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to the special session of the General Assembly entitled
“Women 2000: gender equality, development and peace
for the twenty-first century”: implementation of strategic
objectives and action in critical areas of concern and
further actions and initiatives**

Statement submitted by Centro Regional de Derechos Humanos y Justicia de Género, a non-governmental organization in consultative status with the Economic and Social Council

The Secretary-General has received the following statement, which is being circulated in accordance with paragraphs 36 and 37 of Economic and Social Council resolution 1996/31.



Statement

Violence against women

The State of Chile does not yet have a single register with information on the prevalence of violence against women in the country. According to the most recent study of victimization, however, at least one in every three women has experienced violence in her couple relationship, and domestic violence is the second most reported crime in the country. In recent years, its most serious manifestation, femicide, has drawn greater attention to violence against women. The term, however, pertains only to murders within a current or past couple relationship, excluding a variety of situations in which women are murdered because of their gender.

The legal approach to violence has been fragmented, which is why a domestic violence case will be heard by various courts, depending on the consequences of the abusive act. Psychological violence cases are heard in family court, as are physical violence cases for which there is no evidence. Physical violence cases for which there is evidence will be heard in criminal court — not on gender violence charges but rather for the specific crime with which they are associated, which can range anywhere from injuries, to certain sex crimes to femicide. Despite efforts to expand the scope of protection through the introduction of various parliamentary motions, to this day, only those considered family members are entitled to protection under the law; dating relationships (“pololeos”) in which the couple is not living together and certain close family relations remain outside its scope. Thus, while the recent Femicide Act represents progress in that it recognizes the issue, it does not cover relationships in which the couple is not cohabiting.

Application of domestic legislation on violence against women (Act No. 20.066 on Domestic Violence) is inadequate. Frequency of occurrence is what determines whether the case will be heard by the criminal court or the new family courts. The family courts, however, determine in a preliminary hearing whether or not violence has been habitual. If it has not been habitual, violence is characterized as an offence which, in itself, stands in contrast to international law. Moreover, to reach a settlement, the new family courts, currently understaffed for purposes of carrying out the new procedures and meeting the needs of their users, mainly women, hold hearings which, in practice, take place 30 days after an incident of violence has been reported, and then there is the problem of how to protect the victims who are living through it. The law prohibits female victims of violence from filing complaints directly with the Public Prosecutor’s Office, which undermines due process.

It is also important to point out the lack of institutional mechanisms to coordinate the work of the two courts responsible for prosecuting cases, coupled with the dearth of public services to provide information and counselling to women with regard to judicial proceedings; women are even less likely to be provided legal defence services in court.

In general, the response of the justice system has mainly been to provide alternative outlets, such as a conditional stay of proceedings, which does not involve the imposition of a penalty. This situation is worrying in that it perpetuates a practice that delegitimizes punishment as an element in policies to eradicate violence against women, translating into impunity for the crimes. Nor is there any follow-up or monitoring of the legal consequences or measures taken in respect of the conditional stay of proceedings. Of equal cause for concern is the decrease in

precautionary measures such as preventive detention, a ban on approaching the victim or the obligation to leave the joint place of residence. Such measures are essential to protect victims and their families, as they ensure women's safety and reduce the risks to which they are subjected. This situation highlights the imperative need to train judicial personnel in gender and human rights.

With regard to indigenous women, the practice of reparations in cases of domestic violence or violence within the family (despite the legal ban on applying this alternative outlet in cases of violence within the family) gives cause for concern. At the request of the Office of the Public Defender, and citing articles 9 and 10 of International Labour Organization Convention No. 169, criminal courts have accepted reparations as a means of settlements between the victim and defendant and dismissed the cases. Those decisions were confirmed by the higher courts. It is alarming that such sentences have not been based on ancestral Mapuche custom and that they have been handed down contrary to international law on women's human rights, which prohibits impunity for such offences.

It is disturbing that the new law on trafficking (Act No. 20.507) does not address domestic trafficking in persons, especially as there are indications of its existence in Chile. Furthermore, while the law provides that victims of such offences must be protected, given shelter and even residence permits, those provisions are not enforced, or their enforcement is curtailed. For example, trafficking victims encounter difficulties in applying for work permits, which can cost up to \$400, amounts they cannot possibly pay. Worse still, one year after the adoption of the law, the State is still not certain of its budget for preventing that offence; the number, rank and institutional affiliation of the civil servants it will train; or how and when statistics disaggregated by sex will be elaborated in a single register system that distinguishes trafficking for sexual exploitation from trafficking for labour exploitation, effectively acknowledging the magnitude of the phenomenon in the country.

Institutional violence against women

A variety of social movements have sprung up since 2011, demanding legal and constitutional change. Unfortunately, in the wake of the demonstrations organized by these movements, a pattern of sexual violence against women by police officers began to be observed: forced nudity, threats of rape, blows to the vagina and breasts of demonstrators — always accompanied by sexual insults, seriously harming the physical and psychological integrity of those women and their dignity, compounded by the fact that many of them were minors.

Moreover, in recent years, a policy of criminalization has been the State's response to indigenous social protests against overexploitation of natural resources in their territories by major investment projects and the reclaiming of their ancestral lands. Dozens of Mapuches have been jailed and since September 2010, the rights of members of the Rapa Nui people have also been violated. The pattern of police violence continued through 2011 and 2012, with various episodes of police repression in Mapuche communities following violent raids by Carabineros, leaving women, children and elderly persons injured and affected by the indiscriminate use of tear gas. In that regard, the criminalization of indigenous claims — whereby matters which the State should be settling by political means are shifted to the criminal courts — is disturbing.

As for female victims of enforced disappearances, executions and sexual violence such as torture during the Chilean military dictatorship (1973-1990), it should be noted that the crimes of lese-humanity committed in Chile have not been addressed from a gender perspective. According to the Truth and Reconciliation Commission, 126 women were executed for political reasons and 71 female prisoners disappeared. As for torture victims, the Valech Commission (mandated to identify political imprisonment and torture victims) discharged its functions on two occasions for brief periods of time and is currently inactive. While it was functional, the Commission recorded testimony from 3,399 women in its initial investigation and 1,580 women in its second, almost all of them victims of sexual violence. Nonetheless, very few cases of surviving torture victims have been prosecuted. The process of identifying victims and reparations lacked a gender approach that would have included information on specific violence against female political prisoners.
