



**Convention on the Elimination  
of All Forms of Discrimination  
against Women**

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**Committee on the Elimination of Discrimination  
against Women**  
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**List of issues and questions with regard to the  
consideration of periodic reports**

**Chile**

**Addendum**

**Replies by Chile to the list of issues to be taken up in  
connection with the consideration of its combined fifth and  
sixth periodic report (CEDAW/C/CHL/5-6)\*, \*\***

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\* In accordance with the information transmitted to States parties regarding the processing of their reports, the present document was not formally edited before being sent to the United Nations translation services.

\*\* The annexes may be consulted in the files of the Committee secretariat.

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## Legislation

Constitutional Act No. 18603 on Political Parties

Constitutional Act No. 18695 on Municipalities

Constitutional Act No. 18700 on Popular Votes and Vote-Counts

Act No. 19023 establishing the National Service for Women

Act No. 19253 on the Protection, Advancement and Development of the Indigenous Inhabitants of Chile, and establishing the National Indigenous Development Corporation

Act No. 19937 amending Decree-Law No. 2763 of 1979 to reconceptualize the Health Authority, introduce new modalities of administration and strengthen citizen participation

Act No. 19947 on Civil Marriage

Act No. 19968 establishing the Family Courts

Act No. 20066 on Domestic Violence

Act No. 20286 containing organizational and procedural amendments to the Family Courts Act (Act No. 19968)

Act No. 20336 amending article 150 of the Labour Code, on weekly rest periods for domestic workers

Act No. 20348 on the Right to Equal Pay

Act No. 20370 on Education

Act No. 20418 on Standards for Information, Counselling and Services regarding Birth Control

Act No. 20430 on Refugee Protection

Act No. 20480 amending the Criminal Code and the Domestic Violence Act (Act No. 20066) to establish the offence of femicide, increase the penalties for domestic violence and amend the law on parricide

Act No. 20507 on Smuggling of Migrants and Trafficking in Persons, and providing for prevention and more effective criminal prosecution

Act No. 20526 on Sexual Harassment of Children, Online Child Pornography and Possession of Child Pornography (Official Gazette, 13 August 2011)

## A. General

1. The procedure followed by the new administration of the National Service for Women (SERNAM), which took over in 2010, in its preparation of the report is outlined below. In general, SERNAM:

- (a) Coordinated the joint efforts of the 21 ministries and 177 Government services and collected information on their progress in meeting their gender targets;
- (b) Requested reports on specific subjects from gender specialists;
- (c) Met with key stakeholders in gender affairs, such as Corporación DOMOS and Fundación Esperanza;
- (d) Held seminars, independently and with international agencies such as the United Nations Development Programme (UNDP) and the United Nations Entity for Gender Equality and the Empowerment of Women (UN-Women);
- (e) Analysed Chile's record, as registered in its four previous reports on the implementation of the Convention on the Elimination of All Forms of Discrimination against Women, the corresponding lists of issues, alternative reports and concluding observations;
- (f) Processed all the information obtained;
- (g) Submitted the report for review by the Coordinating Commission of the Ministry of Foreign Affairs, and to the Human Rights Directorate as the mechanism responsible for Chile's human rights reports.<sup>1</sup>

2. Civil society was not directly involved in the drafting of the report. However, SERNAM met regularly with civil society organizations to work on specific projects and to learn about their needs and demands, many of which are reflected in the report. The Minister Director of SERNAM, as the representative of the Government, approved the report, and it was submitted to the Committee and published on the official web page of the Ministry of Foreign Affairs for dissemination nationwide and internationally. Chilean law does not require Congress to be notified of the forthcoming publication of human rights reports or to approve such reports.

## B. Constitutional, legislative and institutional framework

3. The principle of non-discrimination enshrined in article 1 of the Constitution is defined in broad terms since it is intended to cover both direct and indirect discrimination. The Constitution upholds the principle of the inherent equality of human beings, who are recognized as being "born free and equal in dignity and in rights". This is reaffirmed by the explicit prohibition on arbitrary discrimination either in law or by an authority (Constitution of Chile, art. 19, para. 2).

4. In addition, article 6 of the Constitution not only establishes the obligation of State agencies to abide by the Constitution and the laws and statutes that are passed in accordance with its provisions, but stipulates, in paragraph 2, that the precepts of the Constitution "are binding on both the directors and staff of said agencies, as well as for any

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<sup>1</sup> Decree No. 323 of the Ministry of Foreign Affairs, published on 6 December 2006: "A Coordinating Commission is hereby created to coordinate the fulfilment of the Chilean State's obligations under international human rights law".

person, institution or group”. The obligation to not discriminate is thus extended to private actors as well as public ones.<sup>2</sup>

5. It should be noted that the Convention, and consequently the article 1 definition of discrimination, is law in Chile according to article 5, paragraph 2, of the Constitution, which also establishes that the exercise of sovereignty is limited by “respect for the essential rights derived from human nature”, which include the right to equality. This has been upheld in the 179 judgements handed down by various courts in Chile that specifically refer to the Convention.

6. On 9 May 2012, the promotion of equality received a huge boost when the Congress enacted the lengthily-debated anti-discrimination bill whose main purpose is to “establish a judicial mechanism that will make it possible to effectively restore the rule of law whenever an act of arbitrary discrimination is committed”. SERNAM played a key role in the drafting of the new Act (which cites the Convention in its preamble) by securing the inclusion of a reference to gender in the broad definition of discrimination in article 2, which specifically mentions discrimination on the grounds of sex, sexual orientation and gender identity, and obliges all State agencies to “develop and implement policies to guarantee all persons, without arbitrary discrimination, the enjoyment and exercise of their rights and freedoms, as recognized in the Constitution, the law and the international treaties ratified by Chile that are in force”.<sup>3</sup>

## C. National machinery for the advancement of women

### 1. National Service for Women (SERNAM)

7. SERNAM, which was created by Act No. 19023 of 1991, is a decentralized autonomous public service that has its own assets and is connected to the President of the Republic through the Ministry of Social Development. Its most senior technical and administrative officer is the National Director, who is the service’s legal and non-legal

<sup>2</sup> An example of the extension of the constitutional guarantee of non-discrimination to the private sector can be found in the Labour Code, in which the legislature has established “public” (*de orden público*) i.e., inalienable, provisions, specifically to protect the basic rights of workers, who are usually in a subordinate position to their employers. These are in keeping with the special procedure (*tutela laboral*) that aims to ensure the full protection of the fundamental rights of workers in the complex private sector, which is governed by the principle of autonomy of the will. Article 55 of the Civil Code, meanwhile, states: “All human individuals, regardless of their age, sex, lineage or condition, are persons. They may be divided into Chileans and foreigners.”

<sup>3</sup> “Art. 2. Definition of arbitrary discrimination. For the purposes of this law, arbitrary discrimination is understood to be any unreasonable distinction, exclusion or restriction imposed by agents of the State or private individuals that deprives, disrupts or threatens the legitimate exercise of the fundamental rights established in the Constitution of the Republic or in the international human rights treaties that have been ratified by Chile and are in force, particularly when they are based on grounds such as race or ethnic background, nationality, socioeconomic status, language, political views or ideology, religion or beliefs, membership or non-membership of a trade union or professional association, sex, sexual orientation, gender identity, civil status, age, filiation, personal appearance, illness or disability. Para. 2. The grounds listed in the above paragraph may not under any circumstances be cited to justify, validate or excuse situations or behaviour that contravene the law or disrupt public order. Para. 3. The distinctions, exclusions or restrictions that, despite being based on one of the grounds listed in the first paragraph, are justified in the legitimate exercise of other fundamental rights, especially those mentioned in paragraphs 4, 6, 11, 12, 15, 16 and 21 of article 19 of the Constitution, or for any other constitutionally legitimate reason, shall be considered reasonable.” (Bill No. 3815-07).

representative and holds the rank of Government minister. The Director is therefore a member of the Cabinet of the President of the Republic, with whom SERNAM collaborates for the purposes of developing and proposing general plans and measures to help women enjoy, as part of the country's political, social, economic and cultural development — including as it affects family relationships — rights and opportunities on an equal footing with men, while respecting the nature and specificity of the natural differences between the sexes.

8. SERNAM has the following departments, among others:

(a) The National Directorate (which has a cabinet, an auditing department that also oversees fund transfers, a legal reform department, an information, complaints and suggestions office, a women's unit and a project management unit);

(b) The National Subdirectorate (which has a cabinet and oversees the budgeted programmes "Chile Acoge" (to combat domestic violence) and "Women, Work and Participation" (which includes the "4–7 p.m." after-school care programme), as well as a maternity programme entitled "Committed to life" and a participation and leadership programme;

(c) The Prosecutor's Office (within the National Directorate);

(d) The Department of Regional Development; the Department of Planning and Research, which has an information technology unit; the Administration and Finance Department, which has an internal administration unit, an accounting unit, a personnel development unit and a budget unit; the Communications Department; the Department of International Relations and Cooperation; the Public Relations Department; and the Training Department;

(e) Regional directorates in each of the country's 15 regional capitals.

9. By law, the role of SERNAM is to:

(a) Study public policies, petition the relevant ministries to implement policies, and promote legal, regulatory and administrative reforms, with a view to achieving its stated objectives;

(b) Conduct and promote research analysing the reality of women and their family groups;

(c) Encourage and propose measures to strengthen families by creating the social conditions required for their development as human groups and for the personal growth of each individual member;

(d) Promote measures to dignify and value domestic work as an essential contribution to the functioning of the family and society;

(e) Develop specific measures to underline the fundamental value of motherhood to society and ensure that it is effectively protected;

(f) Cooperate with national, international and foreign agencies, as well as generally with all individuals or organizations with similar goals and activities and enter into contracts or agreements with them to carry out projects or activities in areas of common interest, without prejudice to the functions of the Ministry of Foreign Affairs;

(g) Assess the implementation of approved policies, plans and programmes with a view to ensuring the application of the Convention;

(h) Propose and develop policies that promote equal access for women in all areas of society and coordinate programmes, activities and other measures to further the objectives of SERNAM with public- and private-sector services and agencies;

(i) Propose public policies to the President of the Republic to achieve the objectives of the Act, in other words to prevent, punish and eradicate domestic violence and protect victims;

(j) Draw up an annual national action plan in coordination with the relevant public and private agencies.

10. The institutional position of SERNAM was further strengthened with the creation of the Ministry of Social Development. For the first time the Minister Director became a member of a committee of ministers with legal standing and shared responsibilities, the Interministerial Committee on Social Development, whose function is to advise the President of the Republic on Government policy on social development programmes. The institutional position of SERNAM is also being enhanced through the gender equity component of the Management Improvement Programme, which is gaining strength by focusing on results rather than processes: it obliges Chile's public services — there are more than 170 of them — to identify and prioritize gender gaps and inequities and to take action, as stipulated by SERNAM, to eliminate them.

11. SERNAM achieves its goals in these services either through direct action or by agreement with third-party executive agencies, as indicated in the table in annex I.

12. This Government has also demonstrated its commitment to the women of Chile by steadily and substantially increasing the SERNAM budget — which is spent directly on women — despite the decrease in public spending in other areas after the earthquake that struck just as the new Government took office (see the summary table in annex II). Details of the human and financial resources allocated to the execution of the workplan of the 2010–2014 Gender Agenda are given in the breakdown of the SERNAM budget in annex III.

## **2. Ministerial Council for Equal Opportunities**

13. The Ministerial Council for Equal Opportunities was created in 2000 and its mandate was renewed for the presidential terms of 2006–2010 and 2010–2014. The Council is convened by the President of the Republic and coordinated by SERNAM. It is a high-level interdisciplinary political body whose mission is to achieve equality of opportunity for men and women. It operates as a forum for discussion and has decision-making authority in all State sectors. The Council meets at least once a year, with the President of the Republic attending, to assess and report on progress and compliance by the various sectors with regard to the gender equality policies established in the Equal Opportunities Plan, the Gender Agenda and the ministerial gender commitments described below. At the last meeting, the President approved the Equal Opportunities Plan and the Gender Agenda and explicitly ordered their implementation.

## **3. Diversity and Non-Discrimination Section**

14. In 2010, the Department of Diversity and Non-Discrimination became the Diversity and Non-Discrimination Section of the Civil Society Unit of the Social Organizations Division, in whose offices it is permanently located. The Section addresses the strategic objective of the Office of the Minister and Secretary-General of Government to promote respect for social diversity, interculturality and non-discrimination on arbitrary grounds of any kind, in public institutions and civil society, by providing officials with guidelines and methodological tools for ending arbitrary discrimination by means of training, research and dissemination initiatives and action to promote participation, awareness and discussion, organized in coordination with public agencies and civil society organizations.

15. The specific objectives of the Section are to:

(a) Coordinate and support, through the Intersectoral Board on Diversity and Non-Discrimination, intersectoral initiatives and projects to end arbitrary discrimination;

(b) Create forums for information, dialogue and discussion on diversity and non-discrimination, with representatives of civil society and public agencies;

(c) Identify, systematize, acknowledge and spread best practices in combating discrimination in civil society and in public and private institutions.

16. The Section's most important outputs are:

(a) The Intersectoral Board on Diversity and Non-Discrimination, which is a coordinating body comprising the National Service for Minors, the National Service for Older Persons, the National Service for Women, the National Service for Persons with Disabilities, the National Youth Institute, the National Indigenous Development Corporation, the National AIDS Commission, the Department of Foreign Affairs and Migration and the Ministry of Education. The Board organizes sector-specific training for public officials on diversity and non-discrimination;

(b) The 2012 Best Practices Competition (the eighth of its kind), entitled "For the Chile we dream of", which has a special gender category. The competition aims to spotlight best practices that promote the integration of groups vulnerable to discrimination and the reduction of arbitrary discrimination of all kinds, with regional and national prizes;

(c) A descriptive study of diversity and non-discrimination in the public sector, carried out to determine levels of diversity and arbitrary discrimination in the public sector and on that basis produce a manual of best practices.

