

Women's Reproductive Rights in Chile: A Shadow Report

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WOMENS REPRODUCTIVE RIGHTS IN CHILE
A SHADOW REPORT

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Introduction

This report is intended to supplement, or “shadow,” the report of the government of Chile to the Committee on the Elimination of All Forms of Discrimination against Women (CEDAW). It has been compiled and written by Corporación de la Mujer La Morada (La Morada), the Latin American and Caribbean Committee for the Defense of Women's Rights (CLADEM), the Open Forum on Reproductive and Sexual Rights (Open Forum), and the Center for Reproductive Law and Policy (CRLP). As has been expressed by CEDAW members, NGOs such as those mentioned above can play an essential role in providing credible and reliable independent information to CEDAW regarding the legal status and the real-life situation of women and the efforts made by ratifying governments to comply with the provisions of the Convention on the Elimination of All Forms of Discrimination against Women (Women's Convention). Moreover, if CEDAW's recommendations can be firmly based in the reality of women's lives, NGOs can use them to pressure their governments to enact or implement legal and policy changes.

Discrimination against women permeates all societies. Clearly, this discrimination requires urgent action. This report is focused particularly on reproductive and sexual rights, women's equality before the law, and the right to be free from discrimination. These rights were recognized at recent conferences such as the 1994 International Conference on Population and Development in Cairo, and the 1995 United Nations Fourth World Conference on Women in Beijing. This report discusses laws and policies related to these rights, and the reality of women's lives with respect to those rights.

In Chile, discriminatory customs, policies, and practices persist in all spheres of women's lives, making women susceptible to greater risks, dangers, and disadvantages. Due to the persistence of cultural biases and legislative norms that restrict women's rights in both the public and private arenas, Chilean women endure daily affronts to their human rights. Chilean laws and policies discriminate against women in the fields of education, employment and health, in marriage, and in the exercise of their sexual and reproductive rights.

This report was written by Verónica Matus of La Morada, Carmen Antony of CLADEM-Chile, and Josefina Hurtado of the Open Forum, with the assistance of Alejandra Valdés. Kathy Hall Martinez and Luisa Cabal from CRLP edited the report, with the assistance of Soledad Varela, Alison-Maria Bartolone and Lisa Hibler.

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Principal Points of Concern

Marriage, Ownership of Marital Property, and Divorce (Article 16)

The absence of a divorce law threatens the rights of Chilean women, because of the implications of women's inability to terminate a marriage. The marital property regime under which the man is the head of household and the legal representative of his wife, is discriminatory. Similarly, there is a legal provision stipulating that in the absence of an agreement between father and mother, the father is empowered to exercise sole parental authority. Given this legal context, it is recommended that a divorce law be established and that the discriminatory marital property regime and the civil laws establishing the father's parental authority be modified.

Sex Education (Articles 10 and 12)

It is essential that sex education programs be introduced into the educational system in order to avoid unwanted pregnancies, particularly adolescent pregnancies, and the transmission of STIs and HIV/AIDS among adolescents of both sexes. The opposition of conservative groups and the Catholic Church should not be permitted to hinder adolescents' access to health services and information that protect their sexual and reproductive health.

Abortion (Article 12)

The criminalization of abortion in Chile in all circumstances violates the rights of Chilean women, particularly in view of the impact of clandestine abortion. Chile has one of the highest abortion rates in Latin America, and unsafe abortion constitutes the leading cause of maternal mortality. More than one-third of maternal deaths among Chilean adolescents occur as the result of an unsafe abortion. To protect the life and health of Chilean women, it is essential that criminalization of abortion be abolished.

In Chile, approximately 80% of reports filed against women who have had abortions are filed by health professionals. Their legal obligation to report women who present indications of having had an induced abortion is a violation of the rights of women.

Sexual Harassment (Article 11)

Under Chilean law, sexual harassment is not explicitly classified as unlawful behavior. It is recommended that sexual harassment be classified as unlawful through the adoption of laws penalizing such behavior in situations where power relationships exist and sexual harassment may occur.

Education (Article 10)

Discrimination against pregnant students in the educational system violates their right to an education. A circular issued by the Ministry of Education to deal with this problem merely recommends that school principals allow pregnant students to complete their studies; there is no law protecting and guaranteeing their right to education. School textbooks discriminate against women because they replicate biased assumptions regarding the traditional role of women in Chilean society. Measures adopted by the government to address these issues in education have not been adequate.

Family Planning and Voluntary Sterilization (Article 12)

Only 30% of Chilean women of childbearing age use contraceptives. This rate indicates a lack of information and adequate services. Government regulations addressing contraceptives specify that the age range for their use is 15 to 44, but in practice, the public health system offers contraceptives to users only after their first pregnancy. This limits women's access to the information and services they need in order to exercise their reproductive rights.

The existence of requirements such as spousal consent before considering a woman's request for sterilization violates the right of Chilean women to reproductive autonomy.

National Office on Women (SERNAM) (Articles 1 and 2)

The National Office on Women (SERNAM) is the government agency of the Executive Branch that handles women's affairs. In practice, its work is very limited, since it lacks legitimacy with other state institutions and with civil society. It needs to be given a more proactive role among Chilean government institutions, as well as a larger budget to facilitate such a role.

Domestic Violence Law (Articles 3, 5, and 16)

During the five years in which this new law has been in effect, defects and limitations have become apparent. Chief among these limitations is the absence of mechanisms for detecting noncompliance with rulings and precautionary measures and limitations on judges' powers to resolve conflicts. While the domestic violence law has resulted in greater public awareness of domestic violence in Chilean society, without the necessary modifications, the law will fall far short of its intended impact.

General Considerations

In the view of the non-governmental organizations (NGOs) that have prepared this alternative report, the Third Report of the Government of Chile, drafted in 1999, must be placed in the context of recent events in Chile.

1. The Chilean Political and Economic Context

Chile's transition to democracy is dependent upon negotiation¹ among political figures and the military authorities who reached the consensus necessary for implementation of a democratization process employing the institutional framework of the authoritarian government. This is embodied in the Constitution of 1980.² Even with the recovery of civil rights and the democratic election of officials, the relations between the State and civil society have not changed. The style of mediation among the political parties on the basis of pragmatic criteria relegate the needs of various social sectors, including those of women, to the background.

For the two governments of the Coalition of Parties for Democracy,³ the priority issues have been political, institutional, and macro-economic in nature. Internationalization of the Chilean economy and its link with international markets is one of the government's priorities. In this context, demands and claims that must be considered in order to deepen and consolidate the democratic process are being pushed into the background. This situation affects women, who because of their often exclusive preoccupation with childbearing and family life, are effectively outside of and excluded from debate and regarding issues on the public agenda.

