

QUICK GUIDE TO ADDRESS WOMEN'S ISSUES DURING THE UNIVERSAL PERIODIC REVIEW ON CHILE¹

These Guides include:

- A list of issues mentioned in the National Report, the Compilation of official UN Documents and the Summary of Other Stakeholders Submissions, with references to the particular paragraphs in which they can be found.
- The full text of those paragraphs
- A reference to "gaps", that is, issues on which the National Report should/could have applied a gender perspective but failed to do so.
- Suggested questions and recommendations

References in the two working languages of the Council (English and French) have been kept in their original language. In this particular Guide, references in Spanish that were found in the Summary have been translated by us.

Issues are highlighted. References from the National Report are *in Italics*.

All women's rights issues (included sexual rights' issues related specifically to women) are referred to in this Guide. Other sexual rights issues are referred to in the Sexual Rights Guides for each state under review

CEDAW ratified with general reservations². OP-CEDAW not ratified. Rome Statute not ratified. Palermo Protocol ratified.

In 2006, the Committee on the Elimination of **Discrimination against Women** (CEDAW) called upon Chile to ratify **OP-CEDAW** (Para 1, Compilation). In 2007, the Committee on the Rights of the Child (CRC) encouraged Chile to ratify the **Statute of the International Criminal Court**. (Para 1, Compilation).

Gaps

The National Report should/could have applied a gender perspective -that is, make reference to how the issue affects women and men in particular ways- but failed to do so in the following sections: Medidas Relativas a las Violaciones De Derechos Humanos Cometidas por El Régimen Militar (19-32), Modernización integral del sistema de administración de justicia (35), Reforma procesal penal (36-37), Justicia penal adolescente (38), Tribunales de familia (39), Justicia laboral (40), Situación carcelaria (43-47), Derechos de los trabajadores migrantes (72-77), Derechos de las personas con discapacidad (78-80), Derechos de los adultos mayores (81), Derecho a la salud (88-91), Derecho a la educación (92-96), Derecho al trabajo y previsión (97-99), Derecho a la vivienda (100-102), Derecho a un medio ambiente sano (103).

¹ These Guides were produced by the Sexual Rights Initiative, a coalition of organizations based in Africa, Asia, Eastern Europe, Latin America and North America whose mandate is to advance women's issues broadly and sexual rights issues in the Human Rights Council. For questions, comments, suggestions please contact Alejandra Sardá-Chandiramani at alejandra@mulabi.org

² Upon signature (July 1980). Declaration: "The Government of Chile has signed this Convention on the Elimination of All Forms of Discrimination Against Women, mindful of the important step which this document represents, not only in terms of the elimination of all forms of discrimination against women, but also in terms of their full and permanent integration into society in conditions of equality. The Government is obliged to state, however, that some of the provisions of the Convention are not entirely compatible with current Chilean legislation. At the same time, it reports the establishment of a Commission for the Study and Reform of the Civil Code, which now has before it various proposals to amend, inter alia, those provisions which are not fully consistent with the terms of the Convention".

ISSUE	N Report	Compilation	Summary
Abortion		Restrictive laws. Clandestine: major cause of maternal mortality. Need to eliminate criminalization, esp. in rape, incest, risk of life situations. Need to eliminate prosecution of women seeking emergency post-abortion care (38).	Criminalization added to forced reporting by health staff creates coercive climate in cases of post-abortion complications. (42)
Early / forced marriage		Need to set same minimum age of marriage at 18, for girls and boys (26)	
Equality and Non discrimination	Enforcement of legal gender equality (7). Equal rights for children born in or out marriage. Domestic violence sanction, typifying of sexual crimes. Equality before the law and non discrimination policies. (34)	Act on family violence, Act on sexual harassment in workplace, Civil Marriages Act (legalize divorce) (3)	
Forced sterilization			Women living with HIV/AIDS sterilized under pressure or without consent. Need to investigate cases and guarantee adequate sexual and reproductive health services (44)
Indigenous women	Indigenous Women Unit (55)		
Laws that discriminate against women		Joint marital property regime does not allow women to administrate their own property (12)	Joint property marital regime prevent women from administrating their own and marital properties (17)
Migrant women	55% of migrants are women (74)		
Public and political participation	Increase of women participation in government positions. Equitable Cabinet of Ministers (64).	Need to Reform binominal electoral system (unfavourable for women). Need to increase women participation in political life. (30)	One of South America's lowest rates of women representation in public life. (37)
Reproductive health/rights	Reproductive health services and sexual education at school for adolescents (71) Special health care programs for		Unequal costs of health services based on gender and marital status (18). Emergency contraceptive pills

