



**EXECUTIVE SUMMARY  
ALTERNATIVE REPORT FOR THE REVIEW OF THE CHILEAN  
STATE BEFORE THE CEDAW COMMITTEE IN ITS 53<sup>rd</sup>  
SESSION  
(Fifth and sixth periodic report combined)**

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

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

**CENTRO DE ESTUDIOS DE LA MUJER (CEM)**

**CORPORACIÓN DOMOS**

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**OBSERVATORIO DE GÉNERO Y EQUIDAD**

**OBSERVATORIO CIUDADANO**

**OBSERVATORIO DE EQUIDAD DE GÉNERO EN SALUD**

**RED CHILENA CONTRA LA VIOLENCIA HACIA LAS MUJERES**

## Overview

- On February 27<sup>th</sup>, 2010, the country suffered the greatest earthquake and tsunami since 1962, leaving five areas seriously affected and thousands of homeless. Two years after the disaster, the reconstruction progress has been erratic and has scarcely incorporated the participation of the community, let alone the specific needs of women. The response did not take into account the gender dynamics that put women at a disadvantage and no analyses or studies have been conducted that indicate how the rights of women have been cared for in the areas affected by the earthquake and tsunami. Available information reveals a greater psychosocial impact among women who have suffered, among others, the loss of employment, because they must devote more time to caring for their family, and the increase in reports of domestic violence (after a decline in the months following the earthquake).
- Chile is still indebted for the lack of ratification of treaties that were signed by the State, such as the Optional Protocol of CEDAW, the Optional Protocol of ICESCR, ILO Convention 189 on Decent Work for Domestic Workers and other treaties regarding crimes against humanity and war.
- There is a clear delay in the discussion and adoption of the Citizen Advocate or Ombudsman.

## Recommendations

- ❖ In terms of reconstruction following the earthquake and tsunami, it is necessary that the state takes into account gender dynamics that disadvantage women, it is also necessary to conduct a thorough analysis of how women's rights in areas affected by the earthquake and tsunami have been protected.
- ❖ Designing an active strategy by government authorities, that involves the discussion of both public and private actors to achieve ratification of human rights treaties, including the CEDAW Protocol.
- ❖ Approve the law that creates an Ombudsman or Citizen Advocate, and incorporate a specialized unit for gender issues in the Citizen's Rights Defense.

## Articles 1, 2, 3, 4 and 5: Equality and discrimination

- Recently Law 20,609 on Measures against Discrimination was published. Unfortunately, this law holds more of a symbolic content rather than effective tools to address discrimination. Basically, the new law establishes special judicial action against discrimination before the ordinary courts to which those who are sponsored by an attorney may make use of. But it is not clearly stated that their goal is the prevention, punishment, eradication and repair of discrimination. Moreover, it has been ascertained that there is omission of a public institution for equality and nondiscrimination, budgetary resources, preventive measures and affirmative action, among others, and worse yet, it presents the inclusion of a regulation that subordinates the rights of equality and non discrimination to other constitutional guarantees.
- In the country there is a persistent lack of jurisdictional mechanisms that prompt and effectively re-establish the rule of law and protect the women affected by discrimination in any area of their lives.
- Officials from the bodies of the justice system receive almost no training in women's human rights. Both the lack of knowledge of the judicial officers in matters of international human rights and international standards on women's human rights, as the presence of gender stereotypes in the performance of the various operators of justice constitutes an obstacle to the access to justice for women.
- In terms of female migrants, the migration law in Chile does not conform to international human rights obligations and lacks a gender perspective in its design and implementation. The same applies to the women deprived of liberty and penitentiary law, which was built from the male model and is not responsible for the major issues affecting women prisoners. In that sense, the few rules that refer to women deprived of liberty are limited only to regulate issues relating to motherhood, reinforcing the stereotype of "woman-mother"
- Regarding access to justice for indigenous women, it is a concern that compensation agreements may be applied in case of domestic violence (even though, there is a legal prohibition to apply this alternative in domestic violence cases). At the request of the Criminal Defense, and in response to the articles 9 and 10 of the ILO Convention 169, criminal courts have accepted compensation agreements between victims and defendants and dismissed the cases, decisions that have been

ratified by higher courts. It is alarming that these decisions were not based on ancient traditions of the Mapuche people, and have been issued in violation of international law on women's human rights, ensuring impunity for such crimes.

### Recommendations

- ❖ Correct the shortcomings present in the Discrimination Law, in particular by incorporating a public institution for equality and nondiscrimination, budgetary resources, preventive measures and affirmative action, and eliminating the rule that establishes a hierarchy of rights over the rights to equality and non-discrimination.
- ❖ Permanent training on human rights, specifically on women's human rights and international standards for officers of the justice system.
- ❖ Review and update the immigration legislation of Chile in a way that suits the international human rights obligations signed and ratified by Chile. Approve a single regulatory body of law to gather and harmonize the detailed rules on the matter that integrates a gender perspective.
- ❖ Ensuring access to adequate and effective judicial resources to investigate, punish and eradicate violence against indigenous women (be it domestic or police violence). Adopt public policies to eradicate discriminatory socio-cultural patterns that impede to indigenous women full access to justice, including training programs and comprehensive prevention policies.