Although the country has enjoyed major successes in the economic and social spheres, experiencing high rates of growth and an increase in real salaries, among other achievements, significant shortfalls remain. There is marked inequality in the distribution of unemployment, with the most vulnerable sectors suffering the highest rates of unemployment.⁴

2. The Role of Civil Society

The important role played by the feminist, human rights, peasant, and labor movements in the recovery of democracy stands in contrast to the secondary role to which they are relegated by the political figures of the transition to democracy. The two transitional governments have pushed them to the margins of the political process, where they have limited possibilities of exerting influence. This has resulted in a growing malaise and/or apathy among such groups. In various ways, these movements mobilized behind the return to democracy and subordinated their specific demands, with the expectation that once a democratic government was in place, there would be space for their particular demands and claims. Yet now the movements are viewed as outsiders to the political logic of the governing coalition, because they challenge the consensus and introduce issues that are not part of the political agenda.⁵

While citizen participation is needed in order to deepen the democratic process, in Chile there is a tendency toward abstention from voting. This is reflected in the fact that few Chilean young people of voting age register to vote, and that other sectors of the population do not show up at the polls, turn in blank ballots, or cast invalid ballots.⁶

NGOs (Non-Governmental Organizations) and the Women's Movement

Chilean legislation has not yet accorded NGOs in Chile an institutional status appropriate to their purposes.⁷ The State establishes a relationship with them as service providers, but this conceals the absence of government policies designed to strengthen civil society and the refusal to enter into a dialogue concerning citizen control over or criticism of government policies.⁸

The women's movement was a major social and cultural force in the movement for the transition to democracy. The slogan "democracy in the country and the home" demonstrates the movement's richness and eloquence. But the severe constraints and limitations on the full realization of the transition's goals soon became evident. The military government recognized as counterparts the leaders of the political parties who adapted to a framework preserving authoritarian institutions in the negotiations, and the resulting political powers did not regard women as an important political force.

The women's NGOs that came to play an increasingly political role throughout the 1990s are now assuming a technical role. In this capacity they execute, advise, or maintain relations with government agencies, particularly SERNAM. This close relationship with the government has forced these NGOs to modify their activities and limit their political involvement.

At the present time there are 21 NGOs working on women's issues, 14 of which are in Metropolitan Santiago and seven in the outlying regions.⁹ Various networks exist, including the Open Forum on Reproductive Health and Rights,¹⁰ which coordinates more than 20 women's organizations country-wide, and the Chilean Network against Domestic and Sexual Violence,¹¹ which includes 12 organizations in the largest regions. The networks are operating under very precarious conditions, since they lack the resources or facilities necessary for effectively carrying out their work.

Another coordinating agency is the Beijing 2000 NGO Chile Initiative Group, which has engaged in campaigns for monitoring the commitments of the government of Chile under the Beijing Platform for Action. Despite the government's agreement to abide by the Platform for Action, its efforts to implement its principles have been extremely limited.

Comments on the Third Periodic Report of the Government of Chile

Articles 1 and 2: Definition of Discrimination and Measures Undertaken to Eliminate Discrimination

1. The Principle of Equality

The amendment to Article 1 of the Constitution, recently approved by the Senate but not yet in effect,¹² embodies the principle of equality in the statement “[i]ndividuals are born free and equal.”¹³ The amendment to Article 19(2) of the Constitution, which confirms the equality of men and women before the law, is also significant. This provision permits aggrieved persons to file an appeal for protection,¹⁴ a judicial remedy, thus providing a mechanism for enforcing women’s constitutional right to equality.

The concept of non-discrimination established in Article 1 of the Women’s Convention does not exist under the Constitution, nor in Chilean legislation.¹⁵ The Women’s Convention has been ratified by Chile and theoretically has the status of law,¹⁶ but in practice its provisions have not been given full legal effect. Although men and women are equal before the law, in practice laws that discriminate against women continue to exist. Full realization of women’s rights requires simultaneous operation of both the principle of equality and the principle of nondiscrimination. Thus, provisions prohibiting discrimination against women should be explicitly integrated into the Constitution and Chilean legislation.

It should also be pointed out that international instruments, including the Women’s Convention, have not been sufficiently publicized and therefore are not known to public officials or to citizens. For this reason as well, Article 1 of the Women’s Convention has not been incorporated in any meaningful way into Chilean law.

2. Establishment of SERNAM and the Equal Opportunity Plan

The National Office on Women (SERNAM), established in 1991, is “the agency created to collaborate with the Executive Branch in the study and proposal of general programs and measures designed to ensure equality of rights and opportunities for women with respect to men, in the process of the political, social, economic, and cultural development of the country, respecting women’s temperament and natural role which emanate from the differences between the sexes, including adequate protection of women in family relationships.”¹⁷

Although the director of SERNAM has ministerial rank, SERNAM is not a ministry but a functionally decentralized public agency. It has legal status and independent funding, and it reports to the Ministry of Planning. The total 1999 budget of the Ministry of Planning is equal to 8.4% of the budget allocated to the Ministry of Defense. The budget of SERNAM is 7% of the total budget of the Ministry of Planning, and therefore represents 0.59% of the budget allocated to the Ministry of Defense. Its capacity to carry out its mandate is therefore limited in practice.¹⁸

Limitations of SERNAM

SERNAM proposes legal reforms intended to ensure women’s equality. Its other major focus is developing programs to address extreme poverty. It has thus carried out its mission through specific programs and through Chile’s Equal Opportunity Plan.

SERNAM’s programs are oriented chiefly toward poor women and usually deal with violence, early pregnancy, and women heads of households. Thus, the programs tend to view women’s needs in

crisis situations related to their traditional roles within the family. Women thus continue to be considered in terms of their reproductive function, in accordance with the government's traditional view of women.

The First Equal Opportunity for Women Plan, formulated for the period from 1990-1994, was undertaken as a government program by the second Coalition Government (1994-1999). It was proposed as a coherent strategy to improve the situation of women, but unfortunately it has not been accorded legitimacy either among State institutions or in civil society.

The integration of SERNAM into the Executive Branch was difficult and equivocal.¹⁹ On the one hand it is a specialized agency for women's affairs, and on the other hand it must legitimize its activity within an institutional system that lacks a gender perspective and the underlying conditions necessary for execution of its mandate. The weakness of SERNAM is reflected in the lack of coordination between the general policies of the government and the specific policies SERNAM initiates that are directed toward women, with the latter being partial and isolated measures. Added to this is the nonexistence of mechanisms to follow-up on SERNAM's plans and to evaluate the programs initiated, as well as the limited budget allocated to SERNAM.

The various actions described in Chile's report to CEDAW place legal reform initiatives, plans, and programs on the same level, without any indication of how any of the efforts are integrated into general policies, a reflection of the absence of strategies. This is one of the major limitations of both the programs developed and the Equal Opportunity Plan.

One essential role that SERNAM needs to undertake is the coordination of Executive Branch efforts to ensure urgent action on legislative proposals that affect women's rights. In practice this has not happened.²⁰

3 Proposed Ombudsman's Office for the Defense of Women's Rights

The government report refers to a proposal for an Ombudsman's Office for the defense of women's rights. Such a proposal may have been prepared, but its content is unknown, since it has not been circulated to nor discussed with women's organizations, and has not been submitted to Parliament for debate. Such an office would contribute to women's ability to exercise their rights. However, it would have to be autonomous and have adequate budget allocations that would enable it to function effectively.

4 Family Courts Bill

The family courts bill is an important initiative that was submitted to Parliament for its consideration in 1997 and is still being debated in Parliament. A part of the process of modernizing the administration of justice, it would establish family courts as a special jurisdiction, introduce mediation and conciliation, offer parties mechanisms for reaching cooperative solutions, and give preference to non-adversarial, conflict-resolution mechanisms.²¹

While this initiative in general is positive, actual application of mediation in cases involving family violence is problematic. Since the bill has not been widely disseminated, broader distribution is recommended.

