

INTRODUCTION

1. Corporación Humanas¹ has been established as the coordinating entity for this report, which presents the main problems facing Chile with respect to human rights, in the opinion of the signatory organizations, including recommendations to make progress on guaranteeing these rights.

A. BACKGROUND

Consultation process for the preparation of the status report

2. Eight months from the Chilean State presenting its report to the Human Rights Council, there was a call for civil society organizations to consult on the most important topics to be reported. While we recognize the importance of this activity, it was held in Santiago, thus constituting a breach of the call's nation-wide directive,² and does not represent or replace the need to implement a permanent monitoring mechanism.

Scope of international obligations

3. The State of Chile ratified the Rome Statute of the International Criminal Court³ and the Convention against enforced disappearance. In order to comply with recommendations 1, 2 and 3 from 2009, it is necessary to ratify the Optional Protocol to CEDAW, the Protocol of San Salvador, the Optional Protocol to the ICESCR, Convention 189 concerning Decent Work for Domestic Workers and the ILO Safety and Health in Agriculture Convention 184.

Institutional and human rights infrastructure

4. Although the **National Human Rights Institute**⁴ (recommendations 7, 10 and 11) has played a significant role in the promotion and protection of human rights in Chile, and the proposed law to create a **Human Rights Undersecretary**⁵ will give rise to a government body to coordinate the various public agencies, progress in the creation of a human rights institutional framework has been slow.

5. No **National Human Rights Plan** (recommendations 15 and 16) exists, and there are no proposals for wide civil society consultation. Entrusting this plan to the future department postpones its implementation, and it is a cause for concern that the draft legislation does not provide for civil society participation.

6. Recommendations:

- a) **Strengthen NHRI powers to monitor state agencies and increase its budget to ensure the execution of its functions nationwide.**
- b) **Accelerate the debate on the Human Rights Department and bestow it with powers of defense, guarantee, and reparation of serious violations committed during the dictatorship.**
- c) **Promote debate on the Ombudsman's Office,⁶ including specialized Ombudsman for Women, Migrants, Indigenous Peoples, and Persons with Disabilities.**
- d) **With broad citizen participation, develop a National Human Rights Plan, including structural, progress and impact indicators agreed upon with civil society organizations.**

B. COMPLIANCE WITH INTERNATIONAL HUMAN RIGHTS OBLIGATIONS

Equality and non-discrimination

7. Law 20.609 on **Measures against Discrimination** lacks the effective tools to address discrimination.⁷ It does not clearly state that its objective is to prevent, penalize, eradicate, and make reparations for discrimination. It omits the creation of a public institutional framework for equality and non-discrimination, budgetary resources, preventive measures, and affirmative action, among others. Worse still, it includes a provision that subordinates the rights of equality and non-discrimination to other constitutional guarantees.

8. With respect to discrimination on grounds of sexual orientation and gender identity (recommendations 27, 28, and 29), progress has been limited, with the wrongful application of Article 373 of the Penal Code persisting without any proposed discussion for its reform or repeal.⁸

9. In Chile, the law only recognizes and protects heterosexual persons establishing partner relationships based on marriage. People in unions are not legally recognized and the personal and property relations that arise between them are not regulated. This lack of recognition and protection is compounded in the case of unions between people of the same sex, because Chilean law does not offer legal protection for these partner relationships, which fosters discrimination. The legislative proposals on marriage equality and the Life Partner Agreement have not seen progress.⁹

10. With regard to transsexual and transgender people, it is a cause for concern that the State does not recognize their **gender identity** and their rights to change their legal name and legal sex, with serious human rights violations continuing as long as they are forced to undergo surgery as a prerequisite for a legal change of sex.¹⁰

11. The State has not incorporated the guidelines of the **Yogyakarta Principles** into its legislation or public policy, a deficit that results in discrimination in the areas of education, health, and decent working conditions, among others.

12. With respect to discrimination against women (recommendations 20, 21 and 23), the **Pension Fund Administrators** (AFPs) individual account system continues to use of life expectancy tables differentiated by sex. This harms women, as their life expectancy is higher, meaning that with the same amount of pension savings, a woman receives up to 30% less pension than a man.¹¹

13. To date, there is not yet a law to amend the discriminatory regime of **conjugal partnership**¹² (recommendations 26 and 51).

14. Recommendations:

- a) **Correct the shortcomings of the Law on Discrimination, incorporating a public institutional framework for equality and non-discrimination, budgetary resources, preventive measures, and affirmative action, and eliminating the provision that establishes a hierarchy of rights over the rights of equality and non-discrimination.**
- b) **Pass legislation on civil unions that recognizes and protects the rights of people of different sexes and of the same sex living together, giving these people the civil status of a union.**
- c) **Legislate on marriage equality.**
- d) **Approve the draft legislation on gender identity.**
- e) **Approve the draft legislation amending conjugal partnerships, recognizing the full legal capacity of women and equal rights between spouses regarding social goods in a co-management regime, for marriages formed both before and after the law is in force.**
- f) **Correct the AFP pension calculation system that uses life expectancy tables differentiated by sex.**

Right to life, liberty, and security of person

Systematic violations of human rights during the military dictatorship

15. Regarding recommendations 9, 13, 31 and 45, of the 3,216 officially recognized killed or “disappeared” victims, there have been judicial proceedings in approximately 75% of cases¹³. This contrasts with the 67 government agents serving time in detention centers, mostly in military

centers¹⁴. Since 2009, the Human Rights Program (Ministry of the Interior) may lodge complaints for victims of enforced disappearance and political execution. More than 500 have been submitted.¹⁵

16. There is no state agency focused on criminal prosecution for torture committed during the military dictatorship, which results in low prosecution.¹⁶Of the 38,254 recognized victims of torture and political imprisonment, less than 30 lawsuits have been initiated, including five complaints of sexual violence. The systematic sexual violence against women committed during the dictatorship remains invisible, particularly in judicial rulings that do not grant special treatment.