## **D. Programmes and action plans**

17. The Equal Opportunities Plan provides the framework for establishing equality of opportunity for men and women in public policies in Chile in the long term. The Equal Opportunities Plan currently under way is the third such plan and covers the period 2011–2020. The Gender Agenda, which was approved by the President of the Republic, is a technical policy instrument that identifies the most significant gender inequities, outlines the Government's short- and medium-term priorities and organizes its work in pursuit of equality of opportunity for men and women. The first Gender Agenda was drawn up and executed during the 2006–2010 presidential term and the one for 2011–2014 is currently being implemented.

18. The implementation of the Equal Opportunities Plan and the Gender Agenda is coordinated and monitored by SERNAM through the following instruments and mechanisms:

(a) Ministerial gender commitments. These are established annually by each ministry, principally on the basis of the Government's Equal Opportunities Plan and Gender Agenda. They play a key role in the implementation of gender equality policy and are not isolated actions but rather guidelines for the development of global and substantive policies. Their purpose is to ensure equal opportunities and gender equity in the policies of the State sector in question, including in the associated services, whether they participate in the Management Improvement Programme or not, and to ensure the implementation of the Gender Equity System, formerly known as the Gender-Based Approach System, which is monitored by SERNAM, as explained below. In 2011, 50 ministerial gender commitments were assumed by 15 ministries altogether, and 80 per cent were met. A total of 96 ministerial gender commitments have been established by 17 ministries for 2012, though that figure may change once 4 other ministries have announced commitments that are either



pending or being adjusted as agreed with SERNAM. Fulfilment of the commitments will be overseen by the Sectoral Gender Committees, which have to set specific annual targets, organize, budget and schedule the corresponding activities and designate those directly responsible for executing them;

(b) The Management Improvement Programme and the Gender Equity System. The Management Improvement Programme forms part of the Government's management evaluation and control system, with an emphasis on improving the quality of public spending. The Gender Equity System is one of the Programme's five subsystems. It was established to reduce gender gaps and/or inequities and thereby increase equality of opportunity and gender equity in the provision of public goods and services. Between 2006 and 2010, around 87 per cent of public services had adopted the process-oriented Gender-Based Approach System. In 2012, 171 public services (i.e. 85.1 per cent) will implement the Gender Equity System, which is results-oriented, in other words, it focuses on changing the situation of women by narrowing gender gaps and reducing gender inequities. Fewer public services will be participating because some have withdrawn from the Management Improvement Programme. The Management Improvement Programme is implemented by means of a multi-year plan through to 2014, and a programme for 2012 which includes:

- (i) An updated diagnosis of the gender inequities, gaps and barriers that need to be tackled;
- (ii) A general objective and specific objectives for the period;
- (iii) Annual targets and the corresponding indicators;
- (iv) Activities;
- (v) Verifiers;

(c) Sectoral Gender Committees. These comprise the ministerial adviser on gender affairs (who is a member of the ministerial cabinets) and the professionals who are directly responsible for gender policy in each service, division or department. The Committees' role is to secure progress, in their respective sectors, in the reduction of gender barriers, inequities and gaps identified in the commitments established in the Gender Agenda and the 2011–2020 Equal Opportunities Plan or as Government priorities. The Committees must define and monitor their respective sectors' ministerial gender commitments, set the 2012 targets for meeting those commitments, determine the activities that the various services represented on the Committee could undertake in support of the commitments, draw up a work programme, estimate the expenses and financial resources required for meeting the targets and establish a mechanism for coordinating with the regional branches of each service;

(d) The Budget Directorate of the Ministry of Finance, which started an external assessment of the gender equity component of the Management Improvement Programme in 2011. It is hoped that this outsiders' look at the results will suggest how the proposed targets and indicators should be evaluated.

## **E. Violence against women**

19. The most significant changes introduced by Act No. 20066 are the following:

- (a) Establishing the State's obligations as regards the prevention and punishment of domestic violence and protection against such violence;
- (b) Expanding the powers of SERNAM to coordinate and assess public policies on domestic violence and authorizing it to sponsor legal action for such offences;

- (c) Defining habitual ill-treatment as a new criminal offence (art. 14, para. 1, of Act No. 20066);
- (d) Increasing the penalty for injury to a family member;
- (e) A partner may be a victim of parricide;
- (f) Reparatory agreements can no longer be used to terminate criminal proceedings;
- (g) Domestic violence convictions must now be included in criminal records;
- (h) Limiting the possibility of allowing mitigating circumstances for an impeccable behaviour record when there are previous convictions for domestic violence;
- (i) Expanding the list of risk situations under which the court must provide protection to the victim so that it includes the violent refusal to accept the end of a relationship;
- (j) Including as an auxiliary measure in sentences, and for a maximum of two years, the obligation to report regularly to a police station;
- (k) Making the Family Court responsible for taking the necessary measures to protect domestic violence victims before the case is referred to the Public Prosecution Service or while it is being decided which court has jurisdiction to try the case.

20. The proportion of domestic violence cases in which SERNAM provides legal support to women victims has grown to 43.8 per cent.

21. As far as forms of domestic violence are concerned, article 5 of Act No. 20066 defines domestic violence as “any ill-treatment that affects the life or physical or mental integrity of a person who is or has been the spouse or partner of the perpetrator, or is a relative of the perpetrator or of their spouse or current partner, by blood or affinity, in the entire direct line or up to and including the third degree in collateral line” and when the conduct mentioned in the preceding paragraph “occurs between parents of a common child or is directed against a minor, an older adult or a person with disabilities who is under the care of, or dependent on, any member of the family group”. Chilean law thus regulates physical and psychological violence, while sexual violence is a subcategory of both. Even so, bill No. 7314-18, which seeks to specifically penalize sexual violence, has been submitted to Congress, and SERNAM is working with the Public Prosecution Service on another bill that improves on that one. Marital rape, meanwhile, is regulated by Act No. 20480 on femicide, which amended article 361 and paragraph 4 of article 369 of the Criminal Code.

22. Protective or precautionary measures are regulated by article 92 of Act No. 19968 and article 9 of Act No. 20066 and are classified as follows:

(a) Precautionary measures to protect victims. These are listed in article 92 of Act No. 19968, which stipulates that family court judges must protect the victim and the family group and safeguard their economic survival, as well as their assets, and authorizes judges, “without prejudice to other measures they may deem pertinent”, to “impose one or more” of the following measures:

- (i) Prohibit the offender from approaching the victim and prohibit or restrict the offender’s presence in the common home or in the places where the victim lives, studies or works;
- (ii) Arrange the delivery of the victim’s personal effects if the victim chooses not to return to the common home;
- (iii) Order provisional maintenance payments;

- (iv) Establish provisional arrangements for the care of children or adolescents in accordance with article 225 of the Civil Code and determine how direct and regular contact between parents and children is to be maintained;
- (v) Prohibit the signing of legal documents or contracts;
- (vi) Prohibit the bearing or possession of firearms or order the seizure of the same;
- (vii) Order the withholding of the identity of third-party complainants (to encourage the reporting of domestic violence);
- (viii) Establish protection measures for older adults or persons with disabilities;
- (b) Protection measures taken independently by the public prosecution service. These are measures that can be taken by the public prosecutor to protect victims and witnesses. A formal complaint is all that is required for these measures to be adopted. They include:
  - (i) Referral to a shelter;
  - (ii) Regular police patrols at the victim's home;
  - (iii) Having the police telephone witnesses regularly;
  - (iv) Emergency buttons installed by the prosecution service in the home of the protected person or personal alarm provided;
  - (v) Moving the protected person to another place of residence on a temporary or permanent basis;
  - (vi) Changing the victim's telephone number;
  - (vii) Securing the victim's home and installing security devices;
  - (viii) Providing the victim with a mobile telephone or telephone cards;
- (c) Auxiliary measures as part of the sentence. These measures (one or more) may be imposed only by the judge hearing the case and only at the time of sentencing or when a conditional suspension of proceedings is ordered, and in order to protect the victim, as follows:
  - (i) An order to leave the common home;
  - (ii) A ban on approaching the place where the victim is usually to be found;
  - (iii) A ban on carrying or possession of weapons and seizure of weapons;
  - (iv) Compulsory attendance at a therapy or attend family counselling programme for a minimum of six months and a maximum of one year; may be extended by up to two years.

23. On 10 May 2012, the legislature enacted bill No. 5838-07. This law provides for remote monitoring as an alternative measure for certain offences and specifically provides for the use of electronic tagging in domestic violence cases. SERNAM wishes to have tagging included as a precautionary measure as well. Whether this happens will depend on the outcome of the motion filed by the Ministry of Justice.

24. As far as sexual harassment is concerned, Act No. 20005 defines sexual harassment as conduct occurring in the workplace only and as a form of unlawful discrimination that violates physical and mental integrity, equality of opportunity, privacy and sexual freedom, all of which are rights deriving from the dignity of the victim, which is specifically protected in article 2 of the Labour Code, where sexual harassment is defined as

“inappropriate sexual demands, however they are made, to which the recipient does not consent and which threaten or prejudice their position or opportunities at work”. Act No. 20526, for its part, defines and punishes the sexual harassment of minors, implicitly covering sexual harassment at school. The notion of sexual harassment has yet to be explicitly extended to other circumstances.

25. The figures and tables referred to in this reply can be found in annexes IV and V.

26. As to the prevalence of, and trends in, violence against women and girls, the information is largely taken from the national survey conducted by the Ministry of the Interior and Public Security to identify the number of victims of domestic violence and sexual offences. The first stage of the second such survey, for 2012, is currently under way, and the results are expected to be available in the last few months of 2012. SERNAM has, through its Domestic Violence Unit, participated actively in the design of the survey to ensure it effectively quantifies the problem. For the first time, comparative data for 2008–2012 will be obtained, and these will make it possible to measure and characterize domestic violence against women at the national and regional levels.

27. The data available to date, which come from this survey, are as follows: 35.7 per cent of women aged between 15 and 59 who have been in a couple have experienced violence. Of those, 37 per cent suffered psychological abuse, 24.6 per cent mild physical violence, 15 per cent severe physical violence and 15.6 per cent sexual violence.

28. In all, 72.3 per cent of children have suffered violence. Of those, 59 per cent have suffered psychological abuse, 51 per cent mild physical violence and 33 per cent severe physical violence. Seven per cent of children have suffered some form of sexual abuse during their lifetimes; the figure for girls is 12.8 per cent, compared with 3.3 per cent for boys.

29. Formal complaints of domestic violence against women rose by 23 per cent between 2007 and 2011, from 100,658 in 2007 to 123,820 in 2011. Arrests also increased over the same period, by 173 per cent, from 10,661 in 2007 to 29,087 in 2011. The percentage changes in both cases and both at the national and the regional levels are shown in figure 1. It is apparent from figure 1 that, although the number of complaints rose, the number of arrests also increased (the number of arrests was approximately seven times greater). Tables 1 and 2 show the breakdown of complaints and arrests by region and year.

30. Formal complaints of domestic violence against girls in Chile rose by 62 per cent between 2007 and 2011, from 2,246 in 2007 to 3,637 in 2011.<sup>4</sup> The number of arrests increased by 331 per cent over the same period, from 211 to 910. The percentage changes at the national and the regional levels are shown in figure 2. This figure, like figure 1, shows that although there was an increase in the number of complaints, the number of arrests also rose. Tables 3 and 4 show the breakdown of complaints and arrests by region and year.

31. The number of persons with a criminal record for domestic violence is included since it is considered to be an important indicator of the impact of legislative changes. The figures contain the following information:

(a) Figure 3 shows the total number of persons with a criminal record for domestic violence;

<sup>4</sup> The 2008 survey on domestic violence did not find any difference between girls and boys as far as mild and moderate physical violence or psychological abuse are concerned. Differences were detected with regard to sexual violence, however: the proportion of girls who have been the victims of sexual violence is 12.8 per cent, compared with 3.3 per cent for boys.

(b) Figure 4 shows the total number of persons with a criminal record for psychological domestic violence;

(c) Figure 5 shows the total number of persons with a criminal record for physical domestic violence;

(d) Figure 6 shows the total number of persons with a criminal record for physical and psychological domestic violence;

(e) Figure 7 shows the total number of persons with a criminal record for unspecified domestic violence.

32. Table 5 shows a breakdown by type of violence and year, for 2007–2012. The data for 2012 corresponds to January, February and part of March only, which is why the numbers are lower than for the other years. Between 2007 and 2011, the number of persons with a criminal record for domestic violence rose by 149.40 per cent. Of all the persons with a domestic violence record, 96.58 per cent are men.

33. As far as sexual violence, sexual abuse and rape are concerned, the information on sexual violence against women and girls varies. This section presents observations from forensic examinations for sexual assault performed by the Forensic Medical Service in 2006–2010 and police figures for victims, arrests and offenders for 2007–2010. The information provided by the Forensic Medical Service on the examinations it performed shows few changes in the number of male or female victims in the last few years. In 2006–2010, the number of examinations performed on women fell by 2 per cent nationally, as shown in figure 9. Table 6 presents a breakdown of examinations by region, on both men and women, for 2006–2010.