Article 3: Measures to Ensure the Exercise and Enjoyment of Human Rights and Basic Liberties

1. Realization of Commitments Made at International Conferences

The government of Chile has participated in the various United Nations conferences held in recent years,²² which have produced very specific recommendations for States aimed at enhancing the implementation of the human rights of women.

The government's report to CEDAW does not indicate how its commitments made at these conferences have been carried out. It states that "the Equal Opportunity Plan is a public-policy tool for compliance with the agreements of the Beijing Platform for Action." However, the report makes practically no mention of the Cairo Conference. In fact the government has failed to initiate measures to implement the provisions of Cairo. The government's lack of initiative reflects the exclusion of sexual and reproductive health and rights issues from the government's agenda.

2. The Municipalities Law

The government's report refers to the reform of the Municipalities Law as a step forward because it includes among municipal functions "the promotion of equality of opportunities for men and women."²³ However, this function of the municipalities does not specify that concrete actions must be taken and is contingent upon the funds available to municipalities and/or the political will of mayors. It must further be pointed out that the Offices of Women now functioning in the municipalities have been established by mayoral decision, and their mere establishment does not guarantee that their actions will be oriented toward improving the condition of women and/or that they operate from a gender perspective.²⁴

3. Amendments to the Penal Code with Respect to Sexual Offenses

A law that amends the provisions of the Penal Code and the Criminal Procedure Code with respect to sexual offenses has been approved and will enter into effect upon publication. This legislation was enacted as a response to what is a problem of major proportions in Chile. It should be mentioned that (pending publication of the new law) current legislation still speaks of women in quasi-medieval terms that designate their social level and social reputation as determinants of the perpetrator's punishment.²⁵

The extent of sexual abuse of female children in the country is unknown, but cases of sexual abuse are estimated at around 20,000 per year (one every six minutes), with 10% of cases reaching trial and only 3% of the accused receiving a sentence. The cases exhibit certain patterns: they are primarily female and male children between the ages of six and 10; in 50% of the cases, the attacker is known; and rape and incest are most frequent among female children between the ages of 11 and 15. Data from the Forensic Medical Service indicates that, in cases involving minors, the perpetrator is a stepfather or similar male figure in 37% of the cases, a family member in 16%, a neighbor or acquaintance in 11.3%, and the father in 7.2% of the cases.²⁶

It is important to emphasize that the new law amending the Penal Code introduces the concept of rape without distinction by sex, includes the concept of carnal access by vagina, anus, or mouth, and decriminalizes sodomy between adults. Another critical feature of the new law is that it revokes stays of proceedings and suspended sentences in abduction and rape cases where the offender marries the victim. Moreover, for the first time, measures to protect the victim, such as elimination of mandatory confrontation, are included, and guarantees of privacy are established.

Passage of this law is a step forward. However, a change in the law prohibiting abortion is also extremely important. Chile's total prohibition on abortion continues to lead to the application of drastic penalties against women, chiefly low-income women, who are the most at risk for imprisonment. (See Article 12, point 6, below.)

4 Job Training Program

The government's report calls attention to the Job Training Program for low-income women, with a preference for women heads of households, as a priority program pursuant to policies carried out by municipalities and the Ministries of Labor, Health, and Education.²⁷ However, its coverage is limited.

5. Gender-Sensitivity Training for Public Officials

The activities of SERNAM in the gender-sensitivity training of public officials must be measured not by the number of participants but rather by impact. The program underway is not permanent and has not been instituted at all levels. On the federal level, modernization of the State is handled by special offices of the Ministry of General Administration of the Office of the President, and by the Ministry of the Interior on the municipal level. Their priorities and activities have no direct relationship with SERNAM's training activities.

6. Domestic Violence Law

The Domestic Violence Law, Law No. 19,325, went into effect in 1994. To date, one of its chief successes has been to make domestic violence increasingly visible as a social problem. But there are shortcomings in its application that need to be corrected:

a. Given the absence of family courts, the jurisdiction of the civil courts in these matters has created problems such as the clogging of court calendars and the courts' incapacity to deal with a new type of case. The officials and professionals involved, and women themselves, are not familiar with the contents of the law.

b. In terms of procedure, it must be noted that police officers and other officials pay insufficient attention to the need to collect the necessary evidence facilitate the filing of a complaint. Statutes of statutory-limitation periods are not being observed, and there is excessive delay in the service of documents. Additionally, there is an absence of physical space needed to ensure victims' privacy and appropriate treatment by the officials who are assigned to deal with complaints in place of judges, as provided by the law.

c. Sixty-five percent of the cases end in a settlement. This is not an appropriate resolution, since there is no follow up by government officials. In most cases, preference is given to therapy as a punishment. Very few sentences include fines, and imprisonment is practically never ordered.

d. No mechanisms have been established for detecting noncompliance with rulings, precautionary measures, court-ordered settlements, and judgments, with the result that in most cases these measures are ineffective.

e. Amendment of the Domestic Violence Law is necessary in order to remedy these problems, and regulations are needed to create additional mechanisms to deal with these practical problems encountered during the five years since enactment of the law.²⁸ Prompt enactment of the proposed law creating the family courts is of fundamental importance. The law instituting family courts would aid in resolving issues related to jurisdiction, separation of cases, and lack of human and technical resources and infrastructure, and would aid in ensuring better coordination among the institutions concerned with application of the law.

7. Sexual Harassment

A bill concerning sexual harassment was introduced in Parliament in 1997,²⁹ but Chile still has no law explicitly punishing sexual harassment, apart from Article 147 of the Penal Code, which indirectly penalizes sexual harassment committed by a public official.³⁰ At this time a bill is in preparation that defines sexual harassment in the workplace, but there is no proposal to penalize it in other situations in which power relationships exist and sexual harassment may occur. (See Article 11, point 5, below)

8. Rights of Pregnant Adolescents

Forty thousand children are born to teenage mothers in Chile each year. Discrimination against pregnant adolescents occurs at all levels of the educational system. No specific steps have been taken to eradicate this discrimination. A circular issued by the Ministry of Education merely *recommends* to school principals that pregnant students be kept in school until they complete their studies. A bill sanctioning school officials who try to remove pregnant adolescents is also in preparation, but to date it has not progressed significantly. (See Article 12, point 3, below)

9. Filiation Law

Among the most important measures that should be mentioned at this time is the passage of the Filiation Law, Law No. 19,585 of 1998, which ends discrimination between children born within and outside of marriage. The new law also permits unfettered investigation of paternity, including DNA testing.

Article 4: Special Temporary Measures

No special measures exist in Chile at this time to combat discrimination against women. For this reason, passage of a law instituting affirmative action measures to benefit women in government positions and within the legislature is a necessity and is a measure the Chilean government owes to its women. Such a law has been in preparation in the Chamber of Deputies since 1998, and the First Committee Report regarding such a law is pending. Unfortunately, there is no urgency surrounding its consideration. In this regard, SERNAM could have helped to accelerate its consideration by lobbying the Executive Branch in order to obtain urgency status for it.

Some political parties have adopted affirmative action policies. However, the number of women in top party leadership posts is only around 27.2% in the Socialist Party and 22% in the Party for Democracy. In the largest party, the Christian Democrats, barely 12.5% of the top positions are held by women.