17. With respect to recommendations 38 and 39, the **Amnesty Law** still stands¹⁷. Draft legislation to repeal it or to establish the non-applicability and inadmissibility of pardons and amnesties has not been debated in Congress.¹⁸

18. Although the Supreme Court has recognized that crimes against humanity do not have a statute of limitations, the application of the extenuating circumstances of “half prescription” and the granting of benefits to those sentenced results in low penalties compared to the seriousness of the crimes committed, with convicted agents remaining at liberty in many cases.

19. The problems of **qualification of victims of political imprisonment and torture** in 2005 is compounded by the low qualification rate of the Valech II in 2011 (approximately 30%), inability to appeal, immediate closure of the Commission, scarce diffusion of the results on the website (subsequently closed by the government), and complete omission of sexual violence. This seriously impacts the right to reparation of victims and their families, along with the knowledge of the truth of what happened in the country.

Police violence and torture

20. Regarding the investigation and punishment of police abuse (recommendations 42 and 43), citizen protests in recent years have been severely repressed, and a large number of detainees claim to have been tortured and abused by police. This includes girls and adolescents, who report various forms of sexual violence,¹⁹forced nudity, sexual touching, and blows to genitals.²⁰

21. Mapuche communities are often raided by police, who commit various abuses and mistreatment of children, adolescents, women, and the elderly²¹, despite international recommendations on the issue.²²It should be included that indigenous women, especially Mapuche, have been ongoing victims of the disproportionate use of force by State agents in the context of police operations, a situation recognized by the CEDAW Committee in 2012.²³

22. There are still no institutional mechanisms to prevent and punish torture (recommendations 14, 32, 33, 34).

Violence against women

23. Law No. 20,066 on Domestic Violence addresses violence against women (recommendations 22 and 23) in a fragmented way and from a judicial perspective, and there are still shortcomings in its implementation, such as the requirement of “habitual ill-treatment”. The absence of a preventive approach, budget shortages, and the lack of both protection for victims and a single national record of cases of femicide remain as the major deficits.

24. For indigenous women, the implementation of compensation agreements in cases of domestic violence (despite the legal prohibition against using these as an alternative to trial) is a cause for concern. By request of the Public Defender’s Office, and in response to articles 9 and 10 of the ILO Convention 169, criminal courts have accepted compensation agreements between victims and defendants and dismissed the causes, decisions that have been upheld by the higher courts. It is alarming that such judgments are not based on Mapuche ancestral custom and have been issued in violation of international standards on women's human rights, which prohibits the impunity of these crimes.

Human trafficking

25. With respect to human trafficking (recommendation 36), since the enactment of Law No. 20,507,²⁴ actions have focused on criminal prosecution, with prevention, protection, and assistance of victims remaining as a secondary aspect, despite international recommendations on the issue.²⁵There is no national record of victims and no comprehensive study has been conducted on causes, magnitude, countries of origin, transit, and destination. Recent intergovernmental

coordination efforts have not yet resulted in full guarantees for the rights of victims throughout the country, including those who do not wish to report and cooperate with a judicial proceeding, especially rights of health care, education, work, residence permit, and family reunification.

Prison conditions

26. With respect to the prevention and punishment of torture (recommendations 32, 33, 34 and 35), deficiencies in security policies encourage the excessive use of imprisonment, which reproduces social inequalities²⁶. Despite various government measures, there is still severe overcrowding (25%),²⁷ poor infrastructure, poor health, inadequate medical care, little education and job training, and minimal job and reintegration opportunities²⁸. Isolation cells remain in use.²⁹

27. A third of women imprisoned in Chile have not received a conviction (pre-trial detention).³⁰ This is compounded by serious overcrowding, poor health care, inadequate food and infrastructure, and paltry education and job training,³¹ which does not allow for true reintegration or a decent life for the women, their children, and their families.³²

28. Transgender women are incarcerated in male establishments, and are often victims of abuse and violence.³³ There have been no concrete efforts to address the problem of the lack of internal standards in detention centers for the protection of LGBTI people, which threatens the physical and psychological integrity of such persons.

29. Recommendations:

- a) **Repeal the Amnesty Law and reopen criminal proceedings for crimes against humanity.**
- b) **Implement comprehensive reparation policies for victims of the dictatorship and their families.**
- c) **Investigate, prosecute, and punish those responsible for the crimes of torture committed under the dictatorship, and in particular sexual violence as torture perpetrated against imprisoned women.**
- d) **Implement a permanent mechanism for qualifying victims of human rights violations committed during the dictatorship, including sexual violence, and guarantee access to benefits and reparations.**
- e) **Reform penal law and conceptualize torture in accordance with international obligations.**
- f) **Promptly implement a National Preventive Mechanism against Torture.**
- g) **Guarantee impartial and thorough investigations into all allegations of torture, including sexual violence against women and girls and violence against indigenous peoples, in order to punish those responsible, compensate victims, and provide guarantees of non-repetition.**
- h) **Adopt a comprehensive law on violence against women to cover all of its forms and manifestations, thereby eliminating the " habitual ill-treatment " requirement, in order to investigate all acts of domestic violence and to prosecute perpetrators.**
- i) **Promote measures to ensure access to appropriate and effective judicial resources to investigate, punish, and eradicate violence against indigenous women, in addition to actions to eradicate discriminatory socio-cultural patterns that prevent indigenous women from full access to justice, including training programs for members of the justice system and comprehensive prevention policies.**
- j) **Include in the implementation of Law No. 20,507, in a balanced way, tools to prosecute the crime and protect victims, including a National Plan to guarantee access to temporary shelters, health care, legal assistance, and rehabilitation and reintegration programs.**
- k) **Revise the criminal policy that favors criminalization and incarceration, improve infrastructure, and implement policies to ensure the rights of detainees, particularly women in their diversity and transgender people.**

Administration of justice, including impunity, and the rule of law

30. With respect to recommendations 30, 46, 47, 48 and 49, **Military Justice** remains in force for the knowledge of crimes committed by those in uniform, even police, against civilian victims, which goes against international obligations³⁴. It is particularly concerning that some allegations of police violence are known by military courts, and are without due process or impartiality, with high levels of impunity.

