receive a salary for a work contract do not lose the welfare pension, so to promote the participation of the people with disabilities in the work force.**

Article 29. Participation in Political and Public Life

120. In her presentation of the ENDISC II the director of the Instituto Nacional de Derechos Humanos, Lorena Frías, indicated that the right to participate is not only a right in itself, but it is also central for the recognition and protection of other rights, as long as its absence in the sphere of decisions imply the invisibility of the topics that affect them and that are the result of structural discrimination. However, very low participation indexes are identified, the ENDISC II indicates that around a 31.2% of the people with disabilities participate in a social general organization and that only 7.5% do it as an organizer.

121. There isn't any space for participation offered by the State for the active participation of the people with disability in the defense and promotion of their own rights. As it was indicated in paragraph 27 of this report, even though the State has progressed in summoning organizations and people with disabilities to working groups and instances for policy elaboration and evaluation, this is not followed up by any support to make this participation sustainable. Likewise, in the recent constitutional process that the Madam President announced, a Citizens Council of Observers of the Constitutional Process was inaugurated, but it did not include the participation of representatives of the people with disabilities.

122. Recommendations:

- a) **To strengthen public participation of the people with disabilities and their relatives through technical and economic assistance, especially for the organizations of the civil society that work in the defense and promotion of the rights of the people with disabilities .**

- b) To include people and organizations of the civil society that work in the promotion and defense of the rights of the people with disabilities in the constitutional processes promoted by the executive.**

¹ It must be stated that the new law of civil marriage, does include a change to exclude them from being witnesses in a civil marriage (art. 16 Number 5), but it does not do (art.13) to be fully informed and perform the celebration of marriage, where the act is allowed with the assistance of a person trained in sign language.

² This is a corporate instrument used by the Hogar de Cristo that identifies the gaps in access to treatment in vulnerable populations such as the elderly, school drop outs, people with mental disabilities, etc.

³ Dehays Pinochet, María Constanza; Melissa Hichins Arismendi y Vanessa Vidal Castillo “Análisis del significado de las ocupaciones atribuidas a ser mujer y madre para un grupo de mujeres con discapacidad intelectual en la ciudad de Punta Arenas”, Winner of the Thesis Award “Cuenta tu tesis en derechos humanos 2013”, INDH, 2013. Retrieved from:

<http://bibliotecadigital.indh.cl/bitstream/handle/123456789/612/TESIS.pdf?sequence=5>

⁴ Source: Discrimination data of the Education Superintendent
<http://www.supereduc.cl/denuncias/estadisticas/estadisticas-de-discriminacion.html>

See also: <http://www.emol.com/noticias/nacional/2013/03/21/589605/gobierno-alerta-que-discriminacion-contra-ninos-con-sindrome-de-down-subio-29.html>

⁵ Agreements with the municipality of the city of Santiago en la Región Metropolitana Provincia de Santiago.

⁶ Comité de los Derechos del Niño, Observaciones Finales sobre los Informes Periódicos cuarto y quinto combinados de Chile, p. 56 y 57.

⁷ *Ibidem*, p. 54 y 55.

⁸ ONEMI, “Síntesis regional de informe técnico de evaluación simulacro regional de terremoto sector educación Región Metropolitana – 26 de noviembre de 2013”. Retrieved from
<http://repositoriodigitalonemi.cl/web/bitstream/handle/2012/1618/SintesisRegionalSimulacroSectorEducaci%C3%B3nRM2013.pdf?sequence=1>

⁹ ONEMI, “Informe técnico de evaluación simulacro macrozona de terremoto y tsunami evacuación del borde costero Realizado el 8 de Agosto de 2013 Regiones de Arica y Parinacota, Tarapacá, Antofagasta y Atacama”. Retrieved from

<http://repositoriodigitalonemi.cl/web/bitstream/handle/2012/1638/InformeEvaluaci%C3%B3nSimulacroMZNEvacuaci%C3%B3nBordeCostero2013.pdf?sequence=1>

¹⁰ ONEMI, “Informe técnico de evaluación simulacro macrozona de terremoto y tsunami evacuación del borde costero. Realizado el 15 de Octubre de 2013 Regiones del Biobío, La Araucanía, Los Ríos, Los Lagos y Aysén”. Retrieved from:

<http://repositoriodigitalonemi.cl/web/bitstream/handle/2012/1641/InformeEvaluacionSimulacroMZSEvacuacionBordeCostero2013.pdf?sequence=1>

¹¹ ONEMI, Informe técnico de evaluación simulacro de sismo y tsunami, sector educación región de antofagasta Simulacro Realizado el miércoles 5 de agosto 2015. Disponible en:

<http://repositoriodigitalonemi.cl/web/bitstream/handle/2012/1738/InformeEvaluacionSimulacroAntofagasta.pdf?sequence=1>

¹² *Ibid.*

¹³ Observatorio de DDHH Discapacidad Mental, “Derechos Humanos de las Personas con Discapacidad Mental: Diagnóstico de la Situación en Chile”, Report prepared by the Observatorio de Derechos Humanos de las Personas con Discapacidad Mental, 2014.

¹⁴ Data reported by the Ministry of Health MINSAL, under the Transparency Law, December 24, 2015.

¹⁵ Ministry of Health, “Evaluación del Sistema de Salud Mental en Chile” Second Report, June, 2014. Report using as a base the assessment instrument of the mental health system of the WHO (OMS IESM / WHO AIMS), Santiago de Chile, 2014

¹⁶ Observatorio de DDHH Discapacidad Mental, “Derechos Humanos de las Personas con Discapacidad Mental: Diagnóstico de la Situación en Chile”, Report prepared by the Observatorio de Derechos Humanos de las Personas con Discapacidad Mental, 2014.

¹⁷ Observatorio de DDHH Discapacidad Mental, “Derechos Humanos de las Personas con Discapacidad Mental: Diagnóstico de la Situación en Chile”, Report prepared by the Observatorio de Derechos Humanos de las Personas con Discapacidad Mental, 2014.

¹⁸ Notes from the shadow report of CIMUNIDIS-Chile for EPU/2014 Alto Comisionado de DDHH de la /ONU

¹⁹ Comité de los Derechos del Niño, Observaciones Finales sobre los Informes Periódicos cuarto y quinto combinados de Chile, p. 10

²⁰ Ministry of Health, “Evaluación del Sistema de Salud Mental en Chile” Second Report, June, 2014. Report using as a base the assessment instrument of the mental health system of the WHO (OMS IESM / WHO AIMS), Santiago de Chile, 2014.

²¹ Comité de los Derechos del Niño, Observaciones Finales sobre los Informes Periódicos cuarto y quinto combinados de Chile, p. 10.