34. Figure 10 shows that the number of cases of sexual violence involving girls (underage women) nationwide also fell in 2006–2010. The decline is similar to that observed in the total number of forensic examinations performed for sexual assault.<sup>5</sup> As is logical, the same decline is observed in the number of forensic examinations for sexual abuse and rape.<sup>6</sup>

35. The tables contain the following information:

(a) Table 7 shows all the forensic examinations performed nationally for sexual abuse in 2006–2010 (weighted data);

(b) Table 8 shows all the forensic examinations performed nationally for rape in 2006–2010 (weighted data);

(c) Table 9 shows all the forensic examinations performed for sexual abuse in 2006–2010, by age group (weighted data);

(d) Table 10 shows all the forensic examinations performed for rape in 2006–2010, by age group (weighted data).

<sup>5</sup> This is because, to estimate the number of cases involving underage women as opposed to adult women, the weightings suggested by the 2010 data of the Forensic Medical Service were applied. These showed that, of all the forensic examinations performed, approximately 59.41 per cent were performed on minors.

<sup>6</sup> To obtain the numbers of underage and adult women who had been examined for signs of sexual abuse and rape, the figures were weighted according to the 2010 data obtained from the Forensic Medical Service, which showed that, of all the examinations performed on women, approximately 20.64 per cent were associated with rape cases and the remainder (79.36 per cent) with sexual abuse cases.

36. Complaints made to the Carabineros (police):<sup>7</sup> the data provided by the Carabineros show that the relationship between complaints and arrests has not changed over the past five years: complaints continue to outnumber arrests. The gap is narrowing, however, inasmuch as there were 7.4 times as many complaints as arrests in 2007, but only 4.6 times as many in 2011, as shown in figure 13. The breakdown by region is presented in table 13.

37. As to the sex of perpetrators, in 2007–2011, 95.3 per cent were men, as shown in figure 14 (regional breakdown provided in table 12). The total number of underage victims rose, meanwhile, by 49.7 per cent between 2007 and 2011, as shown in figure 15 and table 11.

38. Sexual abuse of adult women: 97 per cent of perpetrators were men in 2007–2011, as shown in figure 16 (regional breakdown provided in table 12). The total number of women victims rose by 44.6 per cent between 2007 and 2011, as shown in figure 17 and table 11.

39. As regards trials and convictions for domestic violence, figure 18 shows the outcomes of all the domestic violence proceedings concluded in 2007–2011. It should be noted that 34.42 per cent of the cases ended with conditional suspension of proceedings and 26.91 per cent with a stay of proceedings. Each of the remaining available outcomes was applied in less than 10 per cent of proceedings. The outcomes of the proceedings in 2007–2010 are shown in figures 14 to 17.

40. The mechanism for overseeing the programmes of the Ministry of the Interior and Public Security, the Ministry of Health and the Ministry of Justice is established in Act No. 20066, which obliges the State to provide protection and assistance to victims of domestic violence and to adopt measures to safeguard the lives, physical integrity and safety of family members, as well as policies to prevent domestic violence, especially against women, older adults and children. SERNAM is responsible for proposing public policies for implementing Act No. 20066 and drawing up a national action plan to combat domestic violence together with the pertinent public and private agencies and is consequently tasked with “promoting, coordinating and evaluating Government policies to combat domestic violence”. This legal mandate also allows SERNAM to monitor the activities of the various actors involved, which has translated into the national action plan and a victims’ assistance network.

41. In January 2011, SERNAM convened diverse stakeholders from the public and private sectors to meet and draw up the national action plan to combat domestic violence referred to in article 4 of Act No. 20066. The main objective of the plan is to design, manage and coordinate public policies for eliminating domestic violence by spearheading processes that guarantee the prevention of such violence and ensure care and protection for victims, as well as access to justice and the proper execution of justice. The plan’s specific objectives are to:

- (a) Reduce gender-based violence, particularly domestic violence, by promoting changes in the cultural patterns that foster it;
- (b) Develop intersectoral activities to prevent domestic violence in all stages of life, from early childhood onwards;

<sup>7</sup> Sexual abuse covers the following offences: sexual abuse of children under the age of 14; sexual abuse, involving immoral conduct, of children aged 14–17; sexual abuse, involving immoral conduct, of children under the age of 14; sexual abuse, involving rape, of children over 14; sexual abuse, involving statutory rape and aggravated sexual abuse, of children aged 14–17 (Carabineros of Chile 2012).

(c) Gather data on the care and protection of domestic violence victims and on the perpetrators of violence;

(d) Design care and protection models to improve intervention in domestic violence cases;

(e) Coordinate the action taken by State agencies to address domestic violence and ensure adequate care and protection are provided to the victims.

42. To monitor the plan effectively, activities have been divided into two categories: prevention and care. Working groups have been set up with the corresponding agencies to carry them out. The working groups are coordinated by SERNAM.

43. The victims' assistance network comprises all the institutions involved in caring for crime victims, which includes victims of domestic violence. The institutions in question are: the Ministry of the Interior and Public Security, the Ministry of Justice (through legal aid associations and the Forensic Medical Service), the National Service for Minors, the Ministry of Health, the Carabineros, the Public Prosecution Service and the investigative police. The network's overall objective is to help reduce secondary victimization by optimizing the response of the agencies that crime victims have to deal with. Specifically, it seeks to: (a) promote proper care and assistance for victims; (b) improve coordination among agencies by promoting a comprehensive approach to intervention; (c) ensure crime victims are correctly referred from one institution to another; and (d) help construct a national policy on crime victims.

## **F. Trafficking and exploitation of prostitution**

44. Act No. 20507, defining the offences of smuggling of migrants and trafficking in persons and providing for prevention and more effective criminal prosecution, came into effect on 8 April 2011. It amended the Criminal Code and Decree-Law No. 1094 of 1975, and made provision for prevention and more effective criminal prosecution, by:

(a) Defining the offence of smuggling of migrants as an offence (Criminal Code, new art. 411 bis);

(b) Defining trafficking in persons as a distinct offence from smuggling of migrants (Criminal Code, new art. 411 quater);

(c) Establishing active cooperation as a mitigating circumstance;

(d) Assigning greater powers to the border agency to control border traffic in and out of the country;

(e) Creating new tools for investigating trafficking;

(f) Setting out protection measures for victims of trafficking;

(g) Providing for the right of foreign victims of trafficking to request residency;

(h) Establishing measures to protect the identity of victims of trafficking.

45. Under the definition of trafficking in the Criminal Code, new article 411 quater:

1. Anyone who, through violence, intimidation, coercion, deception, abuse of power, exploitation of a victim's situation of vulnerability or dependence, or the making or receiving of payments or other benefits in order to obtain the consent of one person who has authority over another, captures, transfers, holds or receives persons for the purpose of subjecting them to any form of sexual exploitation, including pornography, forced labour or services, servitude, slavery or related

practices, or organ removal, shall be liable to the minimum to medium duration of long-term ordinary imprisonment and a fine of 50 to 100 times the monthly taxation unit. If the victim is a minor, even where there is no violence, intimidation, coercion, deception, abuse of power, exploitation of the victim's situation of vulnerability or dependence, or the making or receiving of payments or other benefits in order to obtain the consent of one person who has authority over another, the penalty shall be the medium duration of long-term ordinary imprisonment and a fine of 50 to 100 times the monthly taxation unit.

2. Anyone who incites, facilitates or finances the commission of the acts defined in this article shall be punishable as a perpetrator of the offence.

46. The definition of trafficking is therefore fully in line with the obligations set forth in the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime.

47. Regarding the outcomes of the investigations of such acts, from 2007 to January 2012, there were 10 convictions for the offence of trafficking in persons, resulting from 113 investigations involving 220 victims. Statistics on trafficking produced by the Department for Organized Crime of the Research Division at the Office of the Under-Secretary for the Interior can be found in annex VI. As to prostitution, the scant information from the documentation centre of the Supreme Court covers judgements issued between 12 February 2001 and 29 February 2012, which include a mere 18 convictions for the only relevant criminal offence, namely inciting or facilitating the prostitution of minors. The data come from the records of both the Guarantees Court (where trials begin) and the oral criminal courts (which issue rulings); therefore figures could be even lower.

48. The Intersectoral Board for Trafficking in Persons was established in 2008 as an advisory body to the Office of the Under-Secretary for the Interior and coordinates at the national level the Government actors that monitor trafficking, namely the Ministry of the Interior and Public Security, the Ministry of Foreign Affairs, the Ministry of Justice, the Ministry of Labour, the National Intelligence Agency, the National Service for Women, the National Service for Minors, the investigative police, the police, the Public Prosecution Service, the victims unit of the Office of the Under-Secretary for Crime Prevention and the Directorate-General for the Maritime Territory and the Merchant Navy. The Board also has ties with relevant civil society and international organizations, such as the United Nations Office on Drugs and Crime, the Organization of American States, the International Organization for Migration and INTERPOL.

49. Some of its achievements are:

(a) Providing at the national level a single forum where all Government bodies and civil society organizations directly or indirectly related to trafficking can convene, confer and coordinate;

(b) Completing the first countrywide study on trafficking, including gathering comparative data from all Government and civil society organizations working in this field;

(c) Determining the main points of a national strategy to be transformed into a plan of action that will include the contribution of non-governmental organizations (NGOs) and civil society.

50. The strategy for this action plan includes defining and outlining the following four priorities for action, in keeping with the international strategy: (a) control, (b) prevention, (c) training and (d) care and protection of victims and witnesses.

51. Other actions connected to these priorities are:



- (a) Creating formal systems to register cases, with a view to producing comparable statistics among the various participating Government institutions;
- (b) Coordinating Government and civic efforts to prevent and control trafficking;
- (c) Coordinating information and awareness-raising campaigns;
- (d) Providing training through NGOs to Government bodies such as the Public Prosecution Service, the investigative police and the police.

52. The Ministry of the Interior and Public Security is currently designing an initial assessment of each member institution's response capacity, looking at the profile of victims, how the networks function and how the institutions typically work in cases of trafficking. The objective is to detect weaknesses in the institutions' response capacity so as to devise a protocol for appropriate and timely reaction with a view to eliminating trafficking. The outcome of the national assessment and resulting plan of action will be presented in the first half of 2012.

53. Thus the ultimate goal of the Ministry is to promote: (a) effective criminal prosecution, (b) high standards of care and protection for victims and witnesses, and (c) coordination of efforts between Government actors and civil society in order to put an end to trafficking, in compliance with international law recognized by Chile. In addition, the first shelter for victims of trafficking was set up in the Metropolitan region, for Chilean and foreign women over the age of 18, with or without children under 14. The shelter will also, in exceptional cases, provide assistance to female victims of labour trafficking who are at particular risk.

## **G. Participation in political and public life and decision-making**

54. Bill No. 1994-07 "Amending various legal instruments with a view to promoting women's right to participate in the public life of the country" was introduced on 13 March 1997. It sought to amend: (a) Constitutional Act No. 18603, in order to ensure an effective internal democracy and equal opportunities for its advocates, whether men or women; (b) Constitutional Act No. 18695; and (c) Constitutional Act No. 18700, in order to limit the proportion of candidates of either sex who could stand for office in each party or coalition to 60 per cent. Bill No. 1994-07 has been shelved.

55. However, two subsequent bills were submitted:

(a) Bill No. 3206-18, introduced on 13 March 2003 in the Chilean Chamber of Deputies, and which seeks to amend a variety of legal instruments in order to promote the right of women to participate in the public life of the country, by introducing a system of quotas that would limit the proportion of candidates of either sex to 60 per cent. On 24 January 2010, the Commission on the Family of the Chamber of Deputies recommended rejecting the idea of enacting legislation in this area, as there was no majority. The general discussion on the bill has been pending since 12 May 2010;

(b) Bill No. 5553-06, which was initiated by a memorandum dated 11 December 2007 from the President of the Republic, was introduced in the Chamber of Deputies and is at the first stage of the legislative process. It has lain dormant since 18 November 2009. The bill seeks to introduce the notion of balanced participation between men and women and, to that end, would limit the proportion of candidates of either sex to 70 per cent. The rationale for the bill is the fact that women lack adequate representation in politics and that the proportion of female candidates in senatorial, deputorial and municipal elections, at the time of the bill's submission, did not amount to more than 20 per cent. This bill proposes:

- (i) Setting a threshold for the number of male and female candidates from each political party in municipal and parliamentary elections;
- (ii) Providing for bigger transfers of government funds to the campaigns of women candidates who are elected, to be reduced where political parties field fewer women candidates in relation to the previous election;
- (iii) Encourage equality of access to and the exercise of functions within political parties.

56. SERNAM also seeks to promote women's political participation and access to decision-making positions and thus contribute to the achievement of gender equality in public policy management and development. In addition to being its legally defined purpose, the promotion of equal opportunities and rights for women and men is one of the main components of the work of SERNAM. In its drive to promote the inclusion of women in all of the country's development processes, SERNAM concluded an agreement with the United Nations Development Programme (UNDP) entitled "Capacity-building for the formulation of public policies on gender in the areas of women's participation and the prevention of domestic violence",<sup>8</sup> whereby it hopes to create greater opportunities for women's leadership and access to decision-making positions. Over the course of 2012, 18 political leadership academies will be set up throughout the country; they are expected to enrol some 600 female potential election candidates and, hopefully, to attract members of all political parties and movements active in Chile. The overall objective of the academies is to strengthen the capacities of female leaders and potential leaders of Chile's political parties, with a view to reducing the political participation gap between men and women. Their specific objective is to provide women leaders and potential leaders with tools that will help them to pursue a career in this field. The activities that SERNAM has carried out along these lines since 2006 may be found in annex VII.

57. With regard to the reform of the binominal electoral system, the executive branch has recently instructed the Office of the Minister and Secretary General of the Office of the President to conduct a study on the topic, with a view to formulating a proposal that will eventually take the form of a bill.