31. Recommendations:

- a) **Reform Military Justice so that it totally excludes civilians, limit it to knowledge of military crimes committed by soldiers in active service, and guarantee due process.**

Right to participate in public and political life

32. The **binomial electoral system** for the election of deputies and senators makes it difficult to represent all the political forces in the country and hinders the participation of women³⁵. In the Senate and Chamber of Deputies there is a majority in favor of its modification, but the high quorum required by the Constitution is delaying this reform³⁶. The government's commitment to reforming the electoral system—repeated even in its Midterm Report—remains pending and has no legislative proposal³⁷, which prevents compliance with recommendation 7 made by the Council in 2009.

33. Congress has not discussed the parity law,³⁸ and mandatory measures on **balanced political participation between men and women** have not been incorporated in the Primary Law,³⁹ and the same goes for the proposed direct election of Regional Councilors⁴⁰. The proposed government funding for women candidates has not been discussed and does not have legislative urgency⁴¹.

34. The **right of Chileans abroad to vote**⁴² is not recognized, and the legislative proposals presented by the government⁴³ insist on making this right conditional on compliance with discriminatory requirements.⁴⁴

35. Recommendations:

- a) **Accelerate electoral reform to ensure adequate representation of political forces and equal participation of men and women, via mandatory mechanisms for political parties and special financing for candidates.**
- b) **Establish the right to vote for Chileans abroad without conditions.**

Right to work and to just and favorable working conditions

36. With regard to the workplace (recommendation 25), the participation of women in the labor market rose to 47.7%; despite this increase, the figure remains below the regional average (Latin America). Despite encouraging official figures, the fact is that growth in female employment hides the instability and insecurity that characterize the work of women in Chile, as this growth has taken place through self-employment, part-time work, and low-skilled work.⁴⁵

37. The adoption of Law No. 20,348 that establishes equal pay between men and women who do the same work is a step forward; however, the **wage gap** between men and women has increased according to the Pensions Supervisory Agency.⁴⁶

38. Regarding **seasonal work in the agricultural export sector**, where mainly women work, there are very precarious conditions in terms of contracts, low wages, working hours, and occupational health and safety.⁴⁷ Occupational accidents due to severe poisoning are still common and threaten the life and health of the temporary workers.

39. The lack of protection for **femaledomestic workers** is also a concern, particularly those female workers who face serious discrimination and whose human rights are consistently violated, since they have, for example, longer working hours than other workers.

40. In Chile, women experience an increased workload as a result of their progressive entry to the labor market without the equitable redistribution of unpaid **domestic work and care**. According to the INE, housework⁴⁸ is mostly performed by women (76.1%) and caring for people at home is also performed by women (36.9%) versus 9.2% of men.

41. Recommendations:

- a) **Promote the formalization of women's labor, with work contracts and pension contributions, and extend the coverage of labor rights for informal female workers.**
- b) **Modify the Equal Pay Act, adding sanctions, promotion, and increased resources to monitor its implementation and effectiveness.**
- c) **Strengthen the protection of labor rights of temporary agribusiness workers, and create a system for monitoring and regulating respect for these rights.**
- d) **Approve the draft legislation amending the workday, rest period, and composition of the remuneration of private domestic workers.**
- e) **Foster the creation of laws that promote equal sharing of responsibilities in the home and facilitate the inclusion of women in the workplace, foster access to paid work, and ensure the continuity of women in this activity by providing a social option for the care needs of children and the elderly.**

Right to health

42. In the area of sexual and reproductive health, the situation is critical (recommendations 22 and 23).

43. Currently, **abortion** is still illegal in all forms in Chile. The State has not opened up a democratic debate on this issue, despite repeated recommendations from treaty monitoring bodies.⁴⁹

44. While there is a legal obligation for health facilities to distribute **contraceptives**, this is not necessarily fulfilled in practice, as municipal authorities set up barriers to the distribution of certain contraceptives on ideological grounds and there is a high degree of discretion in their distribution. There have been claims⁵⁰ that indicate the refusal of public servants to offer the emergency contraception pill.

45. In the area of public health policies, the **HIV/AIDS** prevention campaign has been deficient, since it focuses on the exam. Another concern is the shortage in some hospitals of retroviral drugs to treat HIV/AIDS, along with the lack of response from the State concerning the HIV positive women who were victims of **forced sterilization**.⁵¹

46. Recommendations:

- a) **Ensure the exercise and enjoyment of sexual and reproductive rights through legislation, comprehensive policies, and monitoring of compliance**
- b) **Modify the abortion legislation, eliminating its current criminalization, in order to ensure the exercise of sexual rights and prevent maternal mortality due to illegal abortions.**
- c) **Monitor compliance by the authorities of the legal provisions for the exercise of women's sexual and reproductive rights, and ensure access to fertility regulation mechanisms, particularly the emergency contraception pill.**
- d) **Conduct inclusive and permanent HIV/AIDS prevention campaigns and ensure that the population has access to timely treatment.**
- e) **Provide redress and reparation measures for female victims of forced sterilization.**

Right to education

47. Regarding education (recommendations 55 and 56), the model ensures universal access but perpetuates social inequalities, resulting in low levels of learning for students from low socioeconomic and rural backgrounds. Sustained social demands for free, quality public education have not been resolved.

48. The school curriculum does not include sexual diversity human rights issues (recommendation 27). Law 20,501 of Quality and Equity of Education⁵² does not address discrimination against boys/girls and adolescents in educational institutions because of their sexual orientation or gender identity, thus fortifying the prevailing stereotypes.