### Violence against women:

- The State of Chile does not yet have a single or unique record so as to show the extent of violence against women in the country, however, in the last victimization survey it shows that at least one of every three women has experienced violence in their relationships<sup>1</sup>, making family violence (hereinafter VIF) the second most reported crime in the country<sup>2</sup>. In recent years, violence against women has begun to be taken into account due to its most serious manifestation, femicide<sup>3</sup>, however, this term comprehends only the murders that occur in the context of current or past couple relationship, leaving out a variety of situations in which women are killed by their gender condition.

In regard to domestic legislation relating to the phenomenon of violence against women, it may be noted that **Law No. 20,066**<sup>4</sup> (Domestic Violence Act) far from referring to gender violence and abuse of power, it only touches on domestic violence, hiding thereby the extent of violence against women and its many manifestations, both in public and private. In 2011, the **Law on Femicide** promulgates. Without undermining the value of the recognition that the law implies, it is important to note that it improperly restricts the nature of the phenomenon to family life, thereby excluding the killing of women as a result end gender violence (dating, courtship and other links). In the same way, the criminal approach to human rights issues as complex as violence against women, is recognizably ineffective if it is not accompanied by preventive policies and guarantees for the full exercise of women's rights.

- The incorporation of violence against women in the State's work has failed to translate into a **National Public Policy on Gender Violence** that allows for a coherent, coordinated and effective approach to this problem. The manner of addressing it in terms of prevention, care, protection, punishment and redress is fragmented and unevenly developed, focusing primarily in its judicial and penal sanctions, sanctioning domestic violence in particular contexts and in some forms of violence. In terms of prevention, there are few or no policies for the education area, an area that is core for building a culture based on equality of persons and non-violence. Nor has there been a push of communicational campaigns to raise awareness of inequality and discrimination against

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<sup>1</sup> National Crime Victimization Survey, Ministry of Interior (2008), available at:

[http://www.seguridadpublica.gov.cl/files/presentacion\\_violencia\\_intrafamiliar\\_v2.pdf](http://www.seguridadpublica.gov.cl/files/presentacion_violencia_intrafamiliar_v2.pdf).

<sup>2</sup> The Home Office accounts for 102,309 reports of domestic violence in 2006 and 155,113 in 2011, about 80% of these being assaults against women, a percentage that has remained constant over the period of these years.

<sup>3</sup> According to figures provided by SERNAM, in 2011 the number of femicides was 40, the existing low percentage being of 25.93% over the period 2007-2011. It is noteworthy that in 2011 almost a third of the femicides had registered complaints (8) and protective effect (4) at the time of the assault.

<sup>4</sup> Law No. 20,066, published in the Official Journal of the Republic of Chile, Santiago, Chile, October 7, 2005

women. The care system for violence reveals the lack of an unambiguous and coordinated policy in the developed programs.

- In terms of **access to justice**, the lack of depth in understanding and the fragmentation in the treatment of the phenomenon of violence is clearly evident from the legal approach of it. Law No. 20,066 published in the Official Journal on October 7, 2005, far from referring to domestic violence as an abuse of power, accounts only for domestic violence, with an emphasis on the physical consequences of abuse. Therefore, different magistrates, depending on the consequences of the abuse, will know about the domestic violence situation. In the case of psychological violence, it will be reviewed in the family court, as well as physical violence that leaves no evidence. Meanwhile, physical violence that leaves marks will be evaluated in a criminal court, not as gender violence, but by the specific crime which it accounts for, which runs from the wide range of injuries, some sexual offenses, until reaching femicide. Despite attempts to broaden its range of protection by filing various parliamentary motions<sup>5</sup>, the law still only regards those who it considers *family* as subjects for protection, leaving out romantic relationships known as "pololeos" and some kinship relationships of its empire.

- It is also important to demonstrate the **non-existence of institutional mechanisms that allow for coordination between the two judiciaries** in charge of filing the cases in court, a tiny utility coverage for the public information services and guidance for women on legal proceedings, which is further reduced if legal defense in court is provided.

The existence of a sustained pattern of prosecution is observed, oriented toward the conditional suspension of proceedings and other alternative outlets, which do not involve the imposition of a penalty. This is very worrying as it is perpetuating a practice that discredits the penalty as part of a policy to eradicate violence against women, resulting in a lack of protection for victims and impunity for the crimes.

It is possible to observe the decrease of precautionary measures, when observing the low value assigned to them by the administration of justice. This has resulted in the loss of credibility in the system, as likewise the imperative need of training for judicial officers. There is no follow-up or monitoring of the ancillary measures or actions taken regarding conditional suspensions.

- Lack of knowledge and training on gender and human rights in key sectors of the justice system, problems in legal proceedings in addition to its fragmented approach, are of concern in meeting the demand for justice.