## **H. Education and stereotypes**

58. For statistics on school dropout rates in both primary and secondary education from 2006 to 2008, see annex VIII, question 12, table 1.

59. Regarding the impact of early marriage and pregnancy on school enrolment, according to a study carried out by the Special Secretariat for Sexuality and Emotional Education of the Ministry of Education in 2007, school dropout rates were as follows: 28 per cent of teenage mothers and fathers aged 15–19, and 30.3 per cent of those aged 11–23; 29 per cent of student-mothers, and 34.2 per cent of student-fathers, aged 11–23; 33 per cent of student-mothers or fathers aged 11–23 enrolled in municipal schools, 26.9 per cent in subsidized private schools, 30.2 per cent in private fee-charging schools and 15.5 per cent in private corporations run by partner agencies; 21.8 per cent of student-mothers or fathers enrolled in regular secondary education; and 30.2 per cent of student-mothers or fathers aged 11–23 in urban areas and 32.5 per cent in rural areas.

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<sup>8</sup> See agreement found at the following official UNDP website: [www.pnud.cl/proyectos/fichas/Políticas-ubics-Genero.asp](http://www.pnud.cl/proyectos/fichas/Políticas-ubics-Genero.asp).

60. According to the National Social and Economic Survey (CASEN survey), the main reason teenage girls between the ages of 15 and 19 dropped out of school was motherhood or pregnancy. The survey shows that 39,240 pregnant teens and teen mothers did not attend school owing to pregnancy or motherhood, compared to only 1,980 teenage fathers who were not in the school system (see annex VIII, question 12, table 2). Given that the survey is voluntary and includes only public and subsidized schools (93 per cent of the total), it does not fully reflect the situation, since not all schools report cases. However, 93 per cent of Chile's municipal and subsidized schools completed the survey in 2010. Since there are no data or studies relating to this information, it has not been possible to disaggregate it according to indigenous, rural or marital status.

61. With regard to networks established for the protection of students, in October 2008, the Adolescent Pregnancy Protection Board was established, bringing together SERNAM, the National School Support and Scholarships Board (JUNAEB), the National Kindergartens Board (JUNJI), the subsecretariats of the Ministry of Education and the Ministry of Health, and the Ministry of Social Development. The Board set itself, as its first task, the coordination of these agencies in a joint review of definitions and decisions relating to adolescent pregnancy, one of the first definitions to consist of a compilation of existing regulations as a basis for suggestions for changes in the law on pregnant students and/or student-mothers.

62. Noteworthy among the achievements of the Adolescent Pregnancy Protection Board are the following:

(a) In 2008, using a web-based platform, a national register was set up to determine the number of pregnant students or student-mothers in all subsidized or municipal schools in the country, which represent 93 per cent of all educational establishments, excluding private schools. Of these, 95 per cent included pregnant students and student-mothers and student-fathers in the register;

(b) With regard to the regulatory framework, in 2008, the Support for Staying in School (BARE) Scholarship awarded to students in secondary education was changed to include motherhood and pregnancy among the chief eligibility criteria. With the introduction of this new criterion for awarding the scholarship, the number of pregnant students or student-mothers, in relation to all scholarship recipients, rose from 3 to 21 per cent, a figure that to date remains unchanged;

(c) In 2008, priority was assigned in Economic Assistance Programme (PAE) Scholarships to ensure that all pregnant students or student-mothers enrolled in subsidized and municipal schools were granted preferential access to food and a special snack;

(d) Between 2008 and 2010, the National Kindergartens Board (JUNJI) issued directives aimed at providing preferential access to the children of teenage student-mothers, a policy that has resulted in an increase in the total number of teenage student-mothers using JUNJI kindergartens and nurseries from 338 in 2008 to 5,328 in 2011. JUNJI has a total of 38 nurseries located inside, and another 16 located near, schools that operate under the "Bring your child to school with you" (PEC) programme. The nurseries are located throughout all the regions of the country. The level of coverage provided by JUNJI and the Integra Foundation currently does not meet the demand from student-mothers; at a minimum, coverage should be guaranteed for the children of all student-mothers in municipal and subsidized schools and who are listed in the JUNAEB voluntary register, 13,299 in all.

(e) In 2009, Act No. 20370 was promulgated, article 16 of which, for the first time, imposes a penalty on schools that prevent pregnant students or student-mothers from continuing their studies. It goes farther than the former law on education, which contained a provision on non-discrimination against pregnant students or student-mothers but failed to

impose a penalty in the event of non-compliance.<sup>9</sup> Despite the entry into force of the Act in 2010, no penalty has yet been imposed, as it is the Office of the Superintendent of Education, which had been due to begin operations in 2012, that is responsible for determining it. For the time being, these types of complaints are handled through the Ministry of Education hotline 600. However, the recording of a complaint does not necessarily amount to an admission on the part of the Ministry that the alleged discrimination has actually occurred. The category “on the grounds of pregnancy and motherhood” encompasses a broad variety of conduct, ranging from not allowing a female student to attend class or not renewing her enrolment, to allegations by the student or her guardian that she has not been given all necessary facilities for sitting exams or catching up on required subjects. In this context, in 2011, complaints of discrimination on the grounds of pregnancy or motherhood accounted for 0.38 per cent of all complaints (88 out of 23,243). Between January and April 2012, such complaints accounted for 0.27 per cent of the total, or 18 out of 6,556 complaints;

(f) In 2010, the Ministry of Education disseminated the “Rules concerning pregnant students” through:

- (i) The offices of all regional ministerial secretariats for education in the country;
- (ii) The web page of the Ministry of Education;
- (iii) A national publication on pregnant students and student-mothers in the education system;

(g) In 2011, a leaflet entitled “Rights and obligations of pregnant students and student-mothers” was distributed to all secondary schools in the country. Its aim is to give these students guidance to help them not to interrupt their schooling, provide them with information on the protection afforded by Act No. 20370 and explain their rights and duties with regard to pregnancy, motherhood and their schooling. Similarly, a leaflet entitled “Protocol for keeping pregnant teens and teen mothers in school” was circulated to help adults in the educational community to maintain a unified approach to their role as teachers, geared to keeping these students in school. Educational establishments were explicitly informed of their obligation to incorporate a protocol on the subject into their school rules and regulations;

(h) As part of the Network for the Protection of Student-Mothers and Pregnant Students, the Ministry of Social Development applies the Biopsychosocial Support Programme (PADB), which annually provides services to some 200,000 pregnant women. Of these, 23 per cent are under the age of 17 years and 11 months (i.e. approximately 46,000 mothers under the age of 18). This is an age bracket considered to be at biopsychosocial risk; therefore, when the system detects pregnant girls in this age bracket, it checks for other risk factors, such as symptoms of depression, substance abuse, lack of family support, gender violence, a lower than sixth-grade level of education, conflicts with motherhood or an initial check-up later than the twentieth week of pregnancy. Likewise,

<sup>9</sup> Act No. 20370, art. 11: “Neither pregnancy or motherhood shall in any circumstances constitute an impediment to enrolment and continuing attendance in an educational establishment at any level, and such establishments are required to provide the academic and administrative facilities needed to give effect to both objectives. In respect of schools that receive State funding, a change in the civil status of the student’s parents or guardians shall not constitute an impediment to the student’s continuing attendance.” Art. 16: “Failure to comply with the provisions of articles 11, 12, 13, 14 and 15 of this Act shall be punishable by fines of up to 50 monthly taxation units, which may be doubled in the event of a repeat offence.”

when pregnant teenagers are detected, the Ministry of Health has a protocol of set actions, the main ones being the formulation of a personalized health plan, and a comprehensive home visit by a psychosocial team. From 2007 to 2011, the Ministry of Planning and Cooperation, now known as the Ministry of Social Development, operated an agreement with JUNAEB to implement the Stay-in-School Programme for Student-Fathers and Mothers and Pregnant Students, which, through JUNAEB (BARE scholarships, PAE scholarships school materials), supports these students and their children using the “Chile Crece Contigo” (Chile Grows with You) networks and the school system, so that they can complete their full 12-year course of studies. The programme is included in the work carried out by JUNAEB under the support programme to help teenage fathers, mothers and pregnant teens stay in school. The Ministry also reported on the application of the following Chile Crece Contigo indicators, in terms of referrals of pregnant women and children at the local level: (i) pregnant girls under the age of 17 years and 11 months; (ii) pregnant girls with incomplete schooling who are not in school; (iii) mothers with incomplete schooling; (iv) mothers in school who are under the age of 17 years and 11 months; (v) mothers or legal guardians who are in school, working or searching for work and fall within the 60 per cent of vulnerable families;

(i) In 2011, the National Service for Women (SERNAM) launched a biopsychosocial assistance programme for pregnant teens and teen mothers up to 19 years old. The programme takes a holistic approach and emphasizes the development of a life project for teenage mothers and fathers and linkages between public and private resources through social networks. The programme focuses its intervention on the psychological and affective relationship between the professional and/or health worker and the teenage mother, creating a climate of trust that will enable the young woman to develop her potential and reproduce the positive patterns learned in the programme in relating with her child. During the first six months of 2011, the programme provided assistance to nearly 1,000 teenage mothers located in 20 communes of the Metropolitan region. The programme relies on the efforts of interdisciplinary teams made up of midwives, psychologists, social workers and facilitators, who perform home visits, conduct training workshops and seminars (on parenting, health, sharing of responsibilities, etc.), hold individual psychosocial consultations (on improving self-esteem and developing a life project), help with returning to school and staying in school, work with the nuclear or extended family and network extensively with other relevant public services. This programme will be expanded in 2012 to provide specialized assistance to 2,000 additional teens, and new projects will be launched in other regions of the country.

## I. Employment

63. In Chile, the Labour Directorate is the institution responsible for ensuring compliance with the labour standards contained in the Labour Code, which include general and specific provisions for women domestic workers, such as those relating to time off, hours of work, and, until January 2011, the minimum wage.<sup>10</sup> The Labour Directorate has

<sup>10</sup> In the first place, Act No. 20336 replaced art. 150 of the Labour Code, which referred to weekly time off for domestic workers. The Act stipulates that such workers are entitled to: (a) one full day off a week, which may be divided into two half days at the request of the worker; and (b) time off for all statutory holidays. Prior to such holidays, the parties may agree in writing to designate a different day off, to be taken no later than 90 days after the holiday in question. The right is forfeited if it is not exercised within the prescribed time period and no financial compensation can be given unless the employment contract ends before the day off can be taken. Secondly, Act No. 20255 and bill No. 5923-05 provided for a gradual increase in the wage paid to women domestic workers: beginning on 1

not developed a specialized system to monitor the working conditions of domestic workers because a general system is used to monitor compliance with all labour laws, which does not differentiate between particular sectors of employment.

64. With regard to monitoring the working conditions of women domestic workers, in the period January 2009–February 2012, 5,842 inspections were carried out, of which 92 per cent found compliance or led to corrective action, and 8 per cent resulted in fines (see annex VIII, question 13, table 1). In the period 2009–2012, 16 per cent of inspections in the domestic work sector were programmed inspections carried out (see annex VIII, question 13, table 2), as a proactive measure to ensure compliance with the law, taking into account the number of women workers, their working conditions and the number of complaints in each sector. Forty-five per cent of inspections were initiated following complaints by social security institutions and 36 per cent on the basis of complaints lodged by women workers. Of the 58 per cent of complaints that gave rise to labour inspections, 24 per cent related to social security contributions, 18 per cent to issues concerning the employment contract and 16 per cent to remuneration.

65. In relation to the failure to comply with Act No. 20336 regarding weekly time off for domestic workers, 310 complaints (3 per cent) were lodged by this category of workers. This violation is defined in the law as the most serious level of a minor offence and is punishable by a fine payable to the public treasury ranging from 10 to 60 monthly tax units (UTM), depending on the number of workers. In the period 2009–2012, 306 complaints related to time off led to compensation and corrective action, and 4 offenders were fined (see annex VIII, question 13, table 3).

66. Efforts to give effect to labour law provisions regarding women domestic workers are complemented by the following actions: training and the dissemination of information on labour rights by the Labour Directorate; training in occupational health and safety by the Health and Safety at Work Institute (ISL); and the dissemination of information on pension rights by the Pension Fund Institute (IPS). These actions cover a total of approximately 3,000 women employees a year. In 2011, through the National Training and Employment Service (SENCE), resources were approved for the development of a “Skills profile for female domestic workers”. Once this profile is approved, domestic workers can obtain certification of their skills and apply for better working conditions. In May 2012, the Ministry of Labour and Social Security submitted bill No. 8292-13 amending the Labour Code provisions on time off and hours of work for live-in and live-out domestic workers. For live-out domestic workers, the bill seeks to reduce hours of work from 72 to 45 hours a week, with a maximum of 15 overtime hours a week, to be agreed with the worker and subject to a pay supplement of at least 50 per cent of the usual rate. For live-in domestic workers, the bill designates Sunday as the compulsory weekly day off and provides for two additional days off each month. These measures have been developed in consultation with the women domestic workers’ unions, the Asociación Nacional de Empleadas de Casas Particulares (ANECAP), the Sindicato Interempresas de Trabajadoras de Casas Particulares (SINTRACAP), the Sindicato Unico de Trabajadoras de la Casa Particular (SINDUTCAP) and the Mutual Caminando Juntas (MCJ).