49. In the area of sex education, there has not been continuity in programs, and these programs' impact on reducing the high rate of teen pregnancy affecting vulnerable socioeconomic sectors has not been evaluated, despite the recommendations on this issue.⁵³ The 2009 CASEN survey gives an account of the impact of **teen pregnancy** by income quintile, revealing that while in the first quintile (poorest households) the percentage of pregnant or breastfeeding women per 1000 women between 13-19 years of age is 38.5%, in the fifth quintile (richest households), this rate is 2.4%. Of these women, 67.5% did not attend educational institutions, dropout rates being higher among the poor than among the non-poor, with a difference of 10 percentage points.⁵⁴

50. With respect to Law No. 20.536 on school violence⁵⁵, an initiative that amends the General Education Law (Law No. 20,370), while it does constitute an improvement, it lacks the explicit enumeration of so-called "risk groups". This tool is essential to reduce acts of discrimination and violence against these groups, and its omission weakens the effective measures that can be used to promote Peaceful Coexistence in Schools in the establishments.

51. Recommendations:

- a) **Guarantee quality education for children and adolescents without discrimination due to family socioeconomic status, emphasizing human rights education at all levels.**
- b) **Incorporate public policies that aim at non-discriminatory and inclusive education that is free from stereotypes, promoting respect for the sexual orientation and gender identity of all people.**
- c) **Develop a sex education program from a human rights perspective that is in line with a secular state.**
- d) **Respond to the needs that arise for pregnant students and students who are mothers, ensuring that they remain in the educational system and increasing the faculty's capacity to detect situations of sexual abuse.**
- e) **Encourage the setting in motion of specific Peaceful Coexistence in Schools programs that include explicit protection of at-risk groups.**

Rights of children and adolescents

52. There is no legal framework for the comprehensive protection of children's rights, and children's rights do not have any effective guarantee mechanisms.⁵⁶

53. Regarding recommendations 19 and 53, there are no plans underway to eradicate child labor, and no significant progress has been made in specializing the juvenile justice system (recommendation 50). Regarding this last point, there is cause for concern in the disproportionate use of pre-trial detention, as only 15% of young men/women who underwent this measure were ultimately sentenced to imprisonment. Similarly, the lack of protocols, technical guidelines, and limited training for the officials of the National Service for Minors (SENAME) on issues of discrimination against LGBTI adolescents and children makes it impossible to know the potential effects on the fundamental rights of these young men/women.

54. The lack of effective public policies aimed at preventing the alarming rates of teen suicide in Chile, including LGBTI people as a risk group, is a cause for concern, considering that Chile has the highest rate in Latin America.⁵⁷

55. Recommendations:

- a) **Adopt a comprehensive law protecting the rights of children and implement a protection system focused on rights, including universal and specialized policies, financing, and incorporation of all state agencies.**
- b) **Adopt child abuse prevention and treatment policies, focusing in particular on the sexual abuse of children and adolescents.**
- c) **Implement a specialized juvenile justice system aimed at social reintegration that ensures that detention is a last resort, and which includes protocols and appropriate technical guidelines for the prevention of discrimination against LGBTI youth.**

- d) **Ensure appropriate management of adolescent suicide through effective public policy and a concrete plan of action that addresses particularly vulnerable groups, including LGBTI adolescents and children.**

Indigenous peoples

56. Chile must increase efforts to overcome the structural inequality and social and political exclusion that affects indigenous peoples⁵⁸ (recommendations 16, 18, 19, 40, 54, 60, 61, 69, 70).

57. Regarding **consultation** (recommendations 57, 62, 63, 64, 66 and 67) no consultation mechanisms have been implemented for the development and discussion of legislative proposals and other public decisions that may have an effect, particularly investment and development projects. Even the debate on the consultation mechanism to be proposed has shortcomings in terms of the participation and representation of indigenous peoples. Unfortunately important laws have been enacted without consultation⁵⁹ and several draft legislation are being analyzed in Congress without the participation of indigenous peoples.⁶⁰

58. Regarding **participation** (recommendation 62), indigenous peoples still lack representation in Congress and regional governments, and their representation in local government is minimal. There have been no proposals for legal reforms to eliminate the institutional barriers that limit the political organization of indigenous peoples and their integration in decision-making.

59. As for the recommendations on the **constitutional recognition of indigenous peoples**⁶¹ (57, 58, 59 and 65), this recognition is currently stalled in Congress, it has not been consulted, it does not guarantee their rights as a "people," and it does not guarantee self-determination, land rights, and participatory rights.⁶²

60. With regard to recommendations 68, 69 and 70, the **criminalization of indigenous social protest** and their claims to rights still remains. In addition to the incarceration of about 80 Mapuche people after 2009, there were also 55 Mapuches charged with terrorist offenses, with the resulting violation of due process (extended pretrial detention periods, witnesses whose identity was concealed), even if they are later acquitted or prosecuted for ordinary crimes.⁶³ The high rate of acquittals in **Antiterrorist Law** trials brought against Mapuche people makes clear this law's discretionary and political use by the State. For a decade, this law has been applied almost exclusively against this people, despite international recommendations on the issue.⁶⁴

61. Recommendations:

- a) **Implement an effective consultation mechanism in accordance with international standards, in conjunction with the representative institutions of indigenous peoples.**
- b) **Incorporate the constitutional recognition of indigenous peoples, duly consulted, in the fundamental charter.**
- c) **End the criminalization of indigenous claims and bring about a radical change in the ways in which the conflict with indigenous communities has been addressed. In particular, it is recommended not to apply the Antiterrorist Law and to create mechanisms for protecting and assisting child victims of institutional violence.**
- d) **Implement institutional reforms to enable the full participation of indigenous peoples in political life, particularly the participation of indigenous women.**

Migrants

62. The Immigration Law, dating from 1975, does not adequately guarantee the rights of migrants and is not adapted to the reality of current migration. It grants discretionary power to the administrative authority for expulsion of foreigners and does not guarantee due process.