	migrant pregnant women, in irregular situation (75) Gender equality in health services (91)		prohibited by courts. Need to increase knowledge about contraceptive methods. Need to universalize access to emergency contraception, esp. for rape survivors and adolescents. (43)
Right to education	Plan to prevent adolescent pregnancies as a factor to avoid drop-out(94) Fines for schools denying access to mothers or pregnant adolescents. (96)		
Right to social security		Need to guarantee adequate social security benefits, esp. to women and temporary /informal workers. (36)	
Right to work	Higher equity in all educational levels. Increase of women integration in labour market: 40% (63) Women unemployment rate higher than men's. (84)	Minimum wage is not a living wage. Need to ensure decent wages, esp. for domestic workers. (32). Women: higher unemployment rates, lower wages, less participation in labour market. Need to ensure equal remuneration, opportunities and non discrimination (33).	
State Institutions/ Plans of Actions	National Service for Women (14): tasks; plans, programs and agendas (61)		
Trafficking of women/ Forced prostitution		Lack of information on the causes and extent of trafficking/exploitation of prostitution (19) Need to typify trafficking of persons in domestic legislation in line with international standards. (52)	
Violence against Women /Gender Violence	Legislation to prevent, sanction and eradicate domestic violence (63)		High rates of violence and femicide. Need to provide effective system, to register, and investigate complaints, with standardized / disaggregated collection of data. Treatment and

			protection of victims. (22)
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Abortion

In 2007, the Human Rights Committee reiterated its concern about Chile's unduly restrictive abortions laws. CEDAW expressed similar concerns and added that clandestine abortions are a major cause of maternal mortality. (Para 38, Compilation).

According to Corporación Humanas (JS1), abortion is criminalized in all its forms in Chile. JS1 points out that the combination of this criminalization and the health rule that forces health professionals to report any event that could constitute a crime produce a coercive context for women who arrive at the emergency wards of public hospitals suffering from complications due to clandestine abortions (Para 42, Summary)

Early / forced marriage

(See recommendations)

Equality and non-discrimination

() Other important amendments to the Constitution include: (e) strengthening of the principle of equality for men and women before the law (Para 7, NR). In the area of the family, (Other major achievements in the protection of civil rights) include a new statute on filiations, which grants equal rights to children born inside and outside marriage; reforms of civil marriage; penalties for domestic violence; clearer definitions of sex offences; and the implementation of policies on equality before the law and non-discrimination against vulnerable groups. (Para 34, NR).

In 2006, CEDAW commended, inter alia, the Act establishing procedures and penalties for acts of family violence; the Act on sexual harassment in the workplace; and the new Civil Marriages Act, which legalizes divorce (Para 3, Compilation).

Forced sterilization

Center for Reproductive Rights and The Human Rights Center of Diego Portales University (JS4) referred to a study carried out in 2004 which had documented cases of forced sterilization, and sterilizations performed without consent, of Chilean women living with HIV/AIDS, with 31 per cent of the women interviewed having been sterilized; 29 per cent of these women due to pressure from health services and 12.9 per cent without consent. It also found that 66 per cent of women receiving gynaecological care had received inadequate information with regard to the idea that women with HIV should not become pregnant. (Para 44, Summary)

Indigenous women

Among the policies for indigenous ... women, the following stand out: (a) the Indigenous Grants Programme for students in basic, secondary and higher (d) the establishment of the Indigenous Women's Unit in CONADI, to support women in their role as bearers of culture, by promoting and nurturing gender equality. (Para 55, NR).

Laws that discriminate against women

In 2007, the HR Committee expressed concern about laws which discriminate against women as administrators of their property, such as the joint property marital regime. (Para 12, Compilation).

JS1 indicated that the joint property marital regime is still in force in Chile. It deprives women of the possibility to manage conjugal assets as well as those of their own, being the male spouse who manages them. This situation had lead human rights organizations to submit a claim before the Interamerican Human Rights Commission in 2000. The State plead to a friendly solution that has not shown any results in the course of three years (Para 17, Summary).

Migrant women

One troubling aspect of migration is that more and more migrants are women (55 per cent of the total), especially from other countries in South America (Para 74, NR)

Public and political participation

Women's participation in public positions in the executive has been increased considerably. The President since 2006 has been a woman who, upon taking office, appointed a ministerial cabinet in which gender parity was observed (Para 64, NR)

While welcoming the recent progress in decision-making positions in public life, CEDAW noted with concern in 2006 that women's participation in parliament, in municipalities and in the Foreign Service remains slight. (Para 30, Compilation)

According to JS1, Chile retains one of the highest levels of sub-representation of women in public decision-making spaces in South America. In terms of Parliamentary representation, in 2008 women make up just 15% of the Lower Chamber and 5.3% of the Senate; at city level, only 23% of women are city councillor and 12% city mayors (Para 37, Summary)

Reproductive health/rights

The National Service for Minors is drawing up a proposal to redefine its areas of work, in line with the recommendations of the Committee on the Rights of the Child. Meanwhile, it has the ongoing task of ... guaranteeing that young people have access to sexual and reproductive health services and sex education in schools (Para 71, NR).