Article 5: Measures to Eliminate Discrimination in Political and Public Life

Women are underrepresented in public executive posts and in the political, labor union, and guild organization leaderships. In the Chamber of Deputies only 10% of the deputies are women, and there are only two female senators in the Senate, which means that women hold only 4% of the elective positions.³¹ In 1996, 9.3% of the candidates elected to municipal posts were women.³² At the present time, only two of the 23 heads of government ministries are women.³³

According to figures dating from the early 1990s, there have been no female Supreme Court judges and no female lawyers practicing before the Supreme Court.³⁴ Women represent only 17% of the Appeals Court judges.³⁵

The participation of women in union management in various branches of the economy³⁶ has increased slightly, and stood at 14.7% in 1995, 14.9% in 1996, and 15.4% in 1997. The highest number of women in union executive positions was concentrated in the services, business, and financial establishment sectors.³⁷ Women held 2.1% of the board of directors' positions in the services sector, 1.6% in the industrial sector, and 1.7% in production and commerce.³⁸

Article 10: Right to Education

1. Educational reform

Article 19(10) of the Constitution states: "The goal of education is the full development of the human being in the various stages of his or her life. Parents have the preferential right and the duty to educate their children." The State assigns particular priority to the protection of this right, and makes primary education obligatory, ensuring access for the entire population. With respect to other levels of education, the State assumes responsibility for promoting higher education, but it does not guarantee access to such education. It also shares with local communities the duty to contribute to the development and improvement of education, though taking a subsidiary role in this regard. The Constitution recognizes the existence of different needs throughout different stages of education, however it guarantees only access to education and does not recognize the principle of non-discrimination on the basis of gender as a parameter for the education of males and females.³⁹

The government's report to CEDAW does not contain the latest data on female school attendance.⁴⁰ The average years of study among the female population over the age of 15 was 9.3 years, very close to the 9.6 years for men.⁴¹ The average school attendance of women in the urban sector was 9.8 years, in the rural sector 6.3 years. Illiteracy among the general population is 17% in rural areas and 6% in urban areas.⁴²

The government's report does not refer to the resource gap between subsidized state and municipal public education (7%) and private education (93%). The decentralization of education to the municipalities has resulted in greater territorialization of educational administration and social stratification because of resource inequities among various municipalities.⁴³

The curriculum change proposed by the Educational Reform Plan in primary and secondary education provides for "the promotion of conversations that orient and form young people with respect to new subjects ... such as the environment, human rights, ... gender discrimination, ..." among others.⁴⁴ However, this has not been translated into educational materials dealing with gender issues. Moreover, there are no guidelines for determining effective incorporation of a gender perspective at all levels of curriculum development, since assumption of this perspective is left to the discretion of each educational establishment.

Textbooks reinforce discrimination against women and social stratification, and do not question the roles traditionally assigned to men and women or point out conflicts associated with the changes in women's roles.⁴⁵ Measures undertaken to change the textbooks have been inadequate. Even when a policy to improve textbooks is introduced at the ministerial level and studies and consciousness-raising campaigns have been carried out by SERNAM, concrete changes in texts do not materialize, but mere-

ly become part of proposals to improve the education sector.

Another discriminatory aspect of the educational system is the issue of pregnant adolescents who are being compelled to abandon their studies even though the Ministry of Education has issued a circular recommending that they be allowed to complete their studies.

In higher education, although various feminist and gender studies programs have been established in the universities, their existence has little influence on the university environment as a whole. Faculty members in these disciplines encounter barriers to their participation in decision-making at various levels within the university system. In the traditional schools, such as law and medicine, female faculty members are a minority, with women comprising 22.2% at the University of Chile and 11% at the University of Antofagasta.⁴⁶

2. Sex Education

One of the causes of abandonment of studies is adolescent pregnancy. Each year 40,000 children are born to teenage mothers, and in 18% of these cases the father is also an adolescent. Eighty percent of these pregnancies are unwanted, and the adolescents involved do not have the maturity to deal with the biological, psychological, social, and economic consequences. In 1996, 63.7% of the pregnancies to adolescents between the ages of 13 and 19 occurred among minors from rural areas.⁴⁷

This reality is indicative of a deficient sex education curriculum with a biased treatment of sexuality that neither educates nor delivers information. This curriculum leaves young people exposed to early pregnancies, HIV-AIDS, other sexually transmissible infections (STIs), and clandestine abortions.

The only initiative taken in the area of sex education was promoted by SERNAM's Interministerial Commission for the Prevention of Adolescent Pregnancy, which initiated Community Days on Emotional and Sexual Life (JOCAS), beginning in 1996.⁴⁸ The scope of these efforts has been limited by opposition from conservative organizations and lack of government commitment.

The JOCAS involve an educational dialogue between young people and adults on the emotional and sexual aspects of human life, and can be promoted by educational institutions or municipalities. One of their successes is that they have opened a debate among various sectors on adolescent sexuality and have shown that adolescent sexual health is a social concern. However, there are obstacles in the form of a lack of institutional commitment to incorporating this issue at the policy level; the vocal opposition of conservative groups and the Catholic Church, which has been an obstacle to the development of commitment to this issue; and an academic culture that is resistant to educational innovations.⁴⁹

Article 11: Right to Work

1. Participation of Women in the Labor Market

Article 19(16) of the Constitution does not include a right to work per se among the constitutional guarantees. It does provide, however, that "every individual is entitled to freely engage in and choose work with a fair compensation. Any discrimination not based on ability or personal aptitude is prohibited...." The only explicit provision on nondiscrimination is found in the Labor Code.⁵⁰

The massive and growing influx of women into the labor market is occurring under precarious conditions. Women now represent 35% of the work force,⁵¹ chiefly in the services sector, and their par-

ticipation in the finance and trade sector is increasing.⁵² The structure of employment in Chile shows a trend toward increased participation in the informal sector.⁵³ The participation of women in this sector has consequences for their families. They often begin such work with the help of their children, who work as assistants. One consequence of this practice is that such children abandon school.

2. Employment Training

Because of failure to complete their studies, most young people seeking training to enter the labor market have on average between eight and ten years of schooling. Job training programs frequently discriminate against young women, with only 34.8% of women obtaining job training funds.⁵⁴

Although women constitute 33% of the labor force, in 1998 only 19.2% of them had opportunities for job training.⁵⁵

3. Salary Inequality

The salary disparity between men and women at all levels and in all job sectors is apparent. Generally, the average income of the female economically active population (EAP) is equivalent to 70% of the average earned income of the male EAP. At higher salary levels the gap between male and female income is even higher, with women earning 54% of what men earn at the same level.⁵⁶ Although Chile ratified Agreement No. 100 of the International Labor Organisation (ILO) in 1951, which requires compliance with the principle of "equal pay for equal work," the government does not comply with its terms nor are there legal mechanisms for enforcing the treaty.

4. Child Care

Article 203 of the Labor Code requires companies with more than 20 female employees to provide child-care facilities or to reimburse the employees for the cost of child care.⁵⁷ However, the level of noncompliance with this requirement is high. Employers themselves acknowledge that 30.9% of companies with 20 or more female employees do not provide either facilities or reimbursement.⁵⁸ This means that three out of 10 employers acknowledge noncompliance with this obligation and four out of 10 employees report that they are denied this right.⁵⁹

Law No. 19.505 of July 1997 grants a maximum of 10 days of special leave per year to employees of both genders to care for their children who are sick. But the law also specifies that the employee must make up the time in the form of overtime or by giving up vacation days, which limits the exercise of this right. The government's report also refers to Law No. 19.250, promulgated on 30 September 1993, which grants leave to fathers for a birth, illness of a child under the age of one year, and transfer of post-natal care to the father in case of the death of the mother. There are no pertinent statistics, since leaves for child-care purposes are not recorded by gender; in addition, it is very difficult to obtain private-sector and public-sector information because of the nonexistence of a single registration system recording the number of individuals who took leaves.