63. Children born to illegal immigrants in the country are not recognized as being of Chilean nationality, and thus become stateless.⁶⁵

64. The lack of guarantees of migrants' labor, union, and social security rights, of health care, of education of children, and of family reunification, among others, is a cause for concern, along with the lack of policies to combat discrimination and stigmatization.⁶⁶

65. Recommendations:

- a) **Approve a legal framework for the protection and guarantee of the rights of migrants.**
- b) **Guarantee nationality for children born in Chile.**
- c) **Ratify international treaties on statelessness.**

People with disabilities

66. Full respect for the rights of people with disabilities continues as an outstanding debt in the country, especially in terms of access to health, education, employment, and the full exercise of civil and political rights. The lack of official statistics to measure the specific needs of people with disabilities is a matter of concern.

67. For women with disabilities, there are high rates of physical and sexual violence, as well as cases of forced sterilization that, in the absence of a single national record of cases of violence, cannot be recorded or made visible. The State has not developed a national policy to address, in a comprehensive, timely and effective manner, the various forms of violence faced by women with disabilities.

68. Recommendations:

- a) **Guarantee the sexual and reproductive rights of people with disabilities**
- b) **Implement cross-cutting policies and programs to address the multiple forms of discrimination affecting women and girls with disabilities.**
- c) **Guarantee access to health services for people with disabilities, including prevention, treatment, and rehabilitation throughout life.**
- d) **Implement prevention, protection, and reparation for sexual violence faced by women and girls with disabilities in family and community contexts.**
- e) **Implement effective, relevant, replicable, and periodic measurement and evaluation instruments, in order to produce reliable statistics on people with disabilities concerning access to health care, education, employment, housing, justice, family, and the exercise of civil and political rights.**

NOTES

¹ Non-governmental, non-profit organization incorporated under Chilean law that aims to promote and defend human rights and gender justice in Latin America

² Human Rights Council, A/HRC/RES/5/1, Paragraph 15 letter a)

³ The Rome Statute of the International Criminal Court was adopted in June 2009 by Congress after more than a decade of debate, depositing the instrument of ratification. Also enacted was Law No. 20,357, which defines crimes against humanity, genocide, and war crimes, published in the Official Journal on July 18, 2009. This law only governs crimes committed after its enactment and has important limitations in the conceptualization of crimes, since it is not fully consistent with the definitions contained in the Rome Statute and other international instruments.

⁴ Law No. 20,405, National Human Rights Institute, published in the Official Journal on December 10, 2009.

⁵ Draft legislation that creates the Human Rights Department and makes adjustments to the Organic Law of the Ministry of Justice, (Journal of Laws No. 8.207-07).

⁶ Proposed constitutional reform creating the Ombudsman's Office, message presented by former President Michelle Bachelet to the Chamber of Deputies on December 4, 2008. It was approved by the Chamber of Deputies at the first stage on March 10, 2009 and submitted to the Senate, where it has no recorded progress, and the government has not promoted its discussion by a legislative urgency designation (Journal of Laws No. 6232-07).

⁷ Law No. 20,609 establishes measures against discrimination and was published in the Official Journal on July 24, 2012.

⁸ The draft legislation repealing Article 373 of the Penal Code, introduced by deputies on December 13, 2007, was filed on May 5, 2010 (Journal of Laws No. 5565-07). The debate has not subsequently reopened since neither congresspersons nor the executive branch have prompted its discussion.

⁹ Life partner agreement draft legislation, message presented by President Sebastián Piñera, August 17, 2011, no progress in the legislative process (Journal of Laws No. 7873-07).

¹⁰ On May 7, 2013 draft legislation was submitted recognizing and giving protection to gender identity, drafted by the Organization of Transsexuals for the Dignity of Diversity (OTD) and supported by senators who entered it for legislative processing. It not been debated (Journal of Laws No. 8.924-07).

¹¹ RIESCO, Manuel; DÍAZ, Estrella; DURÁN, Francisco; SECONDO, Donata. *Informe Cómo el sistema de AFP discrimina a las mujeres chilenas y cómo corregirlo*. CENDA, Santiago, 2011.

¹² Draft legislation amending the Civil Code and other laws regulating the conjugal partnership regime, message presented by President Sebastián Piñera, April 5, 2011, in the second constitutional stage before the Senate without debate (Journal of Laws No. 7.567-07).

¹³ According to Human Rights Watch of the Institute for Social Science Research (ICSO) of the Universidad Diego Portales, of a total of 3,216 victims recognized by the State of Chile, as of February 2012 there were active court cases for 2,081 people (64.7 %), completed court cases for 305 people (9.5%), and no court cases for 830 people (25.8%). At <http://www.icso.cl/observatorio-derechos-humanos/cifras-causas-case-statistics/> (consulted May 20, 2013).

¹⁴ In September 2012, 67 government agents were serving prison sentences, 15 of whom enjoy the benefit of leaving on weekends or Sundays. According to information provided by the Working Group on Enforced or Involuntary Disappearances, 173 agents convicted with a final judgment for serious human rights violations never actually served prison sentences. NATIONAL HUMAN RIGHTS INSTITUTE. *2012 Annual Report on Human Rights Situation in Chile*, page 284. At: <http://www.indh.cl/informe2012/Informe%20INDH%202012%20Capitulo%206.pdf> (consulted May 20, 2013).

¹⁵ The Human Rights Program of the Ministry of Interior and Public Security is the main government body providing social and legal assistance to the families of victims of enforced disappearance and extrajudicial execution (see: <http://www.ddhh.gov.cl/>). Since the enactment of Law No. 20,405, which created the National Human Rights Institute, this organization is empowered to “perform all necessary legal actions, including lodging complaints regarding the crimes of kidnapping and forced disappearance, if this is the case, and killing or summary execution, if this is the case” (Law No. 20,405, Transitional Art. 10), with 151 complaints filed in 2010, 295 in 2011 and 55 in 2012 of as September. NATIONAL HUMAN RIGHTS INSTITUTE. *2012 Annual Report on Human Rights Situation in Chile*, pages 285 and 286. At: <http://www.indh.cl/informe2012/Informe%20INDH%202012%20Capitulo%206.pdf> (consulted May 20, 2013).