Recommendations:

- Advance towards a treatment of gender violence that can address the phenomenon comprehensively, generating public policies and regulations from a human rights approach, and with a budgetary support that is consistent with the magnitude of the strategy.
- Amend the national legislation on violence against women in order to cover all its forms and manifestations, including the one that occurs in the public and private space, and not only domestic violence.
- Design and implement a National Policy on Gender Violence which articulates the different sectors public offering on prevention, care and remedying of it, generating initiatives which will adequately address these issues with emphasis on strengthening prevention policies. Prevention policies are especially important in the educational training of children and young people, in order to provide them conceptual and practical resources that will strengthen a culture based on the equality of individuals and non-violence; and are also important in the implementation of communication and sensitization policies that generate higher levels of public awareness about discrimination against women.
- Establish mechanisms to monitor the ancillary measures and/or measures taken with regard to the conditional suspensions in both Family Courts and Courts of Guarantee, as well as when the victim deserts or retracts. Precautionary measures are meaningless if they do not include monitoring, which allows activating support networks, facilitating effective protection of women at risk.

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<sup>5</sup> Motion the Senate entered in March 2007 that seeks to include couples without cohabitation in the definition of family, and allows the Attorney General direct investigation of habitual abuse, at the first constitutional stage.

- Perform specific actions in order to decrease the alarming levels of impunity that exist in with regard to violence against women, for example, creating specialized prosecutor offices at a national level to act against criminal offenses of this kind.
- Remove procedural obstacles that impede the Public Ministry to investigate and prosecute crimes of "habitual abuse".
- The adoption by the bodies of the justice system of an effective control on interim measures of protection and conditional suspensions of the trial, with the purpose of providing greater protection to the victim.
- To establish permanent and compulsory legal defence for victims of domestic violence and to design a national register of public offer to treat domestic violence.
- Adopting measures to intervene in the risk factors that increase gender violence in its various forms (access to housing, economic empowerment of women, etc.).
- Advance towards the implementation of policies of redress for victims / survivors of violence against women.
- Pass the bill pending in Congress<sup>6</sup> on content regulation that attempt against the dignity of people in the mass media.
- Coordination of a single registration system to quantify violence against women in all its forms. In that same sense, implement a national articulated system to generate studies and statistics of the various manifestations of violence against women and girls.
- Permanent training on human rights and gender violence to public staff who interact with victims (women's centres and shelters), as well as for justice officials at the various levels and public servants in the different sectors of government.

#### Institutional Violence:

- When facing the **indigenous social protest** due to over-exploitation of natural resources resulting from major investment projects in their territories and the reclaiming of their ancestral lands, in recent years, the State has responded with a policy of criminalization that has led to the jailing of dozens of Mapuche and has tampered violently with members of Rapa Nui since August 2010. During the years 2011 and 2012 the pattern of police violence has continued, with several episodes of police repression in Mapuche communities that were violently raided by police with outcomes of children, women and elderly injured or affected due to the indiscriminate use of tear gas. As such, the criminalization of indigenous demands leading to the criminal justice field that the State is required to resolve politically is concerning.
- Since 2011 to date, a variety of social movements have been generating that demand changes of legal and constitutional character. Unfortunately, stemming from the events organized by these movements, the installation of a pattern of **sexual violence against women by police officials** has been observed, consisting in groping, forced nudity, threats of rape, beatings on the protesters' vagina and breasts, these acts always accompanied by insults of a sexual nature, gravely violating the physical and mental integrity and dignity of these women, with the aggravating circumstance that many of them are minors.
- With regard to **women prisoners**, as said, is of concern the existence a legal framework built around the male model. In addition, there are high levels of overcrowding in prisons for women (problem not solved by the general pardon law issued in 2012), there is limited supply of social reintegration programs for women prisoners (in 2001 only 49 were beneficiaries of a total of 4406 prisoners), and there is a deficit of reports and investigations that analyze the conditions of women prisoners in the country, as well as the reasons for which they are condemned, so the topic remains invisible.
- With regard to women victims of enforced disappearances, executions and sexual violence as torture during Chile's military dictatorship (1973-1990), there has not been an approach with a gender perspective of the crimes against humanity committed on Chile. Also, there are very few prosecutions for cases of torture. The qualification process for the victims and the reparation delivered to them did not have a gender approach. The Valech Commission (dedicated to qualify

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<sup>6</sup> On July 11, 2007 was introduced in Congress a bill, now pending, which incorporates rules against discrimination and against advertising that violates the dignity of individuals (Bulletin No. 5193-07).

victims of political imprisonment and torture) was operational on two occasions for brief periods of time, and is currently closed.

#### Recommendations:

- ❖ To stop criminalizing indigenous demands and to provoke a radical change in the ways in which has been addressed the conflict with indigenous communities. In particular it is recommended not to apply the Anti-Terrorism Act to them and to the design mechanisms to protect and assist child victims of institutional violence.
- ❖ To act with due diligence to prevent, investigate and punish acts of sexual violence committed by the Police against women, as well as to repair the victims of such violence.
- ❖ Reform penitentiary legislation to include a gender dimension capable of addressing adequately the problems of women deprived of liberty.
- ❖ To use a human rights approach to address effectively the problems of overcrowding in prisons; of scarce educational and employment programs for women prisoners; and the absence of studies to address -at least- the causes of the imprisonment of women and their conditions of detention in the country.
- ❖ To reopen the Valech Commission, indefinitely, modifying the common category of victim, including a gender sensitive protocol for interviewing potential victims, and designing an appropriate program of reparations for women victims of sexual violence.
- ❖ Ensure all the necessary measures to investigate and punish the perpetrators of enforced disappearance, execution and sexual violence as torture committed against women during the dictatorship, as well as ensuring adequate reparations to victims and / or their families.

