

Chile

1. Discrimination in the family

a) Overarching legal framework for marriage

The law provides women with the same rights as men to enter into marriage (Civil Code, Art 102). While there is no specific legal provision mentioning forced marriage, the law does not recognise marriages based on the absence of free and spontaneous consent of both spouses, which are the ground for the annulment of the marriage (Civil Code, Art 105).

In April 2015, Chile adopted the Law on Domestic Partnership (*Acuerdo de Unión Civil, AUC*). This Law creates a new contractual entity recognising de facto unions (Law 20830, Art. 1). It consists in an agreement entered into between two people who share a household, with the purpose of regulating the legal effects resulting from their stable and permanent emotional life in common. The law also grants the civil status of domestic partner for both heterosexual and homosexual couples (Lennon et al., 2015). Additionally, the rules provided in the Civil Code with respect to family assets are applicable to the Law on Domestic Partnership (CEDAW 2016).

The law recognises both civil marriage and religious marriage (Law 19947, Art 20). However, religious marriages have to be performed by “religious entities with a legal status of public law” (Law 19947, Art 20).

b) Child marriage

The legal age of marriage is 18 years for both women and men (Civil Code, Art 106). If either of the future spouses is between 16 and 18 years old, he or she must obtain the consent of the relative responsible by law to enter into the marriage (Civil Code, Art 107). If this legal requirement is not met, the spouses are punishable for penalty or lose their inheritance rights (Civil Code, Art 107).

The Inter-American Commission on Human Rights expressed its concerns as this new provision is considered contrary to the international standards for the protection of the rights of the child (Inter-American Commission on Human Rights, 2009).

c) Household responsibilities

Under Chile’s default matrimonial property regime, the husband has the authority to administer the property of the family and of his wife unless it is expressly agreed in advance that each spouse’s property shall be completely separate (Civil Code, Art 1749). The spouses can agree to this regime before or during the marriage ceremony (but cannot switch from a different regime to the joint property after marriage). The husband administers all the assets while the marital partnership is in force, which involves both assets acquired before the marriage and during the union, including gifts and inheritances, except the reserved property of the wife (which includes her professional income) (Civil Code, Art 1749).

The law mandates equal share of parental authority of the children between the father and the mother (Civil Code, art. 244).

The CEDAW Committee has expressed its deep concerns about the persistence of legislation which discriminates against women with regard to the administration of marital property (CEDAW, 2006). Moreover, the reform on this legal provision has been pending since 1995 (CEDAW, 2006).

d) Divorce

The law had not cover divorce did until 2004 (Civil Code, Art 102). Since the new Chilean divorce law in 2004, separation rates have almost quadrupled in Chile. Despite the higher prevalence of divorce in Chilean society, there is still a stigma attached to being divorced (McGarry, 2010).

Both women and men have the same right to initiate divorce (Civil Marriage Law, Art 54). The law requires that spouses demonstrate that they are no longer cohabitating for more than a year in order to get a divorce (Civil Marriage Law, Art 55). Divorce involves a judicial procedure, in which one spouse sues the other, or both reach a mutual agreement. This lawsuit can be based on fault, when the defendant is charged with violating the duties and obligations that marriage imposes, or of the duties and obligations with respect to their children (Civil Marriage Law, Art 54). A peculiarity of divorce trials in Chile is that the judge, in the first hearing, must urge the parties to reach an agreement to overcome their dispute, and verify the intention of the parties to allow the preservation of the marriage where possible (Civil Marriage Law, Art 67). This aims to satisfy the legislators who strongly opposed the recognition of divorce in 2004 and insisted that divorce weakens the family. As a result, it is considered a duty of the State, represented by the judge, to urge the parties to maintain the marriage, as a foundation of the family (Horvitz et al, 2015). However, under article 106 of the Marriage Act, those who file for divorce on the grounds listed in article 54 (which directly or indirectly refer to physical and/or psychological violence) are not obliged to go through mediation beforehand and can file for divorce directly instead, which expedites the process (CEDAW, 2012).

The Marriage Act mandates that parents reach an agreement after separation with regards to the custody of their children (Civil Marriage Law, Art 62). If an agreement is not established, the judiciary will decide on the matter. The law also allows compensation for the spouse who has “borne the bulk of childcare and domestic responsibilities” and, therefore, could not fully develop a remunerated professional activity (Civil Marriage Law, Art 62). Those compensations are not subject to income tax. With this measure, the Government has sought to ensure that persons who have devoted themselves to raising children or homemaking should receive the corresponding economic compensation in full (CEDAW, 2011).

e) Inheritance

Daughters and female surviving spouses have equal rights to sons and male surviving spouses to inherit land and non-land assets (Civil Code, Art 983). This legal provision, however, conflicts with Article 1749 of the Civil code on rights to be head of the households. Husbands are the administrators of property inherited by their wives if separation of property was not established before the celebration of marriage or if it was not expressly mentioned in the will that the inherited property is not meant to be part of the community property (Civil Code, Art 1749).