¹⁶ HUMAN RIGHTS CENTER OF THE UNIVERSIDAD DIEGO PORTALES. *Informe Anual sobre Derechos Humanos en Chile 2012*, Chapter Verdad, Justicia y Memoria: Violaciones de Derechos Humanos del Pasado, pages 17 to 48. At: <http://www.derechoshumanos.udp.cl/wp-content/uploads/2012/11/1-verdad-justicia-y-memoria.pdf> (consulted May 20, 2013)

¹⁷ INTER-AMERICAN COURT OF HUMAN RIGHTS. *Case of Almonacid Arellano et al v. Chile*. Preliminary Objections, Merits, Reparations, and Costs. Sentence on September 26, 2006. Series C No. 154; Committee against Torture, CAT/C/CHL/CO/5, Paragraph 12; Human Rights Committee, CCPR/C/CHL/CO/5, Paragraph 5.

¹⁸ The draft legislation declaring the nullity of Decree Law No. 2191 of 1978, motion submitted by senators, April 21, 2006, did not advance in processing and was shelved for lack of legislative debate on March 15, 2010 (Journal of Laws No. 4162-07). The draft legislation establishing interpretive law that adapts Chilean criminal law to international treaties on human rights, motion by deputies, March 31, 2009, was approved by a majority in the Chamber of Deputies on May 6, 2009, but has not subsequently been debated in the Senate (Journal of Laws No. 6422-07). On May 23, 2012, senators introduced the draft legislation interpreting Article 93 of the Penal Code, which has also not been discussed and does not have legislative urgency (Journal of Laws No. 8325-07).

¹⁹ The account of the sexual violence committed against students by police during the eviction of the Colegio San José (Puente Alto, Santiago) is recorded in the mini documentary "Las Niñas," which can be found at this link: <http://www.youtube.com/watch?v=9ODE-ZT9AbY> (consulted May 20, 2013).

²⁰ NATIONAL HUMAN RIGHTS INSTITUTE, *2012 Annual Report on Human Rights Situation in Chile*, pages 26 and 27. At: <http://www.indh.cl/informe2012/Informe%20INDH%202012%20Capitulo%202.pdf> (consulted May 20, 2013).

²¹ Committee against Torture, CAT/C/CHL/CO/5, Paragraph 23. NATIONAL HUMAN RIGHTS INSTITUTE, *2012 Annual Report on Human Rights Situation in Chile*, pages 25 and 26. At: <http://www.indh.cl/informe2012/Informe%20INDH%202012%20Capitulo%202.pdf> (consulted May 20, 2013).

²² Committee on the Elimination of Racial Discrimination, CERD/C/CHL/CO/15-18, para. 19. Committee against Torture, CAT/C/CHL/CO/5, para. 23.

²³ Committee on the Elimination of Discrimination against Women, CEDAW/C/CHL/CO/5-6, para. 20 and 21.

²⁴ Law No. 20,507 defines the crimes of smuggling of migrants and human trafficking and sets standards for their prevention and more effective criminal prosecution, published in the Official Journal on April 8, 2011.

²⁵ Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families, CMW/C/CHL/CO/1, para. 47. Committee on the Elimination of Discrimination against Women CEDAW/C/CHL/CO/5-6, para. 23.

²⁶ According to information submitted by the Chilean Gendarmerie to the National Human Rights Institute in September 2012, most of the prison population in Chile is composed of young people between 23 and 29 years of age with low levels of schooling. Of the 51,651 detainees, 1,754 have attended higher education (3.4%), most have attended primary school (24,517 people) and secondary school (24,491 people), and 604 people do not have any kind of formal education. NATIONAL HUMAN RIGHTS INSTITUTE. *2012 Annual Report on Human Rights Situation in Chile*, page 144. At: <http://www.indh.cl/informe2012/Informe%20INDH%202012%20Capitulo%204.pdf> (consulted May 20, 2013).

²⁷ The application of General Pardon Law No. 20,588 (published in the Official Journal on June 1, 2012), which benefitted 2,721 people, enabled a reduction in the prison population of 1,732 people, which together with the increase in the number of spaces by 4,410 by the Chilean Gendarmerie, accounts for why the rate of overcrowding in prisons, 62% in 2011, decreased to 25% in 2012. However, overcrowding and indecent prison conditions are not solved by a mere increase in spaces; these spaces are established in same number of square meters without comprehensively affecting the living conditions of persons deprived of liberty. Meanwhile, the rate of detainees decreased from 307.8 in 2010 to 297.9 in 2011. NATIONAL HUMAN RIGHTS INSTITUTE. *2012 Annual Report on Human Rights Situation in Chile*, page 149. At: <http://www.indh.cl/informe2012/Informe%20INDH%202012%20Capitulo%204.pdf> (consulted May 20, 2013).

²⁸ “Moreover, beyond the positive initiative of the Work Study Centers (CETs), there are still serious gaps and limitations in social rehabilitation programs, including the limited percentage of the prison population that has access to CET programs. In state-operated detention centers there was a high level of overcrowding rarely seen in the region, extreme unsanitary conditions that include unreliable or poor drinking water, food, hygiene, and health systems, as well as appalling infrastructure conditions and serious deficiencies or lack of real social rehabilitation programs (...) The delegation also verified a high level of overcrowding in the detention center for women in Santiago and in the women's section in Valparaíso, a precariousness of infrastructure and extremely unsanitary conditions of these centers, a lack of specialized medical care for women and pediatric services for their young children with them in prison, and the presence of the elderly in centers that do not have geriatric services and age-appropriate food.” Rapporteur on the Rights of Persons Deprived of Liberty in the Americas, *Rapporteur of Persons Deprived of Liberty concludes visit to Chile*, Press Release No. 38/08, August 28, 2008. At: http://www.cidh.org/Comunicados/Spanish/2008/39_08sp.htm (consulted May 20, 2013)

²⁹ In violation of international standards, in Chile, detention in solitary confinement persists as a disciplinary penalty for detainees. Despite international recommendations, the implementation of this harmful measure has increased in recent years: it was used for 12,358 people in 2010, for 16,173 people in 2011, and for 18,672 people between January and August of 2012. NATIONAL HUMAN RIGHTS INSTITUTE, *2012 Annual Report on Human Rights Situation in Chile*, page 150. At: <http://www.indh.cl/informe2012/Informe%20INDH%202012%20Capitulo%204.pdf> (consulted May 20, 2013).

