



CHILE

SUBMISSION TO THE UNITED NATIONS COMMITTEE ON THE ELIMINATION OF
DISCRIMINATION AGAINST WOMEN

69TH SESSION, 19 FEBRUARY- MARCH 2018

AMNESTY
INTERNATIONAL



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1. INTRODUCTION

Amnesty International provides the below information to the United Nations (UN) Committee on the Elimination of Discrimination against Women (the Committee) ahead of the adoption of concluding observations for the seventh periodic review of Chile at its 69th session.

This submission outlines Amnesty International's main concerns regarding the implementation of the Convention on the Elimination of Discrimination against Women by Chile, especially regarding women and girls' sexual and reproductive rights, legal gender recognition and marriage equality; topics that are related to the rights enshrined in articles 1, 2, 3, 5, 10, 12, 13 and 16 of the Convention.

Chile has made important reforms to overcome discrimination based on gender and to increase protection of women and girls' rights. Nevertheless, these reforms are still in process of consolidation and the assistance of international human rights bodies is key in order to guide the State Party through the implementation of a new legal framework to ensure better protection of women and girls' rights.

Therefore, Amnesty International considers that this review is an opportunity for the Committee to make relevant recommendations to the State party for developing a better legal framework for protection against discrimination based on gender and promoting gender equality in Chile.

2. CONSTITUTIONAL, LEGISLATIVE AND INSTITUTIONAL FRAMEWORK

According to the Government of Chile's seventh periodic report to the Committee on the Elimination of Discrimination against Women, the bill approving the ratification of the Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women (Optional Protocol) has been pending approval by the Senate Committee on Foreign Affairs since 2001.¹

Amnesty International considers that a 17-year delay in the approval of this bill by the Senate is not justifiable in this case, and that it is obstructing the right of victims of gender-based discrimination to access the mechanism of individual complaints before this Committee.

AMNESTY INTERNATIONAL RECOMMENDS THAT THE STATE PARTY:

- Expedite the ratification of the Optional Protocol without any further delay.

¹ Committee on the Elimination of Discrimination against Women, Seventh periodic report of States parties during 2016, Chile, UN Doc.: CEDAW/C/CHL/7, para. 43.

3. INTERSECTIONALITY AND MEASURES AGAINST DISCRIMINATION (ARTICLES 1, 2, 3 AND 13)

In its General Recommendation 28, this Committee explains that intersectionality is an important concept to understand the scope of states' obligations under the Convention, because discrimination of women based on sex and gender is closely linked to other factors that affect women, including sexual orientation and gender identity. Therefore, discrimination on the basis of sex or gender may affect women belonging to such groups to a different degree or in different ways to men.²

It has been considered by the Committee that article 2 of the Convention expresses the obligation to modify existing laws, customs or practices which constitute discrimination against women, taking into consideration that certain groups of women, including women deprived of their liberty, refugees, asylum-seeking and migrant women, stateless women, lesbian women, disabled women, among others, are particularly vulnerable to discrimination through civil and penal laws, regulations and customary law and practices.³

Additionally the Committee has explained that, inherent to the principle of equality between men and women, or gender equality, is the concept that all human beings, regardless of sex, are free to develop their personal abilities, pursue their professional careers and make choices without the limitations set by stereotypes, rigid gender roles and prejudices.⁴

Therefore, Amnesty International considers the concept of gender should include the protection to women that are also vulnerable to additional discrimination due to other aspects such as gender identity and sexual orientation.

3.1 GENDER IDENTITY

International human rights bodies such as the Human Rights Committee and the Committee on the Rights of the Child have recommended that Chile improve its efforts to effectively protect against discrimination on the grounds of sexual orientation or gender identity.⁵

² Committee on the Elimination of Discrimination against Women, General recommendation No. 28 on the core obligations of States parties under article 2 of the Convention on the Elimination of All Forms of Discrimination against Women, UN.Doc. CEDAW/C/GC/28, para.18.

³ Committee on the Elimination of Discrimination against Women, General recommendation No. 28 on the core obligations of States parties under article 2 of the Convention on the Elimination of All Forms of Discrimination against Women, UN.Doc. CEDAW/C/GC/28, para. 18.

⁴ Committee on the Elimination of Discrimination against Women, General recommendation No. 28 on the core obligations of States parties under article 2 of the Convention on the Elimination of All Forms of Discrimination against Women, UN.Doc. CEDAW/C/GC/28, para. 31.

⁵ Human Rights Committee, Concluding observations on the sixth periodic report of Chile, UN Doc.: CCPR/C/CHL/CO/6, para. 14. Committee on the Rights of the Child, Concluding observations on the combined fourth and fifth periodic reports of Chile, UN Doc. CRC/C/CHL/CO/4-5, para. 25.