5. Sexual Harassment

At the present time sexual harassment is recognized only in administrative pronouncements; there is no equivalent in current labor legislation or judicial rulings. A 1997 bill defining sexual harassment in the workplace is now pending. This practice is not classified as an offense, and it is also not specifically referred to in labor legislation as grounds for termination of employment. In practice, monitoring of sexual harassment is limited to the oversight role of the Department of Labor,⁶⁰ a sub-department of the Ministry of Labor, and provision is made for investigation of complaints and punishment only in the case of persistent or repeated offenses. Records indicate that female employees do not report harassment because of the obstacles placed in the way of potential reporting parties by the government itself.

6. Social Security

Article 19(18) of the Constitution establishes the entitlement of every individual to social security benefits, whether from public or private institutions, and requires the government to oversee that everyone is able to exercise the right to social security.

Retirement and disability benefits and survivors' benefits are paid by the public system known as the Social Security Standardization Institute and the Pension Fund Administrators.⁶¹ In the private system each worker makes a contribution to his individual pension account. There is discrimination in the calculation of retirement pensions because the life expectancy of men and women is not taken into account. Women save less because their salaries are lower, and, because women assume child care responsibilities, the number of their years of savings is reduced.⁶² All these factors result in women having lower pensions than those of men.

Women are also discriminated against in their right to health insurance. Most women cannot afford to access private medical care at Medical Care Institutes (ISAPRES). The monthly premiums for ISAPRES medical care are much higher for women during their reproductive years, and women must pay longer because of their greater longevity. On the other hand, the public health system has appropriately equal premiums regardless of age and gender.⁶³

It is important to emphasize that although public and private pension and medical-care systems exist, some 35% of all workers are without protection under either regime. This percentage includes a significant number of women because of their participation in the informal sector of the economy.⁶⁴

Article 12: Right to Health

1. Medical Coverage and Policies

The public health care system concentrates on lower-income sectors and covers 64.7% of the national population, while the private system covers 46.44%. The public system covers 84% of the poorest households and only 25% of the higher-income groups. Various surveys reveal dissatisfaction by public health care system users.⁶⁶

The Women's Health Program of the Ministry of Health includes advances such as inclusion of comprehensive coverage and a gender perspective. However, the program's stated objectives differ from its concrete programs and treatment of women.⁶⁷

2. Access to Contraceptives

According to some studies, 31.3% of women of childbearing age use some type of contraceptive method.⁶⁸ Of these women, 55.6% live in urban areas and 53.6% in rural areas.⁶⁹ Contraceptive coverage through the public health care system reaches only 20.1% of women of childbearing age.⁷⁰ Other private institutions meet the demand for contraceptives for the remaining contraceptive users.⁷¹ The contraceptives supplied by the public system include oral hormonal contraceptives, intrauterine devices (copper T), and to a lesser extent condoms, which are provided preferentially to high-risk groups. This restricted supply limits women's choices in controlling their fertility.

Administrative pronouncements state that the legal age range for obtaining contraceptives is 15 to 44, but in reality the public health care system provides contraceptives only after the first pregnancy.⁷² This retroactive approach limits effective access of women of childbearing age to information and ser-

vices that would enable them to exercise their reproductive rights.

3. Adolescent Reproductive Health

Adolescents constitute 25.8% of the total population of Chile.⁷³ A survey carried out in 1993 by the University of Santiago showed that 57% of the adolescents surveyed were sexually active, 54.3% did not use contraceptives, and 26.5% had never used contraceptives.⁷⁴

In 1996 adolescent pregnancy accounted for 15% of total live births. This figure is 1.2 percentage points above the percentage for the year 1992. The percentage of births outside marriage among mothers in the 15 to 19 age group in 1996 was 91%.⁷⁵ The highest percentage of births to women under the age of 20, 20.5%, corresponds to those with only a primary education; no births are recorded among women under 20 with higher education.⁷⁶

The Ministry of Health Program for Adolescents operates through public health clinics, which do not have sufficient funds to implement the program and as a result, deal with adolescents in an inconsistent manner. In 1997 only 0.002% of the health-care budget was allocated to this program. In addition, the Chilean government has not established a consistent sex education program that meets the sexual and reproductive health care needs of adolescents.⁷⁷

4. Sterilization of Women

Women can now opt for voluntary sterilization, which is classified in the Responsible Parenthood Norms of the Ministry of Health as an irreversible contraceptive method.⁷⁸ Women are required to meet the following conditions in order to be sterilized: they must have four living children, they must be at least 32 years old, and they must obtain the consent of their partner. The consequence of these requirements is to impede access to this service, a violation of the reproductive rights of Chilean women.

A proposal to change these regulations is now under study by a commission organized by an NGO and whose membership includes representatives of government agencies and civil society organizations. This proposal would eliminate the need for consent from the woman's partner, but it does not eliminate the age or number-of-children requirements, nor does it address the fact that there are no such formal requirements restricting when a man can have a vasectomy. Approval of the proposed regulations has been delayed.

5. Emergency Contraception

Emergency contraception as a contraceptive method is regulated in the Responsible Parenthood Norms of the Ministry of Health as a post-coital pill. However, the ministry has not issued directives for practical implementation of this regulation so that women can have effective access to this method, even in cases of sexual violence where it is desperately needed.⁷⁹

6. Abortion

In Chile all abortions are prohibited.⁸⁰ For this reason it is difficult to estimate the number of abortions, since abortion is performed clandestinely and in most cases under conditions that place the woman's life and health at risk. Thus, abortions in Chile are underestimated in the records that do exist. However, it is estimated that approximately 160,000 abortions are performed each year, only some of which result in the woman seeking help at a hospital;⁸¹ it is also estimated that 35% of pregnancies end in abortion⁸² and that 40% of the women who have abortions are women under the age of 18.⁸³

Studies also show that one out of every three abortions requires hospitalization for serious compli-

cations,⁸⁴ and that complications resulting from abortion represent approximately 30% of maternal deaths,⁸⁵ constituting the primary cause of maternal mortality in Chile.⁸⁶ Poor women are most severely affected by the restrictive laws. Since they do not have the resources to obtain an abortion in safe conditions, they must resort to high-risk abortion methods that generally end in health complications or in death.⁸⁷

One of the goals of the Women's Health Program is to provide timely and appropriate treatment and to prevent complications from abortion. However, the fact that the public hospitals account for 80% of the reporting of women to the criminal justice system demonstrates that far from providing humane treatment to women suffering complications from abortion, the public health care system contributes to the abusive treatment experienced by women who have had an abortion.⁸⁸

It is important to emphasize that in its comments on the report presented by the Chilean government in March 1999, the U.N. Human Rights Committee noted that the criminalization of abortion is extremely problematic because it endangers women's lives.⁸⁹ In this regard, it recommended that the Chilean government "adopt the measures necessary to guarantee the right to life to all individuals, including pregnant women who decide to terminate a pregnancy," through the amendment of legislation on abortion.⁹⁰

7. HIV/AIDS and Other Sexually-Transmissible Infections (STIs)

According to some studies, in 1997 85% of AIDS cases were diagnosed in persons between the ages of 15 and 49, and 91% of these were sexually transmitted.⁹¹ The same studies indicate that cases of heterosexual transmission are increasing, and that the persons primarily affected are women who have a lower education level and are in a stable union, that is, they are generally monogamous.