2. Restricted Physical integrity

a) Violence against women

Chile ratified the Inter-American Convention on the Prevention, Punishment and Eradication of Violence against Women ('Convention of Belém do Pará') on November 15, 1996. Its obligations under international law require that the Chilean State act with due diligence in preventing, eradicating and punishing discrimination against women, in all its manifestations, and that it promotes women's equality in every walk of life (Art 30). Moreover, as part of the due diligence obligation, the Convention of Belém do Pará requires that states take all appropriate measures, including legislative measures, to amend or repeal existing laws and regulations or to modify legal or customary practices that sustain the persistence and tolerance of violence against women (OAS, 2009). In order to do so, in most of the countries of the Latin American Region who ratified the Convention, "first generation" laws have been put in place that were mainly aimed at confronting domestic violence and criminal codes have been reformed to combat sexual offences. In many countries, there is a continuous debate on the most suitable methods for improving current laws, which in the cases of Chile has led to the adoption of new "second generation" laws that have taken into account the lessons learned in the previous stage. These new laws have sought to correct procedural and normative aspects which favour impunity and the lack of protection for the victims (UNICEF, 2007).

Chile currently does not have a specific law addressing violence against women, but instead, the country has several separate laws covering different forms of violence including domestic violence (Domestic Violence Law *No 19.325*), sexual harassment (Sexual Harassment Law, *No 20.005*) while sexual violence is addressed by provisions within the Criminal Code (Law amending the Criminal Code in relation with sexual crimes, *No 19.617*).

In 2015, Act No. 20.820 created the Ministry for Women and Gender Equity in charge of ensuring the coordination, consistency and coherence of gender equality policies, plans and programmes while the responsibilities related to the implementation of such policies, plans and programmes were assigned to the National Service for Women and Gender Equality. A National Plan of Action on Violence against Women 2014-2018 was also established and aims to prevent, punish and eradicate violence against women.

In addition, a National Programme to Train Community Advisers on Gender Violence Issues was implemented in 88 communes in the country and seeks to prevent gender violence through coordination and strengthening of the local social fabric (CEDAW, 2016). In the area of training, note should be made of an e-learning course on tools for dealing with violence against women (CEDAW, 2016). The course aims to build the capacities of actors at the forefront of preventing such violence and providing care for the victims. Of the 475 civil servants who participated in the training in 2016, 22% were law enforcement officers (CEDAW, 2016). The judiciary also established activities and programmes for training judges so that, sensitised to all forms of violence against women, they may provide appropriate assistance to the victims (CEDAW, 2016). It is also worth noting that the average length of judicial proceedings involving violence against women, from the occurrence of the offence to the final verdict, has been reduced from 17.5 months in 2013 to 15 months in 2014 and 9 months in 2015 (CEDAW, 2016).

b) Domestic violence

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”. The law on domestic violence addresses physical, psychological or emotional abuse within the family unit as a crime, while establishing penalties for offenders. The law does not mention sexual or economic abuses, although marital rape is regulated by a separate act (Act No. 20480 on femicide).

In Chile, women remain the primary victims of domestic violence, with one of the highest victimisation rates in the OECD (OECD, 2015). Regarding the law’s application, the Inter-American Commission on Human Rights particularly manifested its concern over procedural and jurisdictional problems between the Public Prosecutor’s Office and the Family Courts having to do with the definition of “habitual abuse” (OAS, 2009). Domestic violence cases currently enter the judicial system through the family courts which analyse the “habitualness” of the abuse (OAS, 2009). If that requirement is met, the family court finds that it does not have jurisdiction and refers the cases to the criminal courts. This slows the processing of cases and the victims are left defenceless and their right to an effective judicial recourse is impaired (OAS, 2009).

The Chilean State has developed various initiatives in the form of policies, programs and plans aimed at solving some of the problems in the area of domestic violence. Act No. 20066 mandates 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.

The Servicio Nacional de la Mujer (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 (CEDAW, 2012). This legal mandate also allows SERNAM to monitor the activities of the various actors involved, which has translated into a victims’ assistance network (CEDAW, 2012).

In the last years, the network of protection facilities for women victims of grave violence has been strengthened. There are currently 103 women’s centres and since 2014, 20 new shelters have been opened throughout the country, while five more are scheduled to open in 2017. In 2015, women’s centres provided support to 33 127 women nationwide.