Despite the link between these recommendations and the topics under review by this Committee, the Chilean state did not provide any information in their report to the Committee regarding what it had done to enhance protection for women against discrimination based on sexual orientation and gender identity.

It is important to mention that in June 2017, the Senate approved the Gender Identity Bill (Bulletin number 8924- 07)⁶, which established the right of people over the age of 18 to have their gender identity legally recognized by changing their name and gender markers on official documents through an administrative process, without requiring gender reassignment surgery or medical certification. However, the Bill approved by the Senate only applies to persons over 18 years of age, leaving children and young people with no legal avenue to change their name and gender markers. Moreover, if the person legally changing their gender identity is married, the Gender Identity Bill provides for a mandatory legal dissolution of the marriage. The Bill was pending before Congress at the time this document was submitted, and the government was proposing to amend the version approved by the Senate to at least allow persons under 18 years of age to legally change their names through to the mechanism proposed in the Bill.

In August 2017, a criminal case filed against a judge for allowing the change of name and gender markers for a transgender girl was closed with all charges dropped.

Amnesty International considers that Chile must remove the discriminatory limitations to the right to identity through the adoption and implementation of this Bill, with amendments in order to ensure that it complies with international standards. Chile must also continue developing mechanisms to ensure women can enjoy all of their rights without discrimination based on these grounds.

AMNESTY INTERNATIONAL RECOMMENDS THAT THE STATE PARTY:

- Modify the current Gender Identity Bill to eliminate blanket age restrictions to legal gender recognition procedures and ensure that legal recognition is accessible to minors, taking into account the child's freely expressed views regarding their own best interests, in light of their evolving capacities.
- Modify the current Bill under discussion to eliminate the marriage annulment clause after a person has chosen to change their legal gender identity and protect marital status.
- Adopt, as soon as possible, the Gender Identity Bill which includes the above amendments.

3.2 MARRIAGE EQUALITY AND PARENTAL RIGHTS (ARTICLE 13)

In its last periodic review under the Universal Periodic Review of the Human Rights Council, Chile accepted a recommendation to “speed up the legislative procedures to adopt the new legislation on de facto unions, ensuring that its provisions fully respect the principle of non-discrimination and equality between women and men”.⁷

However, Chile did not include any information in its report to this Committee regarding marriage equality for same sex couples or the regime of adoption for those couples.

It is relevant to bring into the discussion that Chilean law has two institutions for legal recognition of couples: marriage (which is defined as between a man and a woman) and the “Civil Union Agreement” (which is open to all couples, including same-sex couples)⁸. However, Civil Union Agreements do not allow for adoption recognizing both parents, and do not have clear rules regarding parental rights for same-sex couples.

Amnesty International considers this to be a discriminatory restriction based on sexual orientation.

There have been at least three cases brought to court in Chile in which same-sex couples of two women demanded recognition of both women as mothers of a child conceived via IVF with an anonymous sperm donor. Two of these cases have been dismissed⁹, one of which has been brought to the Inter-American

⁶ www.camara.cl/pley/pley_detalle.aspx?prmID=9331

⁷ UPR, Report of the Working Group on the Universal Periodic Review, Doc. UN: A/HRC/26/5, para. 121.69.

⁸ www.leychile.cl/Navegar?idNorma=172986

⁹ Causa Rol ante la Corte de Apelaciones 74.926-2017 and

Commission of Human Rights (pending admissibility).¹⁰ The third case is currently pending decision at the Supreme Court.¹¹

In July 2016, Chile reached a friendly settlement before the Inter-American Commission on Human Rights on a complaint on behalf of three gay couples who were denied the right to marry.¹² The settlement included the adoption of a series of measures and policies to promote the rights of LGBTI people, but the Chilean state has yet to implement these measures.

In August 2017, the government filed a bill in the Senate establishing marriage and adoption rights for same-sex couples on an equal footing with different-sex couples. Its discussion is pending before Congress. Amnesty International considers this Bill to be a very important initiative to help overcome discriminatory restrictions to LGBTI people's rights in Chile, according to international obligations.

AMNESTY INTERNATIONAL RECOMMENDS THAT THE STATE PARTY:

- Adopt and fully implement the Same-sex Marriage and Adoption Bill (Bulletin number 11422-07) that is pending before the Congress.¹³

3.3 HEALTH SERVICES (ARTICLE 12)

This Committee had recommended in its previous review of Chile that the State party should review its existing legislation regarding abortion.¹⁴ Several other international bodies have also recommended that Chile modify its restrictive legislation that, until September 2017, criminalized abortion in all circumstances.