#### **Article 6: Trafficking and Prostitution**

- With regard to legislation on trafficking and smuggling, in 2011 Law No. 20,507 was approved, which defines the crimes of smuggling and human trafficking and sets standards for more effective prevention and criminal prosecution. While this law has meant an important advance, it is concerning that there is no provision for **internal human trafficking**, especially having evidence of its existence in the country.
- In addition, after a year of the approval of the law, the **budget** allocated by the state for the prevention of this crime is unknown; as is the number, seniority and institutional origin of the public officials that will be trained, as well as how and when the development of statistics disaggregated by gender will be complied, in a single registration system that distinguishes trafficking for sexual exploitation from one that is for labor exploitation, effectively grasping the magnitude of the phenomenon in the country.
- Although the law states that **victims of such crimes should be protected**, receive shelter and even be eligible for residence permits, these provisions are not fulfilled or are limited in their implementation. For example, victims of trafficking face difficulties when processing their work visas because the cost of these can reach even up to 400 dollars, amounts that they are unable to afford. It is also of concern that the Police of Chile do not have protocols, instructions or guidelines to enable them to identify situations of trafficking or smuggling.
- While in the first instance, trafficked persons are considered as victims and as witnesses and are protected under Law No. 20,507 as witnesses, by the fact of violating the Immigration Act they are necessarily reported and made available to the FBI (PDI – Investigation Police) to be taken to the border or directly to their native countries<sup>7</sup>.
- With regard to public policy, in 2008 an Intersectoral Roundtable of Trafficking in Persons was created, however, this did not translate into the development of a national strategy that would involve an action plan for prevention, suppression and punishment of trafficking.

#### **Recommendations:**

- ❖ Include in the implementation of Law No. 20,507 (trafficking), tools for prosecuting crime and protecting victims, including the possibility of regulating their immigration status as victims of

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<sup>7</sup> Radio Cooperativa.cl, April 10th, 2012 "PDI: Dealers were charging 200 dollars for Peruvians and 500 dollars for Dominican"

these crimes, and are not subject to the successful prosecution thereof. As well as creating a single registration system with statistics that differentiate the various purposes for which there is human trafficking in the country.

#### **Article 7: Public life and politics**

- One of the great failures of Chilean democracy refers to the **low participation of women in public decision-making**. In the legislative power, women reach only 13% in the Upper House and 14% in the Lower House, figures well below the regional average exceeding 20%. At the local level, the mayors' representative figure is even lower, reaching 12% and a low level of councilors at 23%. At an executive level the female ministers represent 18% and Chile's foreign service has only two ambassadors.  
These figures do not coincide with the growing interest of women in politics. Polls on the opinion of the female population show that the rates of politicization of women in Chile are medium-high, reaching 69%. Thus, the low percentages of women in political representation appear to be a result of the resistance of party elites to incorporate them in the election processes.  
Four bills have been filed between 1997 and 2007 to ensure a balanced representation of men and women in elected positions, but none has advanced in the legislative process. The current government has stated its intention to act in this matter only through financial incentives to political parties according to the number of women candidates and women elected, discarding the possibility of reactivating the legislative debate around affirmative action.
- The State of Chile has not responded to the Committee's recommendations to **reform the election system**, which, besides being undemocratic, is detrimental to women, and to *"temporary special measures, aimed at accelerating facto equality between women and men in order to increase the participation of women in political life."*<sup>8</sup>
- The participation of **indigenous women** in public office is almost nil, it especially concerning that they are not represented in parliament.

#### **Recommendations:**

- ❖ Monitor the law on Associations and Citizen Participation in Public Administration, in order to assess their effectiveness in terms of citizen participation and representation of women in the instances that have been created from it.
- ❖ Amend the Political Constitution to incorporate the principles of gender equality, parity democracy and nonviolence against women.
- ❖ To reform the binomial electoral system and to incorporate a affirmative action mechanism that allows a balanced representation between men and women.
- ❖ Encourage educational campaigns and training for women to encourage and promote female leadership.
- ❖ Introduce amendments to electoral laws (Law 18,603: Constitutional Law of Political Parties, Law 18,695: Constitutional Organic Law of Municipalities and Law 19,884 on Transparency, Control and Limit of campaign spending) so as to incorporate affirmative action measures designed to match (or equalize) the situation between men and women in the public and political affairs.
- ❖ Incorporate a gender balance mechanism (affirmative measures) in the primaries bill.
- ❖ Submit a bill that promotes equality and requires the involvement of men and women, both in public and private companies as well as in representative and designation offices of all three branches of government.
- ❖ To implement public campaigns to promote women's participation in political decision-making spaces as in the public and private companies.
- ❖ Implementing awards and incentive measures to companies with parity directories and particularly those whose directors are women.
- ❖ Ensure and promote the full participation of indigenous people, especially women, in all matters and policies concerning them.