³⁰ According to Chilean Gendarmerie figures, 24% of detainees in the so-called closed subsystem are in remand. There are a total of 42,896 men and 3,667 women, of whom 9,945 men and 1,246 women have not yet received a conviction (23% and 34%, respectively). That is, one in four male prisoners and one in three female prisoners are in remand, which is a very high number considering the restrictive nature that such a measure should have to safeguard the assumption of innocence. Source: Prison population statistics 30/04/2013 by subsystems and type of population by sex, Statistics Unit, Technical Department, Chilean Gendarmerie. At: <http://www.gendarmeria.gob.cl> (Statistics section, prison population statistics consulted May 20, 2013)

³¹ During 2011, an average of 16,743 inmates held a job in various prisons in the country, equivalent to 32% of the detained prison population. Of these, 90.5% are men and 9.5% are women. However, 85% of inmates who work do so informally and only 4% have an employment contract. Chilean Gendarmerie. *2011 Annual Report, Program and reintegration activities*, pages 36 to 40).

³² Center for Justice and International Law (CEJIL). *Women in Prison - Regional Report: Argentina, Bolivia, Chile, Paraguay and Uruguay*. Sheet One, SA, 2007. At: http://cejil.org/sites/default/files/mujeres_privadas_de_libertad_informe_regional_0.pdf (consulted May 20, 2013).

³³ The NHRI has expressed concern about the situation of gay, lesbian, bisexual, transsexual, transgender, and intersex persons, since the deprivation of liberty can increase their vulnerability. According to the Chilean Gendarmerie, in August 2012 the homosexual population was 360 people and 206 bisexuals, but no information is available regarding transsexuals, transgender, or transvestite persons, making it impossible to diagnose the situation of trans persons deprived of liberty, determine their main needs, and evaluate whether or not they have access to health care (e.g. for HIV care), and education, training, and/or work programs. NATIONAL HUMAN RIGHTS INSTITUTE. *2012 Annual Report on Human Rights Situation in Chile*, pages 152 and 153. At: <http://www.indh.cl/informe2012/Informe%20INDH%202012%20Capitulo%204.pdf> (consulted May 20, 2013).

³⁴ INTER-AMERICAN COURT OF HUMAN RIGHTS. *Case of Palamara Iribarne v. Chile*. Merits, Reparations, and Costs. Judgment November 22, 2005. Series C No. 135, Committee against Torture, CAT/C/CHL/CO/5, Paragraph 14; Human Rights Committee, CCPR/C/CHL/CO/5, Paragraph 12.

³⁵ Human Rights Committee, CCPR/C/CHL/CO/5, Paragraph 15; Committee on the Elimination of Discrimination against Women, CEDAW/C/CHL/CO/5-6, Paragraphs 24 and 25.

³⁶ In the general vote for the proposed constitutional reform, designed to give greater proportionality and representation to the electoral system, 67 deputies were in favor, 36 against, and four abstained (Chamber of Deputies, 360th Legislature, 48th Session, July 3, 2012). In the “insistence vote” of the constitutional reform draft that establishes a proportional and representative principle in the electoral system, 23 senators voted in favor, 13 voted against, and two abstained (Senate, Journal of Senate Sessions, 360th Legislature, 97th session, January 22, 2013).

³⁷ In the Mid-Term Report, the State declared “*Together with the foregoing, the Executive Branch has made explicit its willingness to reform the electoral system of deputies and senators, holding talks with the various political leaders and forces.*” Government of Chile. *Mid-term report on the recommendations made to Chile as part of its Universal Periodic Review in May 2009*. March 2012, 19th session of the Human Rights Council, page 3.

³⁸ Draft legislation amending various laws in order to promote the right of women to participate in national public life, motion by deputies on March 13, 2003 (Journal of Laws No. 3206-18).

³⁹ Law No. 20,640 defines the primary election system for nominating presidential candidates, congresspersons, and mayors, published in the Official Journal on December 6, 2012.

⁴⁰ Draft legislation establishing direct election of regional councilors, message presented by President Sebastian Piñera before the Chamber of Deputies on September 12, 2011 and approved by the National Congress on May 15, 2013. It is awaiting presidential proclamation (Journal of Laws No. 7923-06).

⁴¹ Draft legislation establishing incentive to promote equal opportunities between men and women candidates for elected office; message presented by President Sebastian Piñera before the Senate on April 9, 2013. The Executive Branch has not assigned it legislative urgency and the Commissions have not discussed it (Journal of Laws No. 8876-06).

⁴² Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families, CMW/C/CHL/CO/1, Paragraphs 48 and 49.

⁴³ Proposed constitutional reform to allow Chileans to vote from abroad, message presented by President Sebastian Piñera before the Chamber of Deputies on May 19, 2010, without legislative debate (Journal of Laws No. 6950-07); proposed constitutional reform on the vote for Chileans abroad, message presented by President Sebastian Piñera before the Senate on December 1, 2010, voted upon and rejected by 20 votes against and 16 in favor on May 3, 2011 (Journal of Laws No. 7335-07).

⁴⁴ “*The residence of a Chilean abroad cannot be discriminatory factor in the exercise of the rights guaranteed by the legislature for a Chilean who lives in Chile. The requirement of a link with the country or the condition of having been in the country for a certain time before the election also cannot be a discriminatory factor. This involves a violation of Article 5 of the Constitution of the Republic, that of limiting the right to vote, setting conditions for exercising this right that violate the principle of equality before the law. The universality of the right to vote has left behind the requirements established by the former “census suffrage,” which is what the system would be returning to in setting conditions for Chileans exercising their right to vote abroad. Thus it is concluded that the Election Qualifying Court is of the opinion that the right of Chileans abroad to vote should be established with no more requirements than those imposed on Chileans in Chile* (free translation).” Supreme Court, Official Letter No. 21-2011, Draft Legislation Report 54-2010, Bulletin No. 7338-07, January 25, 2011, page 27.