In September 2017, a law entered into force in Chile decriminalizing abortion in three circumstances: when the pregnancy poses a risk to the life of the pregnant woman or girl; when the foetus is not viable; or when pregnancy is a result of rape. Abortion continues to be criminalized in all other circumstances.¹⁵

According to the State party, the Constitutional Court confirmed the validity of this bill and expressed that women are not instruments or objects in the gestation process and therefore a pregnancy cannot be imposed by the State.¹⁶

The State party also informed the Committee that guidelines for the implementation of the law are pending.¹⁷

Although Amnesty International welcomes the adoption of this law as a positive step towards the decriminalization of abortion in Chile, concerns persist as to whether such a limited law will provide access to safe abortion for women and girls in practice. The guidelines for the implementation of the law are therefore of great importance. Amnesty International considers that these guidelines must ensure effective and unhindered access to safe abortion for women and girls in the three circumstances outlined in the law. Among other things, the guidelines should ensure that if a system of counselling or accompaniment is established, it should always be voluntary and with the purpose of supporting an informed decision, and such that does not create additional barriers or deter women from accessing legal abortion. The guidelines should also guarantee that there are no requirements attached to accessing abortion services that could dissuade women from accessing such services, such as forcing women over 18 years of age to file a police report in order to access abortion services on the grounds of rape. Additionally, the guidelines should ensure that time limits established for the interruption of pregnancy do not create additional barriers to access

¹⁰ BBC, Chile: dos lesbianas quieren ser reconocidas legalmente como madres, 13 December 2013, www.bbc.com/mundo/noticias/2013/12/131213_chile_pareja_lesbiana_lp

¹¹ Causa Rol 971-2018, Apelación de Recurso de Protección.

¹² www.movilh.cl/documentacion/2016/Acuerdo-MOVLH-Estado.pdf

¹³ www.camara.cl/pley/pley_detalle.aspx?prmID=11934&prmBoletin=11422-07

¹⁴ Committee on the Elimination of Discrimination against Women, Concluding observations on the fifth and sixth periodic reports of Chile UN Doc.: CEDAW/C/CHL/CO/5-6, para. 35.

¹⁵ Committee on the Elimination of Discrimination against Women, List of issues and questions in relation to the seventh periodic report of Chile, Responses of Chile, UN Doc.: CEDAW/C/CHL/Q/7/Add.1, para. 63. For Amnesty International's position on this, see Amnesty International, Chile: Partial decriminalization of abortion, an important win for human rights, 21 August 2017, available at: www.amnesty.org/en/latest/news/2017/08/chile-partial-decriminalization-of-abortion-an-important-win-for-human-rights/

¹⁶ Committee on the Elimination of Discrimination against Women, List of issues and questions in relation to the seventh periodic report of Chile, Responses of Chile, UN Doc.: CEDAW/C/CHL/Q/7/Add.1, para. 63.

¹⁷ Committee on the Elimination of Discrimination against Women, List of issues and questions in relation to the seventh periodic report of Chile, Responses of Chile, UN Doc.: CEDAW/C/CHL/Q/7/Add.1, para. 63.

healthcare, for example introducing additional administrative procedures to access safe abortion within the short term that was contemplated in the law for cases of rape, especially for girls.

In addition, the version of the Bill approved by Congress established that conscientious objection was limited to individuals and only to the medical professional who would perform the abortion. However, the Constitutional Court deemed these limits unconstitutional¹⁸ and erased them from the Bill. Thus, the current Law allows entire health teams to refuse to participate in performing abortions based on conscience. It also allows for entire institutions to “conscientiously object” if they define themselves as “confessional institutions” and their ideas conflict with performing abortions. These people and institutions may choose not to perform abortions even in the three circumstances outlined in the law. Although the law obliges that in case of an objection there is an obligation to refer the patient to another doctor, in practice this could create huge barriers to women’s and girls’ access to legal abortion.

International law and standards are clear that conscientious objection should be always limited to individual medical professionals directly involved in providing the service, and should not extend to entire teams or institutions, and be regulated in such a way so as not to pose a barrier to access to services for women and girls who need it. This means that referrals should always be provided when a service is refused based on conscience, and that legal abortion services cannot be denied in emergency situations where the life of the woman or girl is at risk.

In 2004 the Committee against Torture called on Chile to “eliminate the practice of extracting confessions for prosecution purposes from women seeking emergency medical care as a result of illegal abortion”.¹⁹ As abortion in Chile is still criminalized outside the three cases permitted by the law, this recommendation is still relevant. Women in Chile are still at risk of being forced to confess to having undergone an illegal abortion in order to access emergency medical care, thus deterring women from requesting post abortion care due to the threat of being criminalized under these circumstances.