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<sup>8</sup> UN Committee on the Elimination of Discrimination against Women, 36th Session, August 7th to 25th, 2006, "Final Observations of the Committee on the Elimination of Discrimination against Women: Chile", CEDAW/C/CHI/CO/4

- ❖ To ensure and promote the exercise of the right to political participation of indigenous peoples, with special emphasis on promoting women's participation, in accordance with ILO Convention 169 and international law.

#### **Article 10: Equality in education**

- Although the **access to school education** is guaranteed, it remains in the country the breach in quality of education, both in socio-economic and gender terms. This has the result of lowest scores, according to the measurement and selection systems used, among the poor people and women.
- Also, there are still **socio-cultural patterns** that provoke the existence of areas of higher education "for women" and "men" (considering the negative impact this has in terms of devaluation and lower income for women). Particularly worrying is the way in which is being carried out the work to promote equality and non discrimination at school level in order to obtain the same results in future education of women and young men.
- In the area of **sexual education** it was not observed continuity in the work done during the last years and it has not been evaluated the impact of the different programs conducted for the reduction of teenage pregnancy. Also it has not been developed a specific policy to support teenage mothers in order to assure their permanence in the school system.
- Technological advances require highly skilled workers with abilities learned about **new technologies**; however, there is no active concern for reducing the digital gender gap detected from the school.
- In 2009, 7.4% of **indigenous women** cannot read and write compared to 4.9% of indigenous men. The same applies when making the observation considering the urban-rural variable, finding that illiteracy in the rural indigenous population in 2009 reached 12.8%, maintaining the gender gap. It is striking that the biggest gender gap is observed in the level of "uneducated". 7% of indigenous women over 15 are at this level, compared to 4.1% of indigenous men.

#### **Recommendations:**

- ❖ Promote the inclusion of gender equity in the standards for initial teacher training (from Early Childhood Education), requiring the universities to take an active role in developing a culture of equality and nondiscrimination, and to take care, additionally, of the sexual development of children.
- ❖ To design and implement policies that guarantee equality of outcomes for boys and girls throughout the entire educational system.
- ❖ Respond to emerging needs of pregnant students and mothers across the educational system, while increasing the capacity of the teaching staff to detect situations of sexual abuse.
- ❖ Develop active policies to incorporate girls to the use of new information technologies and communication.
- ❖ To develop a program of sex education from a human rights' perspective and consistent to a Secular State.

#### **Article 11: Employment**

Nearly two years after Law No. 20,348 "Salary Equity," came into effect, the **wage gap** between men and women increased up to 17%. So, on average, not only do women earn less, but also the breach between female and male workers has increased: if in 2002 the average taxable income of working women was 10.3% lower than that of male workers, in June 2011 the difference increased to 16.9%. Moreover, according to figures from the Pension Superintendent, the wage gap between men and women in the north is much worse: In the regions of Antofagasta and Atacama it exceeds 50%<sup>9</sup>, while in the region of La Araucanía, female workers earn almost the same as male workers. While the enactment of this law represents a step forward—recognizing that wage gap issues should be addressed by legislative measures—it is a policy with a limited scope: the mechanisms it delivers are not direct enough to force employers to implement pay equity effectively.

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<sup>9</sup> Contrary to what might be expected, the sector with the largest wage gap is not found in mining but instead in trade: in Antofagasta men in the productive sector earn 94% more than the women in the same area and in Atacama they earn 77,5% more.