Articles 15 & 16:

Recognition of Women's Equality Before the Law and Elimination of Discriminatory Laws in Respect of Marriage and the Family

1. Marriage

At the time of marriage a couple can choose from among three marital property regimes: *sociedad conyugal* (joint ownership of property by husband and wife), *participación en los gananciales* (joint ownership of jointly-acquired assets)⁹², and *separación de bienes* (separation of assets). Of the three regimes, the *sociedad conyugal* is the most discriminatory for women. In general there is little knowledge of the three systems among the Chilean population, and especially among low-income women. The result is that a large number of Chilean women and their spouses select *sociedad conyugal* without understanding the possible future repercussions for the woman. Under the *sociedad conyugal* property system, the husband is the administrator of all of the couple's property, severely compromising the wife's rights.⁹³ Her rights are limited in terms of ownership, purchases, management, administration, possession, and disposition of the couple's assets.

Another discriminatory aspect of marriage is found in family law, which undermines equality of the spouses by granting sole parental authority (*patria potestad*) to the father if the parents are unable to reach an agreement regarding their children.⁹⁴

In this regard, the U.N. Human Rights Committee stated its concern about the existence of these marital property provisions, which openly discriminate against women.⁹⁵ It stated that while selection of the marital property system by the couple is optional, the existence of this provision in the legal sys-

tem is discriminatory and should be abolished, along with the provision related to parental authority.⁹⁶

2. Domestic Partnerships

The lack of regulation of domestic partnerships constitutes an insurmountable barrier for women. Concubinage or domestic partnership is not expressly recognized in the civil law, and is mentioned specifically only in indigenous law and in the Domestic Violence Law. This is discriminatory because the absence of explicit recognition of such partnerships has serious consequences with respect to the assets acquired during the years of cohabitation.

3 Divorce

The lack of a divorce law constitutes a situation of blatant discrimination against women. Chile is the only Western country with a predominantly Christian population that does not have such a law; with the exception of the Philippines, which also lacks a divorce law. If a couple wishes to terminate their marital bond they are obliged to resort to annulment, which essentially requires them to disingenuously certify that their marriage is a fraud. Because of its high cost and the difficulty of obtaining an annulment, the process is available only to the wealthiest segment of the Chilean population and is thus beyond the reach of poor women. Most of the Chilean population supports the adoption of a law permitting dissolution of marriage.⁹⁷

On January 23, 1997, the Chamber of Deputies rejected a parliamentary motion to expand and regulate the grounds for annulment of marriage.⁹⁸ On the same day, it also voted in favor of the concept of the adoption of a divorce law.⁹⁹ General agreement exists among all political sectors in Chile that it is necessary to amend the Civil Marriage Law to end unlawful annulments and that ultimately it is necessary to pass a divorce law. However, to date no bill has been introduced.

4 Incarcerated Women

Incarcerated women are in a unique situation that invites discrimination and violence. They are not entitled to conjugal visits, a right that is enjoyed by male prisoners. They are allowed to keep their minor children up to the age of four, but, except for a few precariously equipped nurseries, the women and their children receive no special attention. Pregnant prisoners lack medical services and proper food, and they often suffer insulting and humiliating inspections. Publicly-provided legal assistance is deficient, and cases of sexual abuse by the police have been reported, especially cases involving incarcerated prostitutes. Women imprisoned for drug-related offenses (60% of female prisoners), women of the indigenous populations, foreigners, poor women, and older women are the most vulnerable to discrimination and violence.¹⁰⁰

Endnotes

- ¹ “One of the most problematic aspects of this pact relates to continuing issues related to human rights violations. Justice has seemingly been sacrificed in exchange for the alleged stability of the process.” See CHILE HUMAN RIGHTS 1998, REPORT OF THE SOCIAL ASSISTANCE FOUNDATION OF THE CHRISTIAN CHURCHES (1998).
- ² The Political Constitution of 1980 is the work of the authoritarian government of General Augusto Pinochet and embodies his institutional philosophy. It establishes 9 appointive senators, 4 of whom are the Commanders-in-Chief of the Navy, Army, Air Force, and Internal Police Forces. See POLITICAL CONSTITUTION OF 1980, art. 45 (hereinafter CHILE CONST.).
- ³ A coalition of governing parties.
- ⁴ In 1996 unemployment among the adult population (ages 45-64) was slightly more than 3%; among young people ages 20 to 24 it was 14%, with a high concentration among youth with very low incomes. Poor women have the highest rate of unemployment, over 26%. See OSCAR MUÑOZ, LA ECONOMÍA CHILENA EN 1997 (1998).
- ⁵ A 1998 United Nations Development Programme (UNDP) report notes that “the political malaise expressed by the citizens requires serious thought about the meaning of the democratic order and politics in Chile. On the one hand, politics is an aspect of the modernization process and operates as a self-referential political system and with a specific functional logic. On the other hand, it indiscriminately engages individuals and community groups in only a limited manner. Thus the (inevitable) gap between institutional politics and citizen politicians appears to be increasing.” See UNDP REPORT ON HUMAN DEVELOPMENT (1998).
- ⁶ In 1998, 92% of Chileans of voting age were registered to vote. By 1997 this figure had dropped to 85.6%. One million four hundred thousand Chileans, chiefly young people, were not registered. The percentage of non-voters was 13.7% at the national level, and 17.8% of the voters cast invalid or blank ballots. See PATRICIO NAVIA, TENDENCIAS DE PARTICIPACIÓN, CHILE 1997 (1998).
- ⁷ Most of the NGOs were established as organizations of professionals (equivalent to trade associations). During this period some of them became non-profit corporations, in conformity with general regulations.
- ⁸ In 1994 the NGO-Government Liaison Office recorded 450 NGOs in Chile. The following year between 100 and 150 of them were obliged to close because of lack of international financial support and the absence of government financial and regulatory policies.
- ⁹ CEDEM prepared the National Directory of Services and Resources for Women in 1992, which listed 38 NGOs for women. See GUÍA SILBER (1998).
- ¹⁰ The Open Forum promotes follow-up to the International Conference on Population and Development held in Cairo in 1994, and manages a Campaign for Voluntary Motherhood.
- ¹¹ The Network concentrates its activities on ongoing consciousness-raising and training of women so that they will know and be able to make use of the law, according to information provided to Members of the Network Coordinating Office.
- ¹² It has not yet been published in the Official Gazette and therefore is not yet in effect.
- ¹³ It should be pointed out that the first proposed amendment in 1991 stated that “men and women are born free and equal in dignity and rights.”
- ¹⁴ The appeal for protection (CHILE CONST., art. 20) can be brought by anyone who suffers deprivation or disruption of or threat to his or her rights embodied in the Constitution.
- ¹⁵ Article 55 of the Civil Code, to which the government report refers, defines who is a “person.” It dates from 1855, and has no relation to and does not mention discrimination as described in Article 1 of the Women's Convention.
- ¹⁶ See CENTER FOR REPRODUCTIVE LAW AND POLICY AND OPEN FORUM ON REPRODUCTIVE HEALTH AND RIGHTS, WOMEN BEHIND BARS: CHILE'S ABORTION LAWS. A HUMAN RIGHTS ANALYSIS (1998) (citing Cecilia

Medina Quiroga, *El Derecho Internacional de los Derechos Humanos [The International Right of Human Rights]*, in CONSTITUCIÓN, TRATADOS, Y DERECHOS ESENCIALES (1994).