In conclusion, the Committee should examine the proposed guidelines from implementation of the law decriminalizing abortion in three circumstances, and monitor closely Chile’s implementation of the new legal framework to make sure it is in compliance with its international obligations. In addition, the Committee should call on Chile to amend its legislation and decriminalize abortion in all circumstances in order to protect women and girls from gender-based discrimination.

AMNESTY INTERNATIONAL RECOMMENDS THAT THE STATE PARTY:

- Guarantee access to safe abortion in the three circumstances legalized by the Congress: in cases of pregnancy as a result of rape, when the life of the woman is at risk and when the foetus is not viable.
- Adopt guidelines on access to safe abortion in the three legal circumstances approved by the Congress and ensure that those guidelines establish that:
 - In case of introduction of a counselling or accompaniment system, it should be voluntary and should serve to support the woman or girl to make an informed decision without creating any barriers or deterring her from accessing the services.
 - The requirements for accessing abortion services do not create any legal, administrative or practical barriers or serve as dissuasive mechanisms to access safe and legal abortion.
 - The regulation of conscientious objection should limit conscience-based refusals only to individual medical professionals directly involved in performing the service and should not apply to entire health care centres or institutions. In addition, it should ensure referrals are always provided when services are refused on the basis of conscience and that abortion services are not denied in emergency situations when a woman or girl’s life is at risk.
- Ensure access to quality services for management of complications arising from abortion, regardless of the legality of the abortion, and that women accessing post abortion care will not be forced to confess to the abortion and will not be reported to the police or prosecuted for seeking or obtaining this care.

¹⁸ www.tribunalconstitucional.cl/descargar_sentencia.php?id=3515

¹⁹ Committee against Torture, Conclusions and recommendations, UN Doc. CAT/C/CR/32/5, para. 7(m).

4. SEXUALITY AND GENDER EDUCATION (ARTICLES 5, 10 AND 16)

Several human rights bodies have examined the issue of gender and sexuality education in Chile. The Committee on the Rights of the Child recommended that Chile improve the quality of its sexuality education programmes.²⁰ In addition, this Committee has recommended that Chile train teachers and eliminate any gender stereotyping in education programmes.²¹

Other human rights bodies such as the Human Rights Committee and the Committee on Economic, Social and Cultural Rights recommended to Chile to increase and strengthen the sexual and reproductive health education especially for adolescents, and to adapt sexuality education programmes to primary and secondary schools.²²

A 2017 exploratory study conducted by Amnesty International Chile and Option Corporation (Corporación Opción) showed that the quality of information about gender and sexuality provided to adolescents within official school curricula is considered by students as insufficient, and it does not include a gender equality approach.

According to the study, called “Youth and Sexuality”, the answers of the teenagers who were consulted show that there is a lack of information regarding sexuality available in official educational institutions, and when information is provided in the education system, it does not include a gender perspective and perpetuates stereotypical concepts of sexuality and gender identity.²³

Therefore, Amnesty International considers that Chile must increase its efforts in integrating sexuality and gender education in the school curricula, according to international standards and as per international human rights bodies’ recommendations and guidance. This includes providing sexuality and gender education that does not promote discriminatory stereotypes.

AMNESTY INTERNATIONAL RECOMMENDS THAT THE STATE PARTY:

- Improve sexuality and gender education in school programmes for secondary school, with a comprehensive approach ensuring that the content of those programmes is developed with a gender perspective that eradicates harmful stereotypes and discrimination.
- Ensure that all children and teenagers in primary and secondary school have access to sexuality and gender education programmes within state international obligations.

²⁰ Committee on the Rights of the Child, Concluding observations on the combined fourth and fifth periodic reports of Chile, UN Doc.: CRC/C/CHL/CO/4-5, para. 61(b).

²¹ Committee on the Elimination of Discrimination against Women, Concluding observations on the fifth and sixth periodic reports of Chile UN Doc.: CEDAW/C/CHL/CO/5-6, para. 29(c).

²² Human Rights Committee, Concluding observations on the sixth periodic report of Chile, UN Doc.: CCPR/C/CHL/CO/6, para. 15. Committee on Economic, Social and Cultural Rights, Concluding observations on the fourth periodic report of Chile, UN Doc.: E/C.12/CHL/CO/4, para. 29 (c).

²³ Amnistía Internacional Chile, Juventud y Sexualidad, 22 November 2017, www.amnistia.cl/informe/juventud-y-sexualidad/

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