- **Female participation** in the labor market – historically low compared to other countries in the region<sup>10</sup>—increased to 47,7%. Nonetheless, despite the increase, it still remains below the regional Latin American average, even with a sustained economic growth. The low participation of Chilean women in the labor market, not only impacts negatively on poverty levels of many households, but it also lowers women’s possibility of achieving economic autonomy, which is a fundamental condition for exercising all other rights, including the right to live violence-free.
- Despite the encouraging official figures, the fact is that the growth of female employment hides the **instability and precariousness that characterizes female labor in Chile**. As stated by the Sun Foundation (“Fundación Sol”), female employment maintains low formality, stability and continuity. Thus, women are unlikely to hold a formal, stable and secure job. Even though women employment has grown, this increase has been through self-employment, low skilled and part time jobs. Of the 664,000 jobs that were created during Piñera’s administration (to march 2011), 372,000 have been captured by women (56% of the total), and 46% of these correspond to “self-employment”, “domestic staff,” or “unpaid family member.” Also, women’s new wage employments are not ensuring greater protection or do they reflect higher quality jobs, they are mainly related to temporary employment through agencies, suppliers or subcontractors.
- In the **AFP individual capitalization system**, the use of life expectancy tables differentiated by sex is still in use. This is highly discriminatory and damaging towards women whose life expectancy is higher. Still, the AFP Superintendence justifies the use of these tables, arguing that the system must fund a life-long pension for the people who hire them, and the eligible survivors in the case they exist, therefore, the calculations must take into account life expectancy of those who hire them.
- It is in the **domestic workers** segment where many of the existing gender discrimination practices of the country are manifested. It is also in this area where we find the challenges to overcome them: low participation in the workforce, highly differentiated by income quintiles, the feminization of certain jobs, low wages, double roles resulting from inadequate coverage of care responsibilities, the large number of women as household heads, etc. This is why, the bill amending the contracts for domestic workers, which aims to reduce working hours to a maximum of 45 hours per week is highly appreciated. However, it is worrying that the government still does not propose to Congress the ratification of ILO Convention 189 on Decent Work for Domestic Workers and Domestic Workers.
- In the **indigenous population**, the economic participation rate reached 55.2%, and when separated by sex, 71% corresponded to active men, compared to 40.1% of active indigenous women, this proves an important participation gap between the female and male indigenous population when it comes to production and income generating activities.
- With respect to laws that discriminate against migrant population, we find that states that companies that have more than 25 workers (female/male) there should be at least an 85% of Chilean nationals.
- The wage gap between **migrant men and women** is confirmed by the data from the 2009 Casen survey. We find that only migrant women in the first quintile receive higher salaries than those of men (in a ratio of 1 for women and 0.7 for men). In the other four quintiles, female wages are lower than male wages. So, in quintiles II and III, the ratio for men is 1 to 0.8, in quintile IV it is 1 to 0.7; and, in quintile V it is 1 to 0.6, confirming the wage gap between male and female migrant workers on higher quintiles.

Once migrant women try to insert themselves into the Chilean labor market, they face difficulties inherent to a society affected by strong inequality gaps, an unstable labor market, characterized by the informality of jobs, the lack of protection for workers, and an immigrant legislation that links a visa to an employment relationship<sup>11</sup>, forcing migrant workers to tolerate illegal working conditions to keep their immigration status in order. The 2009 Casen survey indicates that in all of the quintiles, the ratio of women holding a work contract is less than men. In the first quintile, only 28.5% of the women have a contract, a percentage that exceeds the 60% in other quintiles. A

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<sup>10</sup> However, it should be noted in this regard that in the region there are different situations in relation to female labour market, and there are countries with a high participation of women but with high levels of informal employment, and others, like Chile, that although participation is low, it is formal.

<sup>11</sup> Particularly on work-based visas.

significant amount of migrant women are inserted into the Chilean labor market as domestic workers, either residing or not, in the house in which they work.

#### **Recommendations:**

- ❖ Modify the Equal Pay Act, adding sanctions, promotion and resources that allow monitoring its implementation is essential to reduce the gap, as well as incorporating a greater degree of transparency in companies and organizations about the salaries of men and women, so workers can identify and compare wage gaps.
- ❖ Promote the formalization of women's labor through employment contracts, pension contributions, and expanding the coverage of employment rights for women working informally to face female labor precariousness. In the case of seasonal-wage workers, a labor law reform is required in order to stop the term of labor contract and establish a season contract.
- ❖ Reorienting labor rights to the protection of women and men workers with family responsibilities.
- ❖ Stimulate the creation of laws that promote equal sharing of responsibilities at home, that help facilitate the inclusion of women in the workplace, thus promoting women's access to paid work and ensuring women's role in this activity, providing a social response to the needs of child and senior care.
- ❖ To reform Article 203 of the Labour Law Code referred to the corporate contribution to nurseries, including men workers with family responsibilities, to avoid the increasing cost of hiring women.
- ❖ Amend recent Act of extension of the maternity leave so as to be shared by both parents, with incorporation of a non-waivable paternity leave.
- ❖ To incorporate gender equity indicators in companies within the framework of Corporate Social Responsibility.
- ❖ To incorporate higher levels of transparency in companies and organizations regarding salaries of men and women, so that workers can compare and identify differences in wages.
- ❖ To promote campaigns for the incorporation of more women into public decision-making positions and union leadership.
- ❖ Ensure an effective right to strike and collective bargaining, without the possibility of replacement of striking workers.
- ❖ To modify the social security system -Pension Fund Administrators (AFP)- in order that women are not discriminated in the amount of their pensions, ensuring access to minimum conditions of life and health for older women. The pension calculation system used by the AFPs considers life expectancy tables differentiated by sex, punishing women for living longer than men.
- ❖ Strengthen the protection of labor rights women migrant workers, particularly the domestic workers.
- ❖ Ratify the ILO Convention 189 and Recommendation 201 on Decent Work for Domestic Workers.
- ❖ To include migrant women as a target audience of the National Plans for Equality between Women and Men.
- ❖ To include migrant women in the state's offers of labor training programs, such as Prodemu.

#### **Article 12: Health and family planning (Health Chapter)**

- Regarding the exercise and full respect of women's right to health, the situation appears to be critical on several levels.
- At an organizational level, the Chilean **health system** has two subsystems, one private and one public. This division, as well as the public policies enforced by the governments, has done nothing but worsen the public health system, strengthening the private system (ISAPRES) that fill the voids left by the public system. The private health system has high costs for the population, especially for women in childbearing age, where health plan costs are more expensive because they are calculated based on sex/age factors.