67. With regard to monitoring the working conditions of women in the agricultural sector, the Labour Directorate conducts an ongoing inspection programme in the seasonal farm labour sector. In the period October 2010–April 2011, 1,923 inspections were carried out under the programme, in which 43 per cent of the workers concerned were women. This programme monitors compliance with labour, social security and occupational health and

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March 2009, it increased from 75 per cent of the minimum wage to 83 per cent; on 1 March 2010, it increased to 92 per cent; and on 1 March 2011, it was raised to parity with the minimum wage.

safety standards, as set out in Act No. 20123 on subcontracting, which has been in force since 15 January 2007. The programme has allowed time for corrections to be made – 5 to 7 days for labour-related issues and 30 days for health and safety issues, except for areas not amenable to correction, such as time off, and imminent threats to the life or health of workers. Initial compliance in all areas amounted to 57 per cent, and after the correction period compliance was 92 per cent.

68. Noteworthy instances of initial non-compliance with maternity protection standards occurred in the following areas:

(a) Agricultural establishments:

(i) In the case of individual agricultural establishments that operate using only their own employees, the highest incidence of initial non-compliance with labour law was found in the area of maternity protection: 66 per cent of women with children under 2 were not granted infant feeding breaks, while 27 per cent of companies with the obligation to do so did not provide childcare facilities;

(ii) In agricultural establishments that hire contracting companies and in the contracting companies themselves, no incidents of non-compliance with maternity protection standards were noted among the most significant initial violations.

(b) Packing plants:

(i) In individual packing plants, the highest incidence of initial non-compliance was found in the following areas of maternity protection:

- Work harmful to pregnant women (33 per cent)
- Childcare facilities (38 per cent)
- Breaks for infant feeding (29 per cent)

(ii) In packing plants that hire contracting companies, 23 per cent infringed rules relating to infant feeding breaks and prohibitions on the performance of jobs harmful to pregnant workers' health, while 10 per cent violated rules relating to childcare;

(iii) With regard to contracting companies that work for packing plants, of all pregnant women, 78 per cent held jobs that were harmful to their health.

69. Seasonal farm workers in the agricultural sector also received training and were provided with information on their rights by the Labour Directorate, the Pension Fund Institute (IPS) and the Health and Safety at Work Institute (ISL). In addition, the Ministry of Labour conducts an ongoing social dialogue forum, whose purpose is to improve compliance with labour legislation and promote best labour practices. The agricultural sector is the chief beneficiary of the National System of Labour Skills Certification, which during the period 2003–2010, certified 15,584 agricultural workers, of whom 35 per cent were women.

70. Act No. 20348, on the right to equal remuneration, may be invoked by workers of both sexes. With regard to the burden of proof, under article 62 bis of the Labour Code, concerning the duty of employers to apply the principle of equal remuneration, complaints made under that article are to be substantiated in accordance with part V, section I, chapter II, paragraph 6, of the Labour Code (procedure for the protection of labour rights), after completion of the claims procedure, which must be established in the rules and regulations of companies with 10 or more employees. The procedure for the protection of fundamental

rights protects nearly all the constitutional rights of workers<sup>11</sup> and assumes that workers have an inherently weak position in the proceedings, especially with regard to the sensitive issue of the weighing of evidence. In this connection, article 493 of the Labour Code diverges from Chilean rules of procedure stating: “When, on the basis of the circumstances advanced by the complainant, there is sufficient evidence of a violation of fundamental rights, it shall be incumbent upon the defendant to explain the rationale and proportionality of the measures taken.”

71. The reference to article 62 bis of the Labour Code, then, incorporates the reversal of the *onus probandi*, or the formal burden of proof, into the application of Act No. 20348, in the sense that it:

(a) Lightens or reduces the standard of evidence by allowing “circumstantial evidence”, which does not mean the complainant is exempt from submitting evidence, but rather that they must submit sufficient evidence of the existence of wrongful conduct for, in this case, the defendant to be required to show that their action was based on objective and reasonable grounds;

(b) Alters or modifies, so as to effectively safeguard workers’ fundamental rights, the so-called substantive burden of proof, that is, the allocation of the burden where the act was not clearly established by the evidence examined during the evidence stage of the protection procedure;

(c) Constitutes a legal rule of procedure applied, not at the stage of admission of evidence, i.e. the pretrial hearing, or at the submission or inclusion of evidence stage, i.e. the trial, but rather by the judge at the sentencing stage, i.e. when the court decides on the merits of the case. For the complainant (worker) to obtain this procedural benefit, they must demonstrate the existence of “facts which give rise to at least a reasonable suspicion in the judge’s mind that there has been a violation of fundamental rights”.

72. Where sufficient evidence has been submitted, the employer has the option, as indicated in article 493 of the Labour Code, to explain the rationale and proportionality of the measures taken. They must provide evidence to the labour court that their conduct is justifiable, thus dispelling suspicions about it, and that it has not violated the worker’s fundamental rights. Put differently, Act No. 20348 provides for a reversal of the burden of proof in favour of the worker, always assuming the parties come to court.

73. The State does not, in the short term, intend to amend Act No. 20348 (unless any changes are made by parliamentarians who have already voted in favour of the bill) so as to cover situations where women and men perform work that is different but nevertheless of equal value by International Labour Organization (ILO) standards. This is owing to the history of bill No. 4356-13, which formed the basis of Act No. 20348, and actually provided for such a possibility when it stated: “A new article 62 bis shall be added to the Labour Code to read as follows: ‘In the area of remuneration, the principle of equality between work performed by men and that performed by women for a service of equal value shall apply.’” However, the report prepared by the oversight committee on the bill added

<sup>11</sup> The constitutional rights or safeguards that may be invoked in this procedure include the following paragraphs of article 19 of the Constitution of Chile: (a) 1 (Right to life and to the physical and mental integrity of the person), provided that the violation is the direct result of acts occurring in the employment relationship; (b) 4 (Respect for and protection of the privacy and dignity of the person and their family); (c) 5 (Inviolability of all forms of private communication); (d) 6 (Freedom of conscience); (e) 12 (Freedom to hold an opinion and to impart it without prior censorship); (f) 16 (Freedom to work and its protection). The discriminatory acts set forth in article 2 of the Labour Code may also be invoked.



that the pay gap between women and men violates article 2 of the ILO Equal Remuneration Convention, 1951 (No. 100), which stipulates that:

- “1. Each Member shall, by means appropriate to the methods in operation for determining rates of remuneration, promote and, in so far as is consistent with such methods, ensure the application to all workers of the principle of equal remuneration for men and women workers for work of equal value.
2. This principle may be applied by means of:
  - (a) national laws or regulations;
  - (b) legally established or recognized machinery for wage determination;
  - (c) collective agreements between employers and workers; or
  - (d) a combination of these various means.”

74. In a memorandum dated 11 August 2008, a proposal was made to replace the word “value” with “productivity”. A vote was taken on 13 May 2009 to delete the potentially ambiguous concepts of “a service of equal value” and “equal work”, since retaining the requirement that two persons who perform the same work must, by virtue of that fact alone, receive the same pay, was unreasonable. Consequently, bill No. 4356-13, which has become Act No. 20348, states that “Employers shall respect the principle of equal remuneration for men and women performing the same work; objective differences in remuneration that are based on skills, qualifications, suitability, responsibility or productivity shall not be considered to be arbitrary.”

## J. Health

75. Chile does not have background information relating to the data requested regarding the number of illegal and unsafe abortions and the number of deaths and health-related complications due to this kind of abortions. The only official data that allow us to partially understand the reality of abortion in Chile are those from the public health system; this type of information does not exist in relation to private health care.

76. General information on discharges from hospital following termination of pregnancy by abortion between 2008 and 2009 appears in annex VIII (question 15, table 1). This table indicates that in 2008, of a total of 319,856 hospital discharges related to pregnancy, childbirth and the postpartum period, 10 per cent (33,428) related to termination of pregnancy by abortion. Of these, the most frequent were: other abnormal products of conception (40.1 per cent), unspecified abortion (33.1 per cent), and miscarriage (14.3 per cent). In 2011, there were 18,373 abortions. In 2011 there were 18,373 abortions in the public health system (see annex VIII, question 15, table 2).

77. The Ministry of Health is now implementing its technical guidelines for the comprehensive care of women who experience termination of pregnancy or other reproductive losses (2011) in all public health services. This document is aimed at all professionals and technicians who work in gynaecological and obstetric services within the public and private health-care network. In 2011, these guidelines were widely circulated among doctors and midwives in the public health network through a national Women’s Health Programme day, a videoconference for all the regions of the country and publication on the Ministry of Health website.

78. In line with the conceptual framework underlying the guidelines, “the State of Chile recognizes that everyone has the right to health, and has made numerous commitments at the international level relating to the care of women who suffer complications associated

with reproductive loss". In 1994, the International Conference on Population and Development in Cairo established that "In all cases, women should have access to quality services for the management of complications arising from abortion [or reproductive loss]. Post-abortion counselling, education and family planning services should be offered promptly, which will also help to avoid [reproductive losses]." In August 2006, the Committee on the Elimination of Discrimination against Women recommended that the State of Chile "provide [women] with access to quality services for the management of complications arising from unsafe abortion and to reduce maternal mortality rates, in accordance with general recommendation 24, on women and health, and the Beijing Declaration and Platform for Action".

79. The principles of these technical guidelines are based on the recognition of the rights, beliefs, values, perceptions, individual attitudes and characteristics of the culture of the women who are treated for reproductive loss:

(a) Respect for autonomy and a person's right to make decisions concerning their sexual and reproductive health. This implies on the one hand that members of the medical team should not make judgements or give opinions regarding the conduct of the patient, and on the other, that they should provide the patient with all available up-to-date and impartial information that will allow her to make the best decisions in the future in order to look after her own health and avoid finding herself in the same risk situation. The patient should view herself, and be viewed, as the protagonist of the treatment process;

(b) Respect for the dignity, privacy and confidentiality required during every medical procedure. It should be recognized that the provision of information by persons receiving treatment is always voluntary. They should be asked to give just what is needed to diagnose and treat the health condition they present with and any refusal to give information should be respected, while explaining the clinical importance of having such information. Confidentiality is supported by Ministry of Health communication No. 1675 of April 2009, to Directors of Services across the country;

(c) The right to professional care from service providers who possess technical competence. Those carrying out treatment should have the necessary knowledge and appropriate up-to-date skills related to all the procedures that they carry out or plan to carry out in treatment. They should be familiar with the communication techniques that best allow them to convey information and communicate effectively with the people they treat. If they do not possess these competencies in some areas, they should ask for help from those more knowledgeable and skilled, that is, competency should be optimized through teamwork;

(d) Care for women who have experienced reproductive loss should be prompt, comprehensive and multidisciplinary with regard to sexual and reproductive health and should include postpartum care and counselling on sexual and reproductive health, birth control and the prevention of sexually transmitted and gynaecological diseases;

(e) Infrastructure and time allocation that make it possible to provide care that meets these conditions.

80. Maternal mortality has gradually decreased since 1990, from a rate of 40 per 100,000 live births to 16.5 in 2008. However, in 2009 the rate was 19.7 per 100,000 live births. Death from abortions has also declined, from 9.4 per 100,000 live births to 2 in the same period, with some intermittent variations, such as in 2008, when only 5 cases of death resulting from abortion were recorded (Department of Health Statistics and Information/Ministry of Health). This decrease is mainly due to widespread access to free family planning methods.

81. As regards bills aimed at decriminalizing abortion, although the Constitution guarantees the right to life, stating that “the law protects the life of the unborn” (art. 19, para. 1 (2)), several bills to decriminalize abortion if the health of the mother is at risk, i.e., therapeutic abortion proper, or if the foetus is not viable, have been presented, namely: (a) “On therapeutic termination of pregnancy”, bill No. 6522-11; (b) “Amendment to the Health Code to define the cases in which pregnancy can be terminated”, bill No. 6591-11 and (c) “Decriminalization of termination of pregnancy for medical reasons”, bill No. 7373-07. These were all considered together and, after intense discussion in the Senate, were rejected by 12 votes for and 19 votes against, on 4 April 2011. They were shelved under article 68 of the Constitution of Chile and may only be reconsidered a year after rejection.