Additionally, in August 2016, the Ministry for Women and Gender Equity, the Public Prosecution Service, the Carabineros (police) and the Investigative Police signed an agreement on the unified guidelines for detecting risks for women victims of domestic violence (CEDAW, 2016). This measure aims to encourage women to report acts of violence by requiring the bodies at the forefront, namely the law enforcement agencies and the Public Prosecution Service, to facilitate the victims’ access to justice, informing them officially on when and where they may file a complaint and how to proceed in that connection (CEDAW, 2016). The Chilean Police Force has also designed an emergency line to offer orientation to domestic violence victims (OAS, 2009). Other noteworthy initiative includes the

establishment of the System for the Prevention of Domestic Violence and Care and Protection of its Victims, which seeks to reduce the incidence of domestic violence by increasing the coverage and effectiveness of assistance and protection services for women victims (CEDAW, 2012).

The survey conducted by the International Centre for Research on Women (ICRW) in 2013 found an association between sexual violence and men's employment situation (Barker et al., 2013). Men with more precarious working conditions (without work contracts) were more likely to report the perpetration of sexual violence against female partners at some point in their lives (Barker et al., 2013). Another finding of the survey was the association between having ever paid for sex and having committed sexual violence against female partners (Barker et al., 2013). This suggests that the same set of gender norms underlie male violence against female partners and paying for sex (Barker et al., 2013).

c) Rape

Since 1999, a number of measures have been implemented to address the issue of rape (Criminal Code, Art 361) and sexual assault (Criminal Code, Art 366) in Chile. The Criminal Code was amended in 1999 with Law 19.617, which redefined and broadened the scope of the offense. The amendment resulted in the introduction of new categories of victims, the removal of the qualification of having a "good reputation" in order to file charges and the criminalisation of marital rape. Additionally, the requirement of a marital contract in order to file a charge of criminal rape was eliminated. The law also provides for increased penalties for aggravated forms of rape and sexual violence (in relation with the age of the victim or disability) (Criminal Code, Art 366).

Furthermore, the Ministry of Justice has a number of offices dedicated for assisting rape victims. However, experts contend that most rape cases are still unreported (Impowr, 2012). In 2004, the Criminal Code was modified to increase the legal sexual age of consent to 14, whereas the previous age was set at 12. Through this law, sexual intercourse with any minor under the age of 14, regardless of whether the parties believed it was consensual, is considered a crime. This legislative modification was significant for Chilean society, as it took place at a time when it was experiencing feelings of outrage and horror, in the face of high profile sexual abuse and pornography cases (Ahumada, 2009).

The adoption of this law also led to the creation of a policy by the Prosecutors office which establishes the legal obligation of health care professionals and teachers to report any adolescent under the age of 14 who is sexually active or seeks contraceptives (Ahumada, 2009). Once reported, it is the prosecutors' responsibility, in accordance to Chilean law, to lead the investigation of possible criminal activity, such as the existence of rape (Ahumada, 2009).

d) Sexual harassment

Chile adopted the Sexual Harassment Law ('Ley de Acoso Sexual No. 20,005') on the International Women's day, 8 March 2005. This law states that, amongst other conducts, sexual harassment - defined as a person imposing undue, non-consensual sexual demands of any nature on another person and where this threatens or harms their work situation or opportunities at work - is illegal (Labour Code, Art 2). Hence, the definition included and covers harassment by a superior and harassment by co-workers. However, this definition relates only to work relations but does not cover sexual

harassment in other places such as public places or educational settings. The law also includes sexual harassment as a legitimate ground for dismissal of those who sexually harass others. Prior to 2005, employers seeking to fire sexual harassers cited other legal grounds on lack of honesty or moral integrity (Becerra, 2016).

Act No. 20526, for its part, defines and punishes the sexual harassment of minors, implicitly covering sexual harassment at school. However, the notion of sexual harassment has yet to be explicitly extended to other circumstances (CEDAW, 2012).

Despite those legal measures to fight sexual harassment, there is still a stigma attached to being sexually harassed, particularly in a professional setting. A study conducted in 2016 in Chile on the effectiveness of the new law on sexual harassment found that some women were blamed because of failure to clearly establish an appropriate rapport with men, or for behaviour such as dressing seductively (Becerra, 2016). Victims of sexual harassment often hesitated to report precisely because of fear they may have done “something” for harassment to happen (Becerra, 2016). This replicates stereotypes observed in sex offenses whereby women are perceived to be at fault for the harm inflicted on them (Becerra, 2016)

In addition, street harassment is prevalent in the country (Observatorio contra el acoso callejero, 2015). In a study conducted in 2015, two out of three respondents acknowledged that they had suffered from street harassment within the past 12 months; 99% of the victims were female (Observatorio contra el acoso callejero, 2015).

e) Female genital mutilation

There is no known practice of female genital mutilation in Chile.

f) Abortion

Chile has the most restrictive abortion law in Latin America and one of the strictest in the world. Under Chile’s anti-abortion law, passed in 1989 during the final stages of Augusto Pinochet’s regime, abortion is illegal even when the life or the health of the woman or girl is at risk and when the pregnancy is a result of rape (Criminal Code, Art 344).