- In terms of **sexual and reproductive health**, the situation is critical. While there are legal requirements for health facilities to distribute contraceptive methods, this does not necessarily translate into everyday practice due to the barriers set up by municipal authorities based on their own ideological grounds. There have been several reports that point out the refusal of official and public servants to deliver the morning after pill<sup>12</sup>. We found a high degree of discretion in the distribution of this pill, which is mainly attributed to the absence of regulations governing this procedure.
- With regards to **abortion**, Chile is one of the few countries with absolutely restrictive laws since the repeal made to the Article 119 of the Health Code. This situation continues today. The law assigns a penalty that ranges from 3 years and one day to 5 years for women who commit abortion, and this is aggravated in the case of the health professionals involved<sup>13</sup>. Although an attempt to set an abortion law (under certain assumptions) was set forth during last year and part of this year, legislators refused even to the idea of legislating about this matter. This is also contrary to the will of Chilean women<sup>14</sup>.
- As for **cervical cancer**, the preventive phase is not considered in public policies, being this phase particularly important in this disease, since a tetravalent vaccine that prevents cervical cancer is readily available in the market, and has effect on a given population. It is urgent that this phase is included into preventive measures; especially considering the high costs of this vaccine and the high infection rates of this disease.

With regards to **breast cancer** in Chile, it is the second leading cause of death by cancer in women. Although the information regarding the years 2010 and 2011 was not disclosed by the Health Ministry, in their denial to inform we can sustain: *“However, it is noted that the information from 2009 remains valid and can be extrapolated to our current reality, without fear of mistakes.”*<sup>15</sup>.

- The main problem with mammograms in Chile is that there are no clear regulations on quality standards. The accreditation of mammography equipment is voluntary and those who do not meet the standards may continue to operate without problems, since the rule that regulates this is not a law.
- On matters regarding **occupational health**, it is disturbing to note that there is a deficit regarding female sexual health care. While the law 20.005 on Sexual Harassment exists, it is limited to sexual harassment occurring amongst those in an employment relationship, nonetheless, it leaves out the situations that may arise between worker/client/user; although the actions of the offender can be punished by criminal law, labor relations make it difficult for the victim to act in fear of losing her job, be punished, or by a re-victimization produced by the internal procedure following the accusation.
- In the case of **migrant women**, it is important to stress that in order to access either the private or the public health system, a Chilean identification document is required. Therefore, both male and female migrants in an irregular situation, or those that are applying for a visa, cannot access the public health system. This situation becomes particularly serious when it comes to sick people, senior citizens, children, and pregnant women.

Regarding pregnant women, there is a pregnancy or medical treatment visa that allows them to regulate their migratory situation once a medical certificate attesting their status is submitted. However, in practice, it is observed that pregnant women without an id are not treated in doctor's office, forcing them to resort to private health providers to obtain a pregnancy certificate. Those suffering from economic problems cannot afford this cost, and cannot legalize their immigration status; therefore they receive no medical care during their pregnancy, which has a direct effect on the health of the mother and newborn.

It is a concern, that according to the Casen Survey of 2009, a vast majority of migrant women have not done general medical queries. On average, those who do it, only do it twice. With regard to migrants sexual and reproductive health, it is unknown if they have free access to information and contraceptive methods, as well as prevention information, free screenings and appropriate treatments for sexually transmitted diseases. It is a concern that almost half of the women in the

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<sup>12</sup>Information available at: [www.prosaludchile.org](http://www.prosaludchile.org), “Women that did not accept the PAE”

<sup>13</sup> Chilean Penal Code, articles 342 a 345.

<sup>14</sup> Corporación Humanas Survey 2011

<sup>15</sup> Response to the request framed on Law 20.285, code No. 851248, Health Ministry, Received on July 14, 2012

quintiles II, III, and IV have not done the Pap test in the last three years, while 65,7% of the women in the first quintile and 60% of the women in the upper quintile have practiced the examination.

#### **Recommendations:**

- ❖ Ensure the exercise and full enjoyment of the right to health of women in the public system, and establish mechanisms to regulate the discriminatory factor of private health system.
- ❖ To modify legislation on abortion, removing the current penalty in order to guarantee the exercise of sexual rights and to also avoid unsafe abortions as a cause of maternal mortality.
- ❖ Monitoring the respect -by the authorities- of the law regarding the exercise of the sexual and reproductive rights of women and ensure access to mechanisms of fertility regulation, especially the morning after pill.
- ❖ To incorporate into public policy, measures to prevent cervical cancer and breast cancer, ensuring access of women to the quadrivalent vaccine and supervising the quality standards of equipment that perform mammograms in Chile.
- ❖ To implement measures to facilitate access of migrant women to the public health system, especially children, pregnant women and sick people.
- ❖ Involve women in occupational health research.
- ❖ To reform legislation on sexual harassment to include the regulation of sexual violence situations that may arise between workers and clients in the context of an employment relationship.
- ❖ Guarantee access for migrant women to sexual and reproductive health services, especially when they are pregnant, regardless of their regular or irregular immigration status.