82. According to information from the Ministry of Education, content relating to the prevention of unwanted teenage pregnancies is not as yet expressly included in the curriculum. However, a number of programmes for adolescents were established between 2008 and 2009 to provide easier access to sex and reproductive health education:

(a) Between 2005 and 2010, the Ministry of Education implemented the National Plan for Education on Sexuality and Emotional Health, as part of which training was provided to educators through the Learning Programme on Sexuality and Emotional Health (PASA). During that period, more than 12,000 education staff were trained in the PASA methodology: teachers, principals, counsellors, education assistants, parents and guardians and, more recently, student teachers from several of the country’s universities. The Ministry of Education suggested the following in PASA:

(i) One of the lessons to be promoted among students is equality in male-female relations, not only regarding the segregation of roles, but also the imbalance of power. Schools should create a setting for a culture of equality, in which teaching and institutional practices are aware of the need to eradicate sexism, so that sexuality can be exercised without pressure or vulnerability, no one drops out for reasons of gender, vocational options are broadened and leadership by female students increases;

(ii) Planning for the start of sexual life is something to encourage, so that youngsters can make decisions, without pressure, about this personal moment, the context and relationship in which it occurs, the significance of the experience and its place in their lives as a whole and how to care for themselves and their partner;

(iii) Emphasis should also be placed on learning to deal with situations that could expose them to unplanned teenage pregnancy, HIV/AIDS and sexually transmitted infections, sexual abuse or discrimination based on sexual orientation. When any of these situations arise, they affect a person’s life, physical and mental health, development and safety. Although everyone is at risk, it is not always the same degree of risk, as vulnerability in these situations is linked to gender, age and socioeconomic status. Exposure to unplanned teenage pregnancy, HIV and sexually transmitted infections, as well as less frequent use of and access to preventative methods affect adolescents in the poorest social groups more strongly;

(iv) All scientifically established information regarding prevention methods should be available to students, as appropriate to their level of development. This is a right, a resource that allows students to take considered action, and knowledge they need for their protection. This knowledge makes it possible for them to choose to use these methods and acquire the skills to use them correctly. The PASA programme no longer exists;

(b) In 2006, the Ministry of Education Special Secretariat for Sexuality created a Policy on Education on Sexuality and Emotional Health, which led to the preparation and implementation of the sexuality and emotional health plans, which were implemented in

2006 and 2007 and followed until 2008. These plans were voluntary, designed by individual school communities, and then implemented there. They were aimed at secondary school students, achieving a coverage of 450 municipal and subsidized schools, in 15 regions and 126 municipalities. The Special Secretariat and its associated programmes no longer exist;

(c) Another strategy was the programme of initial teacher training and advanced training in sexuality, which consisted of a 190-hour e-learning refresher course on education on sexuality and emotional health. The course included a 12-hour module on gender and sexuality within the “Sexuality and society” section of the course and a 12-hour module entitled “Learning in the family about gender relations, sexuality and emotional health” for working with families, in the “Sexuality and emotional health, socialization and family processes” section. This programme trained 3,000 teachers and terminated in 2010;

(d) From a legal perspective, progress has been made with the above-mentioned Act No. 20418, article 1 of which states: “... schools accredited by the State should include a sex education programme at the secondary level, which, in accordance with their principles and values, should encourage responsible sexuality and provide full information on the various authorized birth control methods, in a way that is in keeping with the educational approach, convictions and beliefs that each school adopts and imparts, together with its parents and guardians association”;

(e) In 2011, the National Service for Women (SERNAM) and the Ministry of Education published a manual offering seven sex education programmes (selected by a commission of experts, following evaluation of more than 10 proposals with the help of professionals from the curriculum unit, and consideration by both agencies), from which municipal and subsidized private schools can choose. The programmes are based on the recognition of the sociocultural differences to be found in Chile that mean that sex education cannot be imposed through a single model and users have the right to choose from various ways of broaching the subject. The Ministry of Education is evaluating the results from 2011–2012, which have yet to be published.

## 1. Teen-friendly areas

83. In order to tackle teenage pregnancy, the “teen-friendly areas” strategy, promoted by the Pan-American Health Organization (PAHO), has been in place since 2007. Fifty-four of these areas were opened across the country, offering differentiated care for adolescents, with the specific purpose of preventing pregnancy. The strategy focuses on tackling the issue of teenage pregnancy, so it was decided to install these spaces in those municipalities with the highest rates of teenage pregnancy. In 2011, the number of teen-friendly areas increased to 65, in 59 municipalities, with three priority areas of care: sexual and reproductive health, nutritional health and mental health. The majority of the teen-friendly areas were installed in primary care facilities, and staffed by a midwife or nurse and a psychologist or social worker for eight hours a week each. Proactive work involves promotion activities aimed at instilling and reinforcing healthy lifestyles (mainly workshops in schools and other community settings). Services for walk-in patients includes sexual and reproductive health counselling, birth control and prevention of HIV/AIDS and sexually transmitted infections; consultations for suspected sexually transmitted infections and diseases, and birth control; consultations for crisis action and initial response in violent situations. Scheduled care emphasizes comprehensive health examinations, sexual and reproductive health care, counselling and/or consultations regarding sexual and reproductive health, birth control and the prevention of HIV/AIDS and sexually transmitted infections. Adolescents who visit the teen-friendly areas have access to comprehensive and integrated health care, with special time-slots and spaces, where their privacy is respected, and professional teams trained in adolescent health care. The areas have enabled young

people to take control of their role in society and their own health care, and given visibility to a section of the population long ignored on the assumption that it was healthy.

84. In 2011, a total of 2,286 male adolescents between 10 and 19 years of age and 17,646 female adolescents between 10 and 19 years of age sought sexual and reproductive health care. A total of 37,101 adolescents (17,316 males and 19,785 females) participated in self-care and life skills programmes. Full check-ups were given to 10,663 adolescents (3,931 males and 6,732 females). A total of 9,348 adolescents sought mental health care (3,432 males and 5,916 females).

85. These areas, of which there are still too few, form part of the teen-friendly services strategy that primary care facilities have started to incorporate in their family health plans from 2012. From 2013, the remaining gaps in access to care for adolescents will gradually be closed, with the “Youth Health Check” being the main point of entry.

## 2. Youth Health Check

86. In terms of progress in matters of adolescent health, the most important initiative by the present Government, as part of the national health strategy, is the Youth Health Check strategy. This has been implemented since 2011 and coverage will increase in 2012 to allow 150,000 health checks for young people between 10 and 19 years of age in the public system. In this way, by 2020, it is hoped to gradually reach universal coverage of preventative health examinations for Chilean adolescents and young people who use the public health system. This strategy is becoming this group’s point of entry to the health-care system and is possibly the only time the system can evaluate an adolescent’s health status and level of risk. This is a comprehensive way of dealing with adolescents that focuses on several issues, among them sexual and reproductive health, education to promote safe, healthy sexuality, and prevention of sexually transmitted diseases and infections and teenage pregnancy.

87. The prevention of repeat teenage pregnancies has been incorporated into the comprehensive home visit. This strategy began in August 2007 and focuses on at-risk pregnant women, among them pregnant women under 19 years of age. There are no specific data regarding coverage, but 71,814 comprehensive home visits were made to at-risk pregnant women in 2010. Until 2010, action taken during comprehensive home visits had not been evaluated, so in 2011 a process was started to standardize the procedure and, in the medium term, the actions taken during home visits, generating indicators of the processes, results and impact of this service.

88. The process includes:

(a) A review of evidence to establish highly effective strategies: the study is due to conclude in June 2012;

(b) A study to assess the implementation of comprehensive home visits in the public health system: results are expected in mid-2013;

(c) Finalization in 2011 of a study to assess the training of 1,020 professionals that was carried out between 2009 and 2010, and which yielded significant results for adjustment of the training for professionals and reinforcement of their skills. This project was carried out in partnership with UNICEF.

89. The model for training professionals will continue to be developed in 2012 and will provide a skills profile and an operational matrix for training in comprehensive home visits; this will conclude in December 2012. With this model, it is hoped that the comprehensive home visits service will help further reduce the rate of unplanned teenage pregnancy and prevent repeat teenage pregnancies, an objective of the 2011–2020 national health strategy.

90. One goal of the 2011–2020 national health strategy is a 10 per cent reduction in the projected rate of pregnancy in women under 19. To achieve this, the action plan for the 2011–2014 period proposes:

- (a) Developing health targets and specific strategic objectives for the young and adolescent population as part of the 2011–2020 health objectives;
- (b) Identifying effective, evidence-based interventions that encourage behavioural changes in adolescents;
- (c) Encouraging the development of a comprehensive intersectoral policy to help attain the proposed objectives;
- (d) Increasing and improving access to differentiated services for adolescents, whether in the health-care context itself, such as teen-friendly areas, or wherever adolescents gather;
- (e) Promoting legislation for the rights and needs of adolescents and young people;
- (f) Increasing youth participation in the plans and programmes that involve them.

91. A table and graph containing statistical information relating to the percentage of teenage pregnancies in Chile are attached (see annex VIII, question 16).

92. Another relevant action is the implementation of the new national adolescent health programme, which has a 2011–2020 action plan, consistent with the health objectives. Implementation is well under way and includes a monitoring and follow-up plan for its subsequent midpoint assessment in 2014. The youth participation action financed by the United Nations Population Fund (UNFPA) under the Andean Plan, helped enormously in gathering the opinions of the national programme's main beneficiaries. In 2010, the Adolescent Advisory Council was set up under exempt resolution No. 65. The Council is comprised of one male and one female youth representative from each of Chile's 15 regional councils. In 2011, 500 young people between 14 and 18 years of age participated in five youth meetings entitled "En Salud los Jóvenes Eligen" ("Young people decide on health care"), in four regions, Bío Bío, Valparaíso, Tarapacá and the Metropolitan region. That adolescents have this forum in which to express their opinions and give feedback on the policies and programmes aimed at them is a significant milestone, both for decision makers and for those who ought to be able to see their own needs and recommendations formulated in the programmes, as happened in the preparation of the new national adolescent and youth health programme.

## **K. Indigenous women**

93. The information on the increased participation of indigenous women in the Chilean economy is as follows:

- (a) The Institute for Agricultural Development (INDAP) runs the Indigenous Territorial Development Programme, which works with communities where women's participation rose from 8,118 (36 per cent) to 20,364 (42 per cent) between 2006 and 2011. In terms of resources, in 2006, indigenous women received CLP 82,190,000,000 of a total of CLP 229,653,000,000 granted under the programme, while in 2011 they received CLP 4,441,136,000,000 (42 per cent) of the CLP 10,619,339,000,000 allocated under the programme. According to the seventh agriculture and forestry survey, conducted in 2007, less than 30 per cent of farmers are women, so an even spread of participation between men

and women in production development schemes cannot be expected (see annex VIII, question 17, table 1);

(b) The Production Development Corporation (CORFO), through Innova, approved 28 projects for indigenous communities in 2011, representing a financial outlay of CLP 2,339,125,833. These projects include:

- (i) The Centre for Mapuche Innovation and Enterprise, which provides services to 20 communities of the Mapuche Makewe Council;
- (ii) A project to improve the competitiveness of Mapuche handicrafts and their integration in the tourism industry, which benefits 20 businesswomen directly and 80 indirectly;
- (iii) A project to improve cultural and tourism management in Mapuche enterprises, which benefits 25 businesswomen directly and 80 indirectly;
- (iv) The Araucanía valley hub, whose role is to help diversify and add value to production and which currently benefits 10 businesswomen directly and 50 indirectly;
- (v) The information and technology transfer hub for Mapuche artisans in the Araucanía valley, which benefits 30 businesswomen directly and 120 indirectly;
- (vi) A programme to disseminate innovative strategies, which promotes the use of best practices in indigenous tourism activities and benefits 22 businesswomen directly and 150 indirectly;
- (vii) A sports tourism centre on the island of Rapa Nui, which specializes in Polynesian canoeing;
- (viii) A project to improve human capital on the island of Rapa Nui, which benefits 17 businesswomen;
- (ix) The hub for the transfer of information and technology on goats' milk production to Mapuche farmers in Lonquimay, which benefits 17 women directly and 40 indirectly;
- (x) The mixed farming innovative environment project in Padre Las Casas, which benefits 40 women directly and 60 indirectly;

(c) The Technical Cooperation Service has various production development schemes that have helped indigenous women. These include:

- (i) The 2005–2011 seed capital for small companies scheme, which benefited 132 indigenous women. The total budget for 2010–2011 was CLP 11,098,706,722;
- (ii) The 2008–2011 seed capital for start-ups scheme, which benefited 231 indigenous women. The total budget for 2010–2011 was CLP 6,238,722,960;
- (iii) The 2009–2011 consultancy and business services scheme, which was used by 385 indigenous women. The total budget for 2010–2011 was CLP 628,493,038;
- (iv) The 2009–2011 business education and training scheme, which was used by 422 indigenous women. The total budget for 2010–2011 was CLP 743,205,650;
- (v) The 2010–2011 competitiveness development programme, which provided support to 1,594 indigenous women. The total budget for 2010 was CLP 208,230,000;
- (vi) The 2009–2011 collaborative labour network, which provided support to 167 indigenous women. The total budget for 2010–2011 was CLP 355,123,830;

(vii) The 2009–2011 advertising and marketing scheme, which provided support to 592 indigenous women. The total budget for 2010–2011 was CLP 494,424,156;

(d) The Solidarity and Social Investment Fund supported 6,021 indigenous women in 2011, at a cost of CLP 2,995,514,589, through its youth employment and vocational training programmes, its support for microenterprises, social enterprises, economic activities, the “Emprende Más” (become more entrepreneurial) programme, the regional development fund, social development programmes and innovation agreements;

(e) The National Culture and Arts Council (CNCA) has supported indigenous women through various programmes, including:

(i) The “Carriers of tradition” programme, which focuses particularly on indigenous languages. Investment in workshops on indigenous topics in four regions, in 2011: CLP 16.4 million;

(ii) The “Living Human Treasures” programme, which is endorsed by UNESCO, was implemented in 2009, 2010 and 2011. Investment in 2012: CLP 68 million;

(iii) The “Acciona” (act now) programme, which organizes workshops on indigenous issues in the Araucanía, Los Lagos and Arica-Parinacota regions. Investment in 2011–2012: CLP 8.6 million;

(iv) Cultural funds: FONDART Regional, indigenous cultural development programme. Investment totalled CLP 186 million in 2010, CLP 180 million in 2011 and CLP 286 million in 2012;

(v) The cultural centres programme, which has 51 cultural centres across Chile, 14 of which are in areas with large indigenous populations. Investment 2010–2013: CLP 13,165,000,000;

(vi) A multicultural fair was organized in the Araucanía region as part of the emblematic projects/native peoples component of the Plan for Native Peoples. Art, food products and handicrafts were on display, and a large-scale theatrical interpretation of *epew* (Mapuche stories) was performed. Investment in 2011–2012: CLP 72.3 million.