¹⁷ Law No. 19023 of 1991. Its principal functions include the designing of policies directed toward women; coordination of national policies and actions within the various ministries; evaluation of performance of policies, plans, and programs enacted in order to ensure compliance with the Women's Convention; and implementation and promotion of studies designed to evaluate the situation of women and the family.

¹⁸ The Third Periodic Report of the Chilean government does not indicate the budget allocated for 1999 to reinforce the Equal Opportunity Plan in the municipalities, which was 28 million 26 thousand pesos, in addition to external donations totaling 32 million 75 thousand Chilean pesos. See REPUBLIC OF CHILE, MINISTRY OF THE TREASURY BUDGET OFFICE, PUBLIC SECTOR BUDGET LAW FOR THE YEAR 1999. The average dollar exchange rate in 1999 was approximately 480 pesos.

¹⁹ The Parliamentary debate on the establishment of SERNAM was characterized by different visions of the new agency's role. Because of political pressure from conservatives, the original project was modified by the Coalition aimed at maintaining its profile without reducing its powers. Ultimately its director was included in the Ministerial Cabinet as the first and only woman minister in the First Transition Government. It should be emphasized that this is a ministerial post reporting to MIDEPLAN, the Ministry of Planning. While there was agreement on SERNAM's establishment, the same was not true with respect to the question of whether its functions should be oriented toward women or the family. These differences were not resolved and are still apparent in the activities of the office and within the government coalition.

²⁰ An example of this is the situation of the Inter-American Convention for the Prevention, Punishment, and Eradication of Violence against Women (Convention of Belém do Pará), which took 4 years for the government to promulgate and publish in the Official Gazette. No explanations were given for the delay.

²¹ Chamber of Deputies, Official Communication of Bill., Boletín 2118-18.

²² Chile participated in the Fourth World Conference on Women, held in Beijing in 1995; the International Conference on Population and Development held in Cairo in 1994; and the World Summit for Social Development, held in Copenhagen in 1995.

²³ Organic Law of Municipalities 18.695, art. 4-K.

²⁴ In many municipalities these offices were created by mayors around election time to obtain the votes of women.

²⁵ The Penal Code of Chile still includes such concepts as *doncellez* (deflowering of a virgin) when punishing sexual assault of a *doncella* (virgin) over 12 and under 18. See *rapto de doncella* (abduction of virgin), art. 359, and *buena fama* (good repute), art. 358, which punishes the abduction of a "woman of good repute" with a more severe punishment than that for the abduction of a "woman who is not of good repute." Another problematic aspect of the current code is that it continues to suspend criminal proceedings or suspend the sentence imposed when the offender marries the raped or abducted woman. See PENAL CODE, art 369(3).

²⁶ Investigative Police Center for Care of Victims of Sexual Abuse (CAVAS).

²⁷ The definition of female head of household refers to women who are in fact alone, excluding women who are with partners and who act as heads of families.

²⁸ SERNAM, ESTUDIO SEGUIMIENTO DE LA LEY DE VIF 1995; SERNAM, ESTUDIO DOCTRINARIO DE LA LEY 1996.

²⁹ Chamber of Deputies Bulletin 583-07.

³⁰ Lidia Casas and Ximena Zavala, Corporación de Salud y Políticas Sociales (CORSAPS), *Presentation on Chile to the Human Rights Committee of the United Nations* (1999) (hereinafter *Chile Presentation*).

³¹ *Id.*

³² Election Office 1998.

³³ A third woman minister in the Frei Cabinet resigned in April.

³⁴ Chile Presentation, *supra* note 30.

³⁵ *Id.*

³⁶ This includes agriculture, mining, industry, electricity, construction, trade, transportation, finance, services, and others. Ministerio del Trabajo y Previsión Social Dirección del Trabajo (1997).

³⁷ *Id.*

³⁸ GUÍA SILBER 1997.

³⁹ Actas Constitucionales, sessions 132, 122[sic], 134, 135, 136, 137, 139, 140, 141, 141[sic], 143, 146, 147, 148, 151, 152, 154, and 155.

⁴⁰ ENCUESTA DE CARACTERIZACIÓN SOCIOECONÓMICA (CASEN) (1996).

⁴¹ This average conceals a large number of women who did not complete their studies. It breaks down as follows: 4.5% without formal education, 20% with incomplete primary education, 12% with completed elementary education, 25% with incomplete secondary education, and 22% with 12 years of studies completed. These figures are directly related to socio-economic class. The average school attendance for women in urban areas is 98 years, for women in rural areas, 6.3 years.

⁴² The government's report also does not refer to the 5.57% illiteracy rate, a figure that does not include functional illiteracy. When the Literacy Program for the years 1996 and 1997 is analyzed, it is revealed that only 0.8% of the illiteracy shortfall is covered, an inadequate response to the potential demand among both men and women. See CASEN 1996, *supra* note 40.

⁴³ The results of the success measurement tests for evaluating quality of education (the SIMCE Test) show the difference in quality of education: 58% among public school students pass the test, compared to 76% among private school students. These figures reflect a difference in access to secondary education.

⁴⁴ MINISTRY OF EDUCATION, FUNDAMENTAL OBJECTIVES AND OBLIGATORY MINIMUM CONTENT OF SECONDARY EDUCATION (1997).

⁴⁵ LA MORADA DEVELOPMENT CORPORATION-WOMEN'S PROGRAM AND MINISTRY OF EDUCATION, REPORT OF THE TEXTBOOK PRODUCERS WORKSHOP SEMINAR (1996).

⁴⁶ CARMEN ANTONY, PAPEL DE LA MUJER ABOGADA: REFLEXIONES PRELIMINARES SOBRE UN TEMA INVISIBLE [ROLE OF WOMEN LAWYERS: PRELIMINARY REFLECTIONS ON AN INVISIBLE ISSUE] (1998).

⁴⁷ Jornadas de Conversación sobre Afectividad y Sexualidad (JOCAS) [Community Days of Conversation about Emotional and Sexual Life], Intersectoral Project for the Prevention of Adolescent Pregnancy: Experience of the Chilean Government, Rodrigo Vera, Technical Support Team of UNFPA for Latin American and the Caribbean. Santiago, June 1997.

⁴⁸ This project is carried out with the support of UNFPA, and is implemented on an intersectoral basis by SERNAM, Ministry of Education, and the National Youth Institute.

⁴⁹ JOCAS, *supra* note 47.

⁵⁰ Article 2(2). "Discrimination, exclusion, or preference based on race, color, sex, union membership, political opinion, nationality, or social origin is contrary to labor law. Consequently, no employer may make the hiring of employees contingent upon these factors." See LABOR CODE (1997). With respect to equal job opportunities and the criteria for selection, discrimination against women exists in the form of help-wanted or employment-seeking newspaper advertisements that require or advertise *buena presencia* [good appearance]. This reinforces most women's feeling that they must display this quality in their job searches. See LA TERCERA, March 19, 1999.

⁵¹ DEPARTMENT OF STUDIES, LABOR OFFICE, ENCUESTA LABORAL 98 [LABOR STATISTICS 98] (1998).