#### **Article 14: Rural and Indigenous Women**

- It is a concern that the indigenous institution (CONADI) has not mainstreamed gender issues into their policies and programs, or that the advancement of women organization (SERNAM) has not included ethnic variability in their interventions. The result of this is the absence of comprehensive, relevant public policies aimed at improving the status of indigenous women, designed and implemented together with the indigenous people.
- Although the percentage of indigenous women who benefit from land purchasing subsidies has increased, they access smaller premises, this indicates that the largest gender gap relates to the size of the property to which men and women access.
- **Seasonal jobs in the agricultural-export sector** –where we can find mostly women—are characterized by not having minimum required health and safety conditions, severe cases of intoxication have been recorded, threatening the lives and health of temporary workers. In this respect, it is a concern that Chile has yet to ratify the 184 ILO Convention on safety and health in agriculture.
- Currently exists a draft law called “Estatuto de los/as Temporeros/as” (“Statute of Seasonal Workers”) who threatens to do even more vulnerable the current conditions of the agricultural seasonal workers, as it will allow the establishment of agreements between employers and workers groups, up to two people, who may reach agreements above the current law.

#### **Recommendations:**

- ❖ To ensure and promote the full involvement of indigenous people, especially women in all matters and public policies that concern them.
- ❖ Promote a review of the public policy in the field of indigenous territories bearing in mind the recommendations of the Human Rights Committee (2007) and the Special Rapporteur James Anaya (2009), and establishing an effective mechanism for recognizing the rights of indigenous peoples to land and natural resources based on traditional occupation and use, in accordance with relevant international standards and without discrimination based on gender. Allocation of adequate resources for the fulfillment of this goal.
- ❖ Strengthen the protection of labor rights of women seasonal workers in the agricultural industry.
- ❖ Ratify ILO Convention 184 on safety and health in agriculture.

- ❖ In the case of seasonal salaried workers, set limits to contract task or activity to avoid the current fraudulent use of this type of contract, and promote direct employment, eliminating the figure of the contractor.
- ❖ Conduct studies on the maximum performance by cultivation and task, according to a standard age and physical ability that allows setting an ethical rate.

#### **Article 15: Equality before the law (Justice Chapter)**

- There is a low participation of women in positions (posts) of decision and/or power in the bodies of the justice system. There is no national legislation or internal policies to promoting women's participation in the high courts (Supreme Court or Courts of Appeals) or other agencies as the Public Criminal Defender or the Public Ministry (Prosecutor's Office). In fact, in these institutions, national and regional more important offices are largely filled by men. Same thing happens with the Constitutional Court and the Electoral Court.

#### **Recommendations:**

- ❖ Ensure a balanced representation of men and women in the lists of candidates which are prepared to integrate the Supreme Court, Courts of Appeal, the Constitutional Court and the Electoral Court.
- ❖ Ensure that the lists of candidates running for the posts of National Defender, General Attorney, and for regional offices, require the balanced presence of men and women.

#### **Article 16: Law on marriage and family**

- In Chile, the law only recognizes and protects people who have established relationships based on marriage. People who are linked together do not hold any legal status and personal and property relationships that may arise between them are unrecognized. This **lack of recognition** and protection is **aggravated when it comes to same sex unions**, since Chilean law does not recognize or offer any legal protection to these relationships, fostering discrimination. Although jurisprudence of the Inter-American court of Human Rights on ample protection to the family (Karen Atala v. State of Chile Case), the legislative proposals on equal marriage made by congress have failed to be discussed, including the August 2011, presidential project on "Couple's Life Agreement," which regulated both personal and financial effects of same-sex and different sex-couples, without recognizing a marital status.
- In terms of property regimes an express discrimination towards woman married under the conjugal society, still exists, despite the repeated reproaches by international organisms. Current legislation stipulates that this is the default regime applicable in absence of another agreement, where the husband is the head of the conjugal society becoming the sole owner and manager of the social goods, depriving women from the right to administer the estate, her own assets and her full legal capacity, just for being a woman. Since 1995, a legal reform that grants equal rights to men and women regarding marital property is being debated, but since it has been unsuccessful, on April of 2011, the President made a new proposal that would address the main forms of discrimination that currently prevail. Still, by allowing that either spouse can manage the society's assets, without creating a co-administration rule, women's subordinate position could be perpetuated in front of their husbands, what will be worst if it is allowed to the husband to have reserved assets regardless of social goods, as stated in the project.

#### **Recommendations:**

- ❖ To promote a civil unions legislation that recognizes and protects the rights of people of different and same sex who live together.
- ❖ To promote the creation of an equal marriage law
- ❖ To reform the marriage's system of community property assets recognizing full legal capacity of women and equal rights to men and women regarding social goods in a regime of co-administration and without reserved patrimony for the husband, both for prior marriages as those held once the law is in effect.
- ❖ To establish gratuity for all matrimonial property regimes.