In some cases where the health of certain vulnerable groups of irregular migrants is concerned, the Ministry of Health, together with the National Health Fund and the Aliens Department, has run special programmes, including programmes for all pregnant women (Para 75, NR).

Human Rights Watch informed that in April 2008, the Chilean Constitutional Court prohibited the distribution of the emergency contraceptive pills (ECP) to the public health sector. JS1 added that the Constitutional Court verdict creates inequalities, as those women who have the means to do so can buy the pills. In a joint submission, JS4 stated that the Constitutional Tribunal's decision, which concluded that the ECP acts as an abortifacient, contradicts scientific evidence provided by various international organizations, including the WHO. (Para 43, Summary)

According to Centro de Derechos Humanos de la Universidad Diego Portales (CDHUDP), the plan implemented according to the Universal Access with Explicit Guarantees Law (AUGE in Spanish), that entered into force in Chile in July 2005, has not ended discrimination against women in healthcare. CDHDP states that, for instance,

discrimination in terms of the costs of health insurance for men, married and single women persist (Para 18, Summary).

Right to education

Under the Complete Education Plan, efforts have been stepped up to prevent teenage pregnancies (Para 94, NR).

In order to comply with the guarantees set forth in the Constitution and in the treaties signed and ratified by Chile, the Constitutional Act on Education was amended to provide for financial penalties for schools that expel or deny access to pregnant girls or teenage mothers.²⁹ The Act was also amended in such a way as to avoid discrimination in the selection procedures for pupils, stipulating that they must be objective, transparent and respectful of the dignity of pupils and their families. (Para 96, NR)

Right to social security

In 2004, CESCR was concerned that the private pension system, based on individual contributions, does not guarantee adequate social security for a large segment of the population that does not work in the formal economy or is unable to contribute sufficiently to the system. (Para 36, Compilation)

Right to work

There is greater equity at all levels of education and women's participation in the workforce has increased for the first time to over 40 per cent (Para 63, NR). The annual average unemployment rate ranged from 6.1 per cent in 1997 to 10.0 per cent in 1999 and 2004, with a higher unemployment rate for women than for men throughout this period (Para 84, NR)

In 2004, CESCR expressed concern at information that the minimum wage was not sufficient to ensure a decent living for workers and their families and at the fact that some categories of workers, in particular domestic workers, are not covered by the minimum wage. (Para 32, Compilation)

The 2006 CCA report and CEDAW noted with concern that women have higher unemployment rates than men and that there is a significant wage gap between them. CESCR noted that the labour-force participation of women remains among the lowest in Latin America. (Para 33, Compilation)

State Institutions for Women's Rights

There are also public services that deal with the specific concerns of certain groups, such as ... the National Service for Women (SERNAM) (Para 14, NR). The first step in guaranteeing women and men equal access to the benefits of development in Chile was to establish the National Service for Women (SERNAM) in 1991. The job of SERNAM is to devise, propose and coordinate policies and legislative reforms conducive to equal rights and opportunities for women and men, thereby helping to curb discriminatory practices in the country's political, social, economic and cultural development. Part of its job is to put into practice the Convention on the Elimination of All Forms of Discrimination against Women, the Inter-American Convention on the Prevention, Punishment and Eradication of Violence against Women, and the outcomes of global and regional United Nations conferences (Para 61, NR). To ensure that gender equity is integrated in public policies, SERNAM drew up the first Plan on Equal Opportunities for Women, for the period 1994-1999. In 1997 it produced a set of policies on equal opportunities for rural women and in 1999 the second Plan on Equal Opportunities for Women, for the period 2000-2010, to

consolidate gender policies in public institutions. In 2000, the Council of Ministers on Equal Opportunities was established, with the task of monitoring and ensuring compliance with the equal opportunities plan, as well as to introduce specific gender-related policies in ministries, services and State corporations. In 2002, within the framework of policies to modernize the civil service, the Government included a "gender equity scheme" in its Management Improvement Programme. The scheme seeks to improve opportunities for women and men to access and benefit equally from public policies. In recent years, President Bachelet has set out specific commitments in the Government Agenda for Gender Equity, 2006-2010 (Para 61, NR)

Trafficking of women/Forced prostitution

In 2006, CEDAW remained concerned by the insufficient information available on the causes and extent of trafficking in Chile as an origin, transit and destination country; the lack of national legislation; and the absence of adequate measures to combat the phenomena of trafficking and exploitation of prostitution. (Para 19, Compilation)

According to CCA 2006, there is also a need to adjust domestic legislation to the standards set by international human rights instruments, for example in the case of ... trafficking in persons... (Para 52, Compilation)

Violence against Women/Gender Violence

Another milestone was the legislation on domestic violence, which had been in force since 1994 and was replaced in 2005 with the aim of preventing, punishing and eradicating such violence (Para 63, NR).