⁵² In the service sector, women comprise 48%; in finance and business, 24.2%. *Id.*

⁵³ The informal sector's share of the labor force has increased from 26.6% in 1986 to 34.7% in 1996. The occupational category that characterizes this trend toward the informal market is that of the self-employed, a category that increased between 1986 and 1996 by almost 400,000 persons and represents 28% of new jobs.

⁵⁴ National Training Office, Statistics Bulletin (1997).

⁵⁵ SENCE, National Training and Employment Office (1998).

⁵⁶ SERNAM, Document No. 63, SEGUIMIENTO DE LA SITUACIÓN DE LA MUJER SOBRE LA BASE LA ENCUESTA CASEN 1996. [sic]

⁵⁷ *Chile Presentation*, *supra* note 30.

⁵⁸ ENCUESTA LABORAL, *supra* note 51.

⁵⁹ MUNDO DEL TRABAJO. 2 SUPLEMENTO INFORMATIVO DE LA DIRECCIÓN DEL TRABAJO (Dec. 1998). The existence of a union has an effect on employer compliance. Noncompliance is found in only 12.5% of companies in which there is a union, compared with 48% in companies where there is none.

⁶⁰ Sexual harassment is defined as “any behavior of a sexual nature that is not desired by the person affected and that has a negative effect on his or her job situation, causing him or her damage.” It is broken down into “hierarchical harassment and horizontal harassment.” Hierarchical or vertical harassment occurs when a supervisor harasses the person affected; horizontal harassment occurs when the harasser is on the same hierarchical level as the person affected.

⁶¹ The private health care system is a provisional system that does not formally comply with medical plan requirements and principles since the extent of the services depends on the beneficiary's income. ISAPRES are private entities that operate under the criterion of free choice of medical care provider, and are mandatory for employees and voluntary for the self-employed. They pursue their profits under the criterion of achieving the highest margin per risk assumed. Quality of coverage is affected by three elements: sex, age, and income of the premium-paying member.

⁶² *Chile Presentation*, *supra* note 30.

⁶³ UNDP Report, *supra* note 5.

⁶⁴ *Id.*

⁶⁵ CASEN 1996, *supra* note 40.

⁶⁶ UNDP Report, *supra* note 5. The Paradoxes of Modernization. March 1998. See also M. Matamala, F. Berlagoscky, G. Salazar, and L. Nuñez, *Calidad de atención en salud reproductiva desde un enfoque de género* [Quality of Attention to Reproductive Health from a Gender Perspective], a 1994 survey in the journal HECHOS DE SALUD, February 1996.

⁶⁷ Designed to benefit 4,000,000 women, the only aspects of the program that have been implemented in practice are pre-natal care, mental health care to treat depression, and care of women undergoing menopause. This shows that it has not been put into practice on a large scale. Another important aspect of the program is Sexual and Reproductive Health Counselling, which provides women with information on sexual and reproductive health, family planning, and contraceptives. While this consulting service is provided in all medical-care offices throughout the country, its coverage is limited.

⁶⁸ TERESA VALDÉS AND ALEJANDRA FAUNDEZ. DIAGNOSTICO DE SALUD REPRODUCTIVA EN CHILE [ANALYSIS OF REPRODUCTIVE HEALTH IN CHILE], at 54 (1997).

⁶⁹ *Id.*

⁷⁰ *Id.*

⁷¹ *Id.*, at 54-55.

⁷² *Id.*, at 53.

⁷³ HECHOS DE SALUD (journal produced by CORSAPS), September 1996, Year II, No. 6.

⁷⁴ *Id.* According to another survey carried out by the National Health Institute in the same year, 32.5% of adolescents have an active sexual life; 58.8% report that they have sexual relations at least once a month.

⁷⁵ INE, Demographic Bulletin; SERNAM Database (1998).

- 76 ANALYSIS OF REPRODUCTIVE HEALTH IN CHILE, *supra* note 68, at 46.
- 77 INSTITUTO DE LA MUJER, VEREDAS POR CRUZAR, at 58-9 (1997).
- 78 According to 1990 data, 10.4% of women in urban areas and 16.6% of women in rural areas have had a tubal ligation. ANALYSIS OF REPRODUCTIVE HEALTH IN CHILE, *supra* note 68, at 57.
- 79 *Chile Presentation*, *supra* note 30, at 4
- 80 Chile has one of the most restrictive laws in the world on abortion, which is punishable under all circumstances. The provisions prohibiting abortion are embodied in Articles 342 to 345 of the Penal Code, under the heading "Crimes and Offenses against the Family and Public Morality." Abortion is not explicitly defined. A 1963 Supreme Court decision defined abortion as the deliberate interruption of pregnancy for the purpose of preventing the birth of the fetus or halting the natural course of the pregnancy.
- 81 THE ALAN GUTTMACHER INSTITUTE, CLANDESTINE ABORTION: A LATIN AMERICAN REALITY (1994). There were 159,650 abortions, or 437.4 per day, in 1990. See ANALYSIS OF REPRODUCTIVE HEALTH IN CHILE, *supra* note 68, at 96.
- 82 *Id.*
- 83 Zoraida Portillo, *Latin American Population: Increase in Numbers of Teenage Mothers*. INTERPRESS SERVICE, September 24, 1997.
- 84 Irma Palma and Cecilia Quilodrán. *Adolescent Pregnancy in Chile Today: From Marriage to Abortion*, in REPRODUCTIVE HEALTH MATTERS, No. 5, May 1995.
- 85 Other studies attribute 36% of maternal deaths to abortion. See *Adolescents: The Challenge of the Future*, in 54 (7) WOMEN'S HEALTH JOURNAL (1995).
- 86 LIDIA CASAS AND NURIA NÚÑEZ, INSTITUTO DE LA MUJER, ABORTO: ARGUMENTOS PARA UNA DISCUSIÓN NECESARIA [ABORTION: ARGUMENTS FOR A NECESSARY DEBATE] (1998), at 12.
- 87 *Id.*
- 88 See WOMEN BEHIND BARS, *supra* note 15.
- 89 U.N. Human Rights Committee, *Comments on Reports by the States Parties under Article 40 of the Covenant*, at 3 (March 30, 1999).
- 90 *Id.*
- 91 VEREDAS POR CRUZAR, *supra* note 77, at 71.
- 92 A 1991 bill to replace the traditional *sociedad conyugal* regime with the *participación en los gananciales* system was rejected by the Senate, and the *participación en los gananciales* and the *separación de los bienes* regimes continue to be alternatives to *sociedad conyugal*.
- 93 "The husband is the head of the marital union, and as such administers the joint assets and the wife's assets, subject, however, to the obligations and limitations hereby imposed upon him and those contracted by him in any matrimonial agreements ..." CIVIL CODE, art. 1749
- 94 *Id.*, art. 240.
- 95 U. N. Human Rights Committee, *supra* note 89.
- 96 *Id.*
- 97 Seventy percent of the population is in favor of a divorce law. See ENCUESTA DE QUANTAS (January 1999).
- 98 The vote was 53 in favor and 32 against.
- 99 The vote was 53 in favor and 40 against.
- 100 UNICRIM, SERNAM, AND MINISTRY OF JUSTICE. MUJERES EN CONFLICTO CON EL SISTEMA PENAL [WOMEN IN CONFLICT WITH THE PENAL SYSTEM] (1997).