⁴⁵ Fundación Sol. *Precariedad laboral y modelo productivo en Chile*. “Ideas para el Buen Vivir” Series, Fundación Sol, December 2011.

⁴⁶ “According to the Pensions Supervisory Agency on women who contribute to pension funds, if the gap was 66,080 pesos in 2009, it currently amounts to 89,175, and the situation is especially evident in economic activities such as social and health services, where the taxable income of the women is 597,000 pesos versus 725,000 pesos for men (free translation).” See: <http://radio.uchile.cl/noticias/168933/>

⁴⁷ According to the 2011 NENE Survey, formal women workers in the export sector also claim no practical access to labor rights and guarantees. For example, 81% say they do not use their annual pro rata leave, 50% does not make use of maternity leave, 36% do not exercise the right to paid sick days, 20.3% have no

unemployment insurance contributions, and 97% of the temporary women workers do not use child care services.

⁴⁸ National Institute of Statistics. ¿Cómo Distribuyen el Tiempo Hombres y Mujeres? Encuesta Exploratoria de Uso del Tiempo en el Gran Santiago. INE., 2009 At: http://www.ine.cl/canales/chile_estadistico/estadisticas_sociales_culturales/encuesta_tiempo_libre/pdf/enfoque_eut_pag.pdf (consulted May 20, 2013).

⁴⁹ Committee on the Elimination of Discrimination against Women, CEDAW/C/CHL/CO/5-6, Paragraphs 34 and 35 letter d) Human Rights Committee, CCPR/C/CHL/CO/5, Paragraph 8; Committee on the Rights of the Child, CRC/C/CHL/CO/3, Paragraph 56, the Committee on Economic, Social and Cultural Rights, E/C.12/1/Add.105, Paragraph 52.

⁵⁰ DIDES, Claudia; BENAVENTE, Cristina; SÁEZ, Isabel; NICHOLLS, Leslie and CORREA, Tomás. *Provisión de Anticoncepción de Emergencia en el Sistema de Salud Municipal de Chile Estado de Situación 2011*. At: http://www.prosaludchile.org/dv/provision_de_ae_2011.pdf (consulted May 20, 2013).

⁵¹ The case of F.S. v Chile, currently pending before the Inter-American Commission on Human Rights (IACHR), exemplifies the widespread problem of involuntary sterilization in Chile. See <http://reproductiverights.org/es/lbs-fs-vs-chile> (consulted May 20, 2013).

⁵² Published in the Official Journal on February 26, 2011.

⁵³ Committee on Economic, Social and Cultural Rights, E/C.12/1/Add.105, para. 58, Committee on the Rights of the Child, CRC/C/CHL/CO/3, para. 29, Committee on the Elimination of Discrimination against Women CEDAW/C/CHL/CO/5-6, para. 29

⁵⁴ Ministry of Social Development. *National Socioeconomic Survey, CASEN 2009*. At: http://observatorio.ministeriodesarrollosocial.gob.cl/casen/casen_obj.php (consulted May 20, 2013).

⁵⁵ Published in the Official Journal on September 17, 2011.

⁵⁶ The draft legislation to protect rights of children and adolescents was presented on April 30, 2013 by President Sebastian Piñera before the Chamber of Deputies, after continuous pressure by civil society organizations and months of delay and fruitless negotiations (Journal of Laws No. 8911-18).

⁵⁷ Pan American Health Organization. Mortality Database. 2010.

⁵⁸ Committee on the Elimination of Racial Discrimination, CERD/C/CHL/CO/15-18, para. 24

⁵⁹ In the area of sustainability of aquatic resources, Law No. 20,657 modifies access to industrial and artisanal fisheries and regulations for research and enforcement of the general fisheries and aquaculture law contained in Law No. 18,892 and its amendments, published in the Official Journal on February 9, 2013 (Fisheries Law). Law No. 20,573 is a constitutional reform on the special territories of Easter Island and Juan Fernández Archipelago, published in the Official Journal on March 6, 2012.

⁶⁰ Draft legislation regulating the long-distance power line project, message presented by President Sebastian Piñera before the Senate on September 4, 2012 (Journal of Laws No. 8566-08). Draft legislation on forest development that amends and extends the DL No. 701, message presented by President Sebastian Piñera before the Chamber of Deputies on October 2, 2012, approved by the Chamber of Deputies in the first stage on April 2, 2013 and sent to the Senate for debate, with legislative urgency assigned by the Executive Branch (Journal of Laws No. 8603-01)

⁶¹ Committee on the Elimination of Racial Discrimination, CERD/C/CHL/CO/15-18, para. 16.

⁶² Proposed constitutional reform on recognition of indigenous peoples, message of former President Michelle Bachelet, rewritten with a senators' motion. The idea of legislating was approved by the Senate on April 7, 2009 but the discussion subsequently stalled before the Committee on Constitution, Legislation, Justice, and Regulation (Journal of Laws No. 5324-07 and 5522-07, rewritten).

⁶³ From 2009 to date there have been eight criminal cases in which 55 people belonging to the Mapuche people have been charged for participation in terrorist offenses. Of these eight criminal cases, four have been ruled upon by the courts, three resulted in the acquittal of the accused, and in one, four of the 19 accused were convicted of ordinary crimes. While none of those convicted were ultimately qualified with terrorist behavior as defined by Law 18,314 in the crimes for which they were convicted, the evidence used in their sentence was the result of judicial proceedings under the umbrella of this body of law, since in it, the testimonies of eyewitnesses with concealed identities was used.

⁶⁴ Committee on the Elimination of Racial Discrimination, CERD/C/CHL/CO/15-18, para. 15. Committee against Torture, CAT/C/CHL/CO/5, 29

⁶⁵ Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families, CMW/C/CHL/CO/1, paragraphs 32 and 33.

⁶⁶ Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families, CMW/C/CHL/CO/1.