JS1 indicated that the high prevalence of violence against women and femicide is alarming (Para 22, Summary).

Suggested questions and recommendations:

- Ask Chile if and how a gender perspective has been applied to the measures taken in relation to violations perpetrated by the former military regime, that is, if the specific ways in which women experienced those violations have been taken into account and if so, how.
- Ask Chile which specific provisions for females exist in the juvenile correctional system, if any; i.e. how are the prison conditions like; if adolescent inmates are separated from the adults; if they have access to education, including in sexual and reproductive health.
- Ask Chile how is a gender perspective applied to the measures taken to protect the rights of persons with disabilities and older persons, that is, if specific programs and/or services exist to address the needs of women with disabilities and older women.
- Ask Chile why the fact that a majority of migrants from other South American countries (55%) are women is considered "problematic" in the National Report (Para 74) and what specific measures are being taken to protect the rights of migrant women, besides those already specified in the report on access to healthcare.
- Recommend that Chile reforms its health insurance system, eliminating all discriminations based on gender and marital status in the cost of insurance plans
- While commending Chile for imposing fines on schools that expel pregnant students, ask what steps are being taken to provide sexuality education and access to contraception to adolescents in order to lower the rate of teenage pregnancies /recommend that efforts to provide sexuality education and access to contraception to adolescents in order to lower the rate of teenage pregnancies be incremented.

- Recommend that Chile amends its social security schemes to fully include domestic workers in its benefits

CEDAW

- To ensure that sustainable change towards full equality of women with men in all aspects of public and private life is achieved through comprehensive legal reform (Para 12, Compilation)
- To intensify efforts to reform the binominal electoral system, which is unfavourable for women's political representation, and to take measures in order to increase the participation of women in political life (Para 30, Compilation)

Committee on Economic, Cultural and Social Rights (CESCR)

- To take effective measures to ensure that all workers are entitled to adequate social security benefits, paying special attention to the disadvantaged position of women and the large number of temporary and seasonal workers and workers in the informal economy (Para 36, Compilation)
- To take effective measures to address the many barriers to women's participation in the labour market and incorporating the principle of equal remuneration for men and women workers for work of equal value in its legislation (Para 33, Compilation)

Committee on the Rights of the Child (CRC)

- To review its criminalization of the termination of pregnancies in all circumstances, including in cases of rape, incest and situations where the life of the mother is at risk (Para 38, Compilation)
- To further review legislation with a view to establishing the minimum age for marriage at 18 years of age, for both boys and girls. (Para 26, Compilation) (CEDAW formulated the same recommendation)

Committee against Torture (CAT)

- To eliminate the practice of extracting confessions for prosecution purposes from women seeking emergency medical care as a result of illegal abortions (Para 38, Compilation)

Human Rights Committee (HR Committee)

- To hasten the adoption of the act repealing the joint property marital regime and replace it with a community property regime (Para 12, Compilation)
- To reverse the burden of proof in discrimination cases to favour women employees, so that employers must explain why women hold positions of lower rank, have lesser responsibilities and earn lower wages (Para 33, Compilation)

ILO Committee of Experts

- To amend section 349 of the Commercial Code which provides that, unless a woman is married under the separate state regime, she may not enter into a commercial partnership agreement without special permission from her husband. (The Committee on Economic, Social and Cultural Rights expressed similar concerns in 2004) (Para 12, Compilation)

Amnesty International

- To promptly ratify and fully implement the Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women and the Rome Statute of the International Criminal Court (Para 3, Summary).
- To establish an effective system for registering cases of violence against women that activates mechanisms to treat and protect victims, as well as to investigate all complaints promptly and impartially; uphold standards in the collection of evidence from victims of violence in line with the World Health Organization's Guidelines for medico-legal care for victims of sexual violence; and ensure that the collection of data is standardized and disaggregated according to gender and other factors, and that it be open to verification (Para 22, Summary)

Center for Reproductive Rights and The Human Rights Center of Diego Portales University (JS4)

- To liberalize the legislation which criminalizes abortion under all circumstances (Para 42, Summary)
- To thoroughly investigate those cases of forced sterilization which have been presented, and undertake special measures to guarantee that women living with HIV receive sexual and reproductive health services which meet their needs (Para 44, Summary)
- To adopt all necessary measures to universalize access to emergency contraception, and develop public health strategies to increase knowledge of contraceptive methods, placing an emphasis on emergency contraception (Para 43, Summary)

Human Rights Watch

- To take all necessary measures to increase access to emergency contraception for all women, with a special emphasis on rape survivors and adolescents (Para 43, Summary)