(f) The National Indigenous Development Corporation (CONADI) has increased the number of women who receive support for productive activities through its economic development programmes. In 2011, women represented 50.9 per cent of total participants in the Corporation’s various programmes, which include:

(i) The Chisol (Chile Solidario) competition: 113 women beneficiaries; budget for women: CLP 72,244,905;

(ii) The public tendering process for provision of basic services to plots acquired for legal beneficiaries: 92 women beneficiaries; budget for women: CLP 184 million;

(iii) The public tendering process for establishing and boosting economic and productive activities for Mapuche women in urban areas: 81 women beneficiaries; budget for women: CLP 110 million;

(iv) Financing of local non-agricultural production projects as part of phase 2 of the “Origins” programme: 296 women beneficiaries; budget for women: CLP 298,536,462;

(v) The handicrafts hub set up by the Production Development Corporation (CORFO) under the agreement between CONADI and the Catholic University of Temuco: 45 women beneficiaries; budget for women: CLP 4,542,000;



- (vi) The CORFO project to incorporate technology into handicrafts production, set up under the agreement between CONADI and the Catholic University of Temuco: 60 women beneficiaries; budget for women: CLP 3,254,250;
- (vii) The project to incorporate technology into horticulture, set up under the agreement between CONADI and the Catholic University of Temuco: 1 woman beneficiary; budget for women: CLP 131,571;
- (viii) The programme to increase the use of technology in Mapuche handicrafts production and to improve the competitiveness of Mapuche handicrafts, as well as their integration in the specialized tourism sector: 13 women beneficiaries; budget for women: CLP 2,943,720;
- (ix) Provision of basic family necessities to Mapuche communities: 100 women beneficiaries; budget for women: CLP 5 million;
- (x) Technical advice on land management and planning for families and communities in the Araucanía region: 92 women beneficiaries; budget for women: CLP 18,320,346;
- (xi) Design of tourism circuits, support for associations and training to increase the professionalism of Mapuche tourism operations: 4 women beneficiaries; budget for women: CLP 7 million;
- (xii) Development of land-management and planning capacity for indigenous Pehuenche communities: 80 women beneficiaries; budget for women: CLP 6 million;
- (xiii) The public tendering of land to individuals and communities: 388 women beneficiaries; budget for women: CLP 5,531,333,333;
- (xiv) Participation of the Mapuche community in the planning of “development with identity” in the Araucanía region: 70 women beneficiaries; budget for women: CLP 18,666,667.

94. In addition to the above programmes, special programmes have been implemented for indigenous women since 2009. These include:

(a) Competition for microenterprises and small businesses set up by indigenous women. CONADI and the regional government of Araucanía signed an agreement in December 2009 to transfer resources to support indigenous women’s microenterprises, small businesses and entrepreneurial activities in urban and rural areas of Araucanía. The objective of the programme was to combat unemployment and provide effective support to a large segment of society that is active at the microeconomic level and has the capacity to boost the region’s economy. The programme benefited 318 Mapuche women, for a total of CLP 453,355,565;

(b) Competition for enterprises set up by urban Mapuche women. This initiative was started in 2011, and benefited 81 Mapuche women that year for a total of CLP 109,663,936. The process will be repeated, starting with the publication of conditions and the distribution of application forms in 2012.

95. A number of public policies targeting indigenous women as an especially vulnerable group have been implemented in the last few years. This group still experiences a large gap in socioeconomic terms, however, particularly as regards access to education, employment opportunities and participation in public decision-making bodies.

96. With regard to the content of the inter-agency agreements signed in relation to indigenous women heads of household, a general collaboration agreement was signed by SERNAM and CONADI in 2007 for coordinating and executing joint actions leading to the

proposal and development of policies that promote equal access for women in all sectors of society and for coordinating programmes, actions and other measures with public and private agencies and services to further their shared objectives. In 2009, a specific collaboration agreement was signed with a view to improving the employment conditions of indigenous women heads of household by directly financing their income-generating activities. The programme was implemented in the Arica-Parinacota, Metropolitan and Araucanía regions. The agreement included making arrangements for the two agencies to work together to produce gender-sensitive and culturally appropriate information packages on human rights (Programme to improve the employability and employment conditions of women heads of households in the Arica-Parinacota, Metropolitan and Araucanía regions, collaborative programme development – SERNAM).<sup>12</sup> CONADI transferred CLP 25 million to SERNAM to fund the programme, which benefited 165 women.

97. To facilitate indigenous women's access to education, CONADI implemented a number of programmes between 2006 and 2011 to increase access to education for the indigenous population as a whole. These target preschool-age girls and boys and, tangentially, address the needs of children in basic education as well. They include:

(a) The recovery and revitalization of indigenous languages. The revitalization of indigenous languages has been strongly promoted during the past six years, spearheaded by indigenous women. There are currently language academies and commissions for almost all the native languages of Chile and many are headed by women;

(b) The design of bilingual intercultural teaching curricula. This programme is established in accordance with Act No. 19253, the Indigenous Peoples Act, and the International Labour Organization (ILO) Indigenous and Tribal Peoples Convention, 1989 (No. 169) and aims to implement teaching that is more relevant to contexts of cultural and linguistic diversity using the reality of the indigenous peoples as a starting point;

(c) A programme to teach indigenous languages ab initio in 44 preschools was launched in 2009. Monitors from indigenous communities are involved in the programme, and over 80 per cent of the teachers are indigenous women;

(d) The programme to disseminate and promote indigenous cultures. This programme revives and encourages indigenous cultural activity throughout the country by organizing competitions and other events, including exhibitions of indigenous art and culture in which female handicrafts producers and female promoters of contemporary indigenous art actively participate;

(e) From 2007 to 2011, CONADI has supported 3,179 persons through its Culture and Education Fund, of whom 1,734 (55 per cent) were women (yearly figures are presented in annex VIII, question 17, table 2).

98. The indigenous scholarship programme provides grants to help finance the basic, secondary and university education of indigenous children and youths throughout the country. The programme is implemented in cooperation with the National School Support and Scholarships Board (JUNAB) (see annex VIII, question 17, table 3).

99. The new emphasis placed on access to education by families and the State has made it possible for increasing numbers of women to apply for and obtain the educational support scholarships for indigenous persons.

<sup>12</sup> Programme to improve the employability and employment conditions of women heads of households in the Arica-Parinacota, Metropolitan and Araucanía regions, collaborative programme development – SERNAM).

100. To facilitate access to health for indigenous women, CONADI implemented the following programmes and projects in 2006–2011:

(a) Joint initiatives with the Ministry of Health. The Ministry of Health Special Programme for Indigenous Peoples (PESPI), which aim is to reduce the indigenous peoples' health equity gap by participatory design of health plans that respect cultural diversity, build on the complementarities between medical systems and deliver appropriate health services that respond to specific needs, rights and epidemiological profiles. PESPI has been implemented across 26 of the country's 29 health services to cover both those who live, in ancestral territories and those who have had to migrate to urban areas but still observe their cultural traditions as regards health care. The key components are: (i) in-service training for public-sector health workers on intercultural considerations in health care; (ii) the development and improvement of intercultural health practices; (iii) support for entities in the health sector that involve members of indigenous communities; (iv) participatory analyses of the health situation of the indigenous population and culturally-appropriate health initiatives to address the main problems identified. The development of PESPI is determined by the health problems of the indigenous population. Data from the basic epidemiological profiles drawn up within the framework of the Programme show clear and undeniable inequality in the health of the indigenous peoples of Chile: indigenous peoples living in certain geographical areas and in similar conditions to the rest of the population have a different morbidity and mortality profile than the non-indigenous population. The profile also varies markedly between the country's various indigenous peoples, but there is a common denominator, namely the mortality rate in all age groups, associated with a prolonged and polarized epidemiological pattern of transition in which high levels of common infections, degenerative diseases and injuries persist side by side, against a background of increasing social inequalities in terms of health. Both the Ministry of Health and the individual health services are, according to Act No. 19937 and their internal regulations, obliged as part of their regular duties to consider alternative approaches to health care that respect indigenous cultures and encourage the active participation of indigenous communities and organizations in the actions taken by the health services that impact them. Studies of the prevalence of certain diseases in indigenous communities have therefore been carried out as part of this programme, and particular emphasis has been placed on promoting the practice of indigenous medicine in public health facilities. It should be noted that, with the expansion of indigenous therapeutic practices, it is indigenous women who are promoting the social and health programmes implemented by CONADI and the Ministry of Health;

(b) The building of an intercultural hospital (2006) in the town of Imperial, which benefits approximately 100,000 persons from six municipalities. Traditional modern medicine and the ancestral medicine of the indigenous peoples converge in the hospital in an intercultural approach, with *machi* (Mapuche medicine practitioners) playing an important role in the health care of both Mapuche and non-Mapuche patients. This integrated health centre has 15 *machis*, 4 *ngütanchefes* (healers), 1 *püñeñelchefes* (adviser) and 11 *ngülanchefes* (cultural advisers), as well as Mapuche specialists.

## L. Migrant women

101. All foreign girls, boys and adolescents under the age of 18 receive health treatment in public health network the same way that their Chilean counterparts do, regardless of their migration status or the migration status of their parents, guardians or legal representatives, as established in the collaboration agreement between the Ministry of Health and the Ministry of the Interior and Public Security (exempt resolution No. 1914 of 10 March 2008).

102. Pregnant migrant women who do not have valid documents may go to the clinic closest to where they live to seek advice on how to access the benefits of the public health system and obtain the documents required for applying to the Department of Foreign Affairs and Migration of the Ministry of the Interior and Public Security for a one-year temporary visa (arrangements coordinated by the Social Organizations Division, the Ministry of Health and the Department of Foreign Affairs and Migration).

103. According to communication No. 3229 of 11 June 2008 on “Pregnant women in an irregular situation”, the Department of Foreign Affairs and Migration agreed with the Ministry of Health (circular No. 1179 of 20 January 2003 supplementing circular No. 6232 of 26 May 2007) (a) to grant temporary residence visas to pregnant women who regularly attend check-ups at the clinic corresponding to where they live. In order to obtain the visas, the women must submit an antenatal check-up certificate in addition to the general documentation required. Foreign women whose residence visas have expired may also apply under this scheme if they demonstrate their irregular status and that they are receiving antenatal care in the public clinic that corresponds to where they live. In this way, this migrant group can quickly regularize their situation and obtain care within the public health network under the same conditions as Chilean women; and (b) that foreigners in Chile who have not yet regularized their migration status have the right to receive emergency medical attention and may also obtain health care on a private basis if they pay the corresponding medical fees and hospital charges.

104. The Ministry of Health guarantees the application of the health promotion and protection measures taken to maintain the population’s health and prevent biomedical risks to all persons living in the national territory, regardless of their social security status and free of charge in the public clinic or health post that corresponds to each person’s place of residence, without prejudice to their provision by duly authorized public or private agencies.

105. As to access to education, article 19, paragraph 10, of the Constitution guarantees the right to education for all children and young people living in Chile regardless of their country of origin or the fact that their parents have not regularized their residence status in Chile – which may not be cited as grounds for denying an immigrant child or young person the right to enrol and remain in the Chilean school system and progress through it. Moreover, immigrant schoolchildren have the right to school insurance, travel passes, scholarships and school meals, among other benefits, just like Chilean schoolchildren. In the case of immigrants who came as refugees, children of asylum seekers may apply to enrol at a school provided they present the corresponding authorization from the Provincial Department and a valid certificate of regularized migration status issued by the Department of Foreign Affairs and Migration.

106. From the viewpoint of the Ministry of the Interior and Public Security, one of the pillars of migration policy is the promotion of regularization, and indeed most immigrants to Chile can apply for residence. In that sense access to social benefits for immigrants is guaranteed, since residence leads to registration, and acquisition of a national identity card, which facilitates their incorporation in the social security systems that have been established for the Chilean population and which include the health and education systems. That said, it is true that immigrant status gives rise to situations of greater vulnerability and exclusion than nationals experience, and that these are exacerbated in the case of women, which makes it harder for them to obtain residency status. They risk facing problems derived from a lack of documentation, may suffer discrimination or find themselves the victims of migration offences, while also in many cases having to cope with poverty. Chile has therefore introduced a series of measures to help integrate this group. These target the most vulnerable groups, such as immigrant women, children and adolescents, and focus on regularizing their migration status so as to provide them with the instruments they need to

access basic social services. The initiative has to come from the immigrant women and their families themselves, however, since they have to request a residence permit for themselves and their dependent children when they apply for one of the social services established in the special agreements.

107. The agreements in question are:

(a) An agreement on special action to protect motherhood, in force since 2003. Access to social services is facilitated for pregnant foreign women, regardless of their migration status. Moreover, pregnant foreign women are allowed to apply for a temporary residence permit. The records of the Department of Foreign Affairs and Migration associated with the agreement show that 3,489 immigrant women were granted temporary residence permits between 2005 and 2011 on account of pregnancy;

(b) An agreement to extend access to the protection network for victims of domestic violence to immigrant asylum seekers, in force since 2009. The objective of this agreement is to facilitate access for immigrant women, asylum seekers and refugees living in Chile to the protection network for victims of domestic violence. In addition, access to residency is also facilitated for those who apply and those whose migration status is irregular. The records of the Department of Foreign Affairs and Migration show that a temporary visa was granted in three cases of women victims referred from other public services and in another case where the Department acted *ex officio* on the basis of the information available and the information provided by the woman herself;

(c) An agreement on access to temporary residence visas for victims of human trafficking, in force since 2011 when Act No. 20507 came into force. Residence permits have been granted under this agreement to six persons (five women and one man) as part of the protection arrangements for victims and witnesses in human trafficking cases.

108. In addition to the agreements listed above, which mainly benefit women directly, other agreements have been reached to protect the children of immigrants, but which also have an impact on the situation of migrant women inasmuch as they enable them to use national childcare facilities, which makes it easier for them to enter the labour market.

109. The relevant agreements that are currently in force are the agreements on:

- (a) Access to education for the children of immigrants;
- (b) Access to preschool education for the children of immigrants;
- (c) Access to the public health system for the children of immigrants;
- (d) Access to the child protection network.

110. Access to benefits under the Chilean social security system is via the social security questionnaire developed by the Ministry of Social Development. The questionnaires make it possible to identify and prioritize those eligible for social benefits, using vulnerability as the yardstick of the new rights-based social security policy. Anybody, regardless of their nationality or migration status, can ask to be interviewed. Beneficiaries are entered in the system and registered by nationality. If they have still not regularized their residency status in Chile, they are recorded under national identity card No. 0 (zero). Anybody living in Chile can therefore be interviewed for the questionnaire and thus be incorporated into the social security system, which has two subsystems: “Chile Solidario” (Chile in solidarity) and “Chile Crece Contigo” (Chile grows with you).

## **1. Chile Solidario**

111. Once families have been interviewed and the social protection questionnaire has been completed, the Chile Solidario programme contacts the most vulnerable families and

persons and makes outreach and support arrangements to ensure that they are incorporated into the social security network (for example by regularizing their migration status) in such a way that they can make effective use of the opportunities provided in the form of programmes, services and cash payments. To that end, Chile Solidario runs its own outreach and training programmes, which also work as counselling, support and intermediation services. These are specialized psychosocial support services, and use well-defined socio-educational methods to draw up support plans that help families and individuals make the transition to other forms of social integration.

112. The programmes run by Chile Solidario are:

(a) The Bridge Programme, which supports families living in extreme poverty. The programme is executed by local municipalities with administrative and technical assistance from the Solidarity and Social Investment Fund (FOSIS);

(b) The Ties Programme, which supports vulnerable adults and older adults who live alone. The programme is executed by local municipalities with the technical assistance of SENAMA;

(c) The Street Programme, which supports homeless men, women and children. The programme is executed by municipalities, provincial governments and NGOs and managed by the Ministry of Social Development, which also provides technical assistance;

(d) The Pathways Programme, which supports children in families that have to deal with an enforced separation because one member has been sent to prison. The programme is executed by NGOs, but was designed by, and receives methodological support from, the Ministry of Social Development.

113. Chile Solidario arranges for basic buffer grants to be paid to eligible recipients. The most important of these are the family subsidy, the drinking water and drainage service subsidy, the identity card subsidy and the basic solidarity allowance. These benefits are only payable, however, through the banking system, which makes it impossible to collect them without a valid Chilean identity card, which may be the case of many immigrants. On the other hand, the Chile Solidario protection network comprises various institutions, and immigrants may apply to them if they meet the vulnerability criteria. In the health and education sectors, these institutions include:

(a) The National Health Fund (FONASA), which is responsible for providing health care both to those who pay 7 per cent of their income into the fund each month and to those who do not have any resources of their own;

(b) The National Kindergartens Board (JUNJI), which is responsible for providing crèches, early childhood education and childcare;

(c) The National School Support and Scholarships Board (JUNAEB), which is responsible for designing and managing quality products, services and scholarships that promote students' rights and social security;

(d) The Integra Foundation, which is a private, not-for-profit organization that serves as a national human resources and infrastructure network for the benefit of young children.

## 2. Chile Crece Contigo

114. Chileans and foreigners have equal access to the Chile Crece Contigo programme, unlike Chile Solidario. There is no difference, as far as the conditions of access to benefits and services are concerned, between illegal foreigners and those who have regularized their situation, because participation in Chile Crece Contigo is through the public health system, where, for humanitarian reasons, nobody may be denied access to health care whatever

their situation. Access to Chile Crece Contigo is through the Biopsychosocial Support Programme (PADB), which has been developed by the public health-care network and targets all the children in the public health system. PADB is executed by the Ministry of Health through its 29 health services and is the entry point to the Chile Crece Contigo Programme. It consists of intensive support for the care, monitoring and promotion of health in early childhood, from gestation through to 4 years of age.

115. No legislation has been passed to protect the labour rights of migrant women in particular. However, a large proportion of immigrant women work in domestic service, and they therefore benefit from the measures established for domestic workers in Act No. 20336, such as the revised minimum wage, the right to maternity leave and the right to time off.

116. Act No. 20507 does not directly address the situation of immigrant workers either, but it enhances the protection of their rights inasmuch as it criminalizes trafficking in persons for the purposes of various types of exploitation, including labour exploitation, and establishes provisions to protect the rights of victims of human trafficking.

117. The most important legal provisions applicable to women migrant workers are outlined below:

(a) According to article 2 of the Labour Code, acts of discrimination contravene the principles of labour law. Acts of discrimination are defined as any distinction, exclusion or preference based on race, colour, sex, age, civil status, union membership, religion, political opinion, nationality, or national or social origin whose object is to eliminate or reduce equality of opportunity or treatment in employment or occupation;

(b) Article 19 of the Labour Code stipulates that at least 85 per cent of employees working for the same employer must be Chilean, except if the employer employs less than 25 workers in total. Article 20 of the Code establishes the rules for calculating the proportion of Chilean workers: rule No. 3 states that “a foreigner whose spouse or children are Chilean or who is the widow or widower of a Chilean shall be considered Chilean”, and rule No. 4 adds that “foreigners who have been resident in the country for over five years, not counting occasional absences, shall be considered Chileans”;

(c) Many women who enter Chile as immigrants work as domestic workers in private households, a position that, until a few years ago, was not protected by Chilean law to the same extent as other types of work. The latest legal reforms to benefit domestic workers in Chile are:

(i) Act No. 19010 of 1993, which provides that domestic workers are, under all circumstances, entitled to severance pay equivalent to 4.11 per cent of their monthly wages;

(ii) Act No. 19250 of 1993, which changed the working hours, rest periods and remuneration of domestic workers. Time off for live-in domestic workers was extended to 12 hours. The working day of live-out domestic workers was limited to 12 hours, with one-hour breaks. For the first time a minimum monetary wage (paid in addition to board and lodging) was established for domestic workers and set at 75 per cent of the minimum monthly wage of other types of workers;

(iii) Act No. 19591 of 1998, which established that domestic workers were eligible for maternity leave;

(iv) Act No. 20255 of 2008, on social security reforms, which brought domestic workers’ minimum taxable income for social security purposes up to parity; their

contributions must be proportional to the minimum monthly income of other workers;

(v) Act No. 20279 of 2008, which brought domestic workers' minimum monthly wage up to parity with other workers.

## **M. Refugee women**

118. Act No. 20430 on refugees was published in 2010, followed by its Regulations.<sup>13</sup> These uphold universal principles and provide that “when determining refugee status [...] a gender-sensitive approach shall be used”, and special treatment shall be given when “the applicant claims to have been the victim of sexual or gender-based violence” (article 58 of the Regulations). To be awarded refugee status in Chile, applicants need only show that they are persecuted, which means demonstrating a “well-founded fear of persecution” (article 2 of Act No. 20430 and article 2 of its Regulations) and, although gender-related persecution is not specified as a possible criterion, it must be taken into account in the assessment of a persecution claim, together with information on the country of origin, cultural considerations and other elements. Gender-related persecution can thus be demonstrated by other means. Also, in the last few years, the State has used extreme vulnerability, and gender in particular, as a criterion in resettlement cases.

119. With regard to measures to prevent discrimination and improve the economic and social situation of refugees, article 13 of Act No. 20430 specifically states that applicants for refugee status shall enjoy the rights and freedoms established for all persons in the Constitution, the law and regulations, and in the international human rights instruments that Chile is party to, adding that refugees and their families are entitled to health, education, housing and work, whether as employees or as own-account workers, under the same conditions as other foreigners, which, taken together with article 19, paragraph 2, of the Constitution, means that no distinctions may be made between refugees and the other inhabitants of the Republic. Furthermore, articles 45 to 47 of Act No. 20430 and article 13 of its Regulations grant refugees the right to obtain a permanent residence permit and to enjoy “all the rights established in this law and the international conventions on the subject”.

120. Since 2006, the Ministry of the Interior and Public Security has allocated budget resources to projects that help integrate refugees and applicants for refugee status. For these projects, funds are transferred to civil society organizations with a solid reputation for helping applicants for refugee status, to enable them to provide support particularly during the initial settling-in period in Chile. The funds are used in developing actions aimed at meeting the needs of these persons in an appropriate way depending on the risk situations they may present, and notably in the areas of subsistence, physical and mental health care, help with schooling or finding a job, vocational training grants and seed capital. Trends in the budget resources allocated to the integration of refugees in Chile are set forth in annex VIII (question 19, table 1).

121. In 2009, it was decided that the refugee integration projects needed a special procedure for detecting particularly vulnerable cases, and these are now transferred to a technical committee, the Board on Vulnerable Cases and Women at Risk. The minutes of the Board's meetings and individual case records are confidential, but it can be confirmed that it meets regularly and has been developing and applying tools for diagnosing and

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<sup>13</sup> Decree No. 837, published in the Official Gazette of 17 February 2011, approving the regulations to Act No. 20430 on the protection of refugees.



assessing levels of vulnerability. It makes arrangements to enable longer-term integration plans to be established for persons who have suffered more serious rights violations or who find themselves in more complex situations of exclusion. In these cases, funding is made available for longer periods and the subjects monitored on a permanent basis to see how the cases evolve and decide what corrective action may be required. The Board comprises representatives of the Social Affairs Department, the Department of Foreign Affairs and Migration, the civil society organizations that execute the integration projects and the Office of the United Nations High Commissioner for Refugees (UNHCR).

## **N. Marriage and family relations**

122. The legislation on divorce, set forth in Act No. 20286, facilitates divorce by mutual consent by establishing that the parties may act personally or through a representative, which expedites the process (Act No. 20286, art. 68). Also, under article 106, those who file for divorce on some of the grounds listed in article 54 of Act No. 19947 (which directly or indirectly refer to physical and/or psychological violence) are no longer obliged to go through mediation beforehand and can file for divorce directly instead, which also expedites the process. According to the new final section of the transitional article of Act No. 19947, subject to exequatur, “rulings on divorce cases handed down by foreign courts shall be valid in Chile despite having been issued prior to the entry into force of this law”.

123. As to initiatives to ensure spouses’ equal rights with regard to the administration of their assets, on 5 April 2011, the President of the Republic sent a message to the Congress containing bill No. 7567-07 “amending the Civil Code and other laws governing the matrimonial property regime”, which is being processed together with the other two bills that propose amendments to the wording of the original instrument, bill No. 7727-18<sup>14</sup> and bill No. 5970-18.<sup>15</sup>

124. Bill No. 7567-07 is now in its first stage in Congress. It has been approved by the Family Affairs Committee and is now before the Constitutional Affairs Committee. It is being handled as an urgent priority. The bill is based on three principles:

- (a) The equal status of husband and wife before the law;
- (b) The full capacity of both spouses married under the matrimonial property regime;
- (c) The protection of the economic interests of the spouse who has devoted him or herself to the care of the children or the home or who, for those reasons, has worked less than he or she would have liked or was able to.

125. The main objectives of the bill are to:

(a) Recognize that women are fully capable of discharging responsibilities and that men and women are equal in rights and opportunities, as set forth in the Constitution. Women who are married under this property regime will thus be allowed to manage the matrimonial property as well as their own assets, rights which do not exist under current Chilean law. To achieve this:

- (i) The provision establishing the husband as the “head” of the matrimonial property partnership is eliminated, and it is established that matrimonial property

<sup>14</sup> “Amending the Civil Code and other laws on the matrimonial property regime”.

<sup>15</sup> “Amending various provisions of the Civil Code, establishing the right of women married under the matrimonial property regime, to manage the assets that are theirs by inheritance, legacy or gift.”

may be managed by the husband or the wife, as they choose. Only if there is no agreement on this matter shall the matrimonial property be managed jointly by both spouses;

(ii) Assets owned individually will be managed by each spouse. The provisions of Chilean law whereby the husband has the right to manage the wife's assets merely by virtue of the fact that they are married under the matrimonial property regime are thus repealed;

(b) Ensure that the new matrimonial property regime supersedes all previous regimes, since it recognizes the value of the contribution made (to the marriage and the other spouse's professional development) by the spouse who spends the most time caring for the children and the home. It is a regime that protects the spouse who has spent the most time caring for the children and the home (which is usually the wife) by establishing their right to half the assets accumulated during the marriage;

(c) Continue to protect women. This is achieved because:

(i) The bill empowers women to manage the matrimonial property;

(ii) Women will manage their own assets;

(iii) It increases the amount of assets that count as own assets because assets currently classified as matrimonial property will now be classified as own assets and will consequently be managed separately by each spouse;

(iv) Women will continue to be the sole owners of the reserved assets if it is the husband who manages the matrimonial property;

(v) If the spouse designated as the administrator is absent or incapacitated, the other spouse may manage the matrimonial property on an extraordinary, provisional basis so that the assets can be made available to cover the family's needs. These powers, with the exception of those related to reserved assets, are granted to both spouses whether they are the administrator or not, which means the husband has them as well. The bill thus safeguards the principle of equal rights while still protecting the spouse who has spent the most time looking after the children and the home;

(d) Increase the assets managed separately by each spouse by doing away with the relative assets, i.e. *inter alia*, the money or movables that the spouses owned prior to the marriage or that they acquire free of charge during the marriage, and reclassifying them as the individually owned assets of each spouse, to be managed by them and not solely by the husband as is the case under the legislation currently in force;

(e) Enable the spouse who is not the designated administrator to dispose of assets in emergency situations: if the spouse designated as the administrator is absent or incapacitated, the other spouse may dispose of assets on an extraordinary, provisional basis to cover the family's needs.

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