This highly restrictive law fuels unsafe, clandestine abortions, putting women’s lives at risk. Moreover, Chile’s abortion ban creates a climate of fear among health professionals whose first thought is often to report a woman or a girl to the police for a suspected abortion rather than give them life-saving treatment (Amnesty International, 2015).

The CEDAW Committee has expressed its deep regrets that all the recent parliamentary initiatives aimed at decriminalising abortion have failed, including those where the health or life of the mother are at risk, in cases of serious foetus malformation or rape and that abortion remains a criminal offense in all circumstances (CEDAW, 2016). The UN Committee on Economic, Social and Cultural Rights also recommended that Chile expedite adoption of the pending abortion bill and consider broadening the circumstances in which abortion is permitted to ensure the bill’s compatibility with women’s right to health and life (CESCR, 2015). At the time of writing, a bill legalising abortion was being examined by the Senate.

3. Restricted Access to productive and financial resources

a) Secure access to land and non-land assets

The law provides unmarried women with the same rights as unmarried men to own, use, make decision and use land and non-land assets as collateral (Constitution, Art 19.2 & 24). However, that is not the case for married women. In the default property regime, assets acquired before and during the marriage, including gifts and inheritances, are administrated by the husband (Civil Code, Art 1749). Nevertheless, the husband needs the authorisation of the wife in order to complete certain acts such as using as collateral over land and non-land assets (Civil Code, Art 1749).

Chile has established specific measures to ensure women's participation in cooperatives, producer organisations and rural committees. For instance, the Foundation for the Promotion and Development of Women (PRODEMU) has a set of programs designed to promote the participation of poor women in the society and more particularly in productive activities within rural areas (OECD, 2008). These programmes target certain particular groups of women such as indigenous groups (OECD, 2008).

In addition, the government of Chile has also established a specific program called "*Adelante Mujer Rural*" which grants specific loans to rural women in order to support their economic activities (Ministerio de Agricultura, n.d.)

b) Secure access to formal financial resources

No restriction in the law regarding women's equal rights as men to open a bank account and obtain credit at a formal institution could be located.

The social assumption that a husband manages all assets creates barriers for women to access formal financial resources. If a couple separates, a woman is still required to obtain her husband's permission to access credit through collateral. According to the World Bank, women borrow less from financial institutions in economies where there are legal gender restrictions on property (World Bank, 2015). Moreover, this also restricts their ability to start a business (World Bank, 2015).

At the same time, Chile has developed various initiatives in order to increase women's access to financial services and to credit. The SERNAM (National Women Services), a ministerial office that serves as the umbrella organisation for women policies and affairs, sponsors the entrepreneurial program called "Enterprising Women". The programme is delivered through local offices in 15 territorial regions along Chile that distribute information, provide basic business training, coaching, and access to funds for women who accept SERNAM's supervision of their business endeavours.

In addition, SERCOTEC (Technology Cooperation Service), a division of the Ministry of Economics, offers national program through information centres along Chile and in local offices that provide face-to-face trainings and online business management courses (Lepeley et al, 2014). It also offers funding for start-up ventures and promotion of small and medium size enterprises (Lepeley et al, 2014). It directs a seed capital program called "Bee Capital", where women starting a business or small/medium business owners can postulate to get funds and more importantly, child care is available for women attending these centres (Lepeley et al, 2014).

c) Workplace rights

Chile has ratified ILO Conventions 100, 111, 156 189 but not 183.

The law mandates non-discrimination on the basis of sex in employment (Labour Code, Article 2). The labour code specifically covers selection criteria, but not recruitment, hiring, terms and conditions, promotions, training, assignments and termination (Labour Code, Art 2). The law also mandates equal remuneration for work of equal value (Law 20.348, Art 62 bis). Nevertheless, the labour market is characterised by significant inequalities, with large employment and earnings gaps between men and women (OECD, 2015).

While the law does not prohibit women from entering certain professions, art 211 of the Labour Code does prohibit pregnant women from carrying loads that are over a certain weight. Women can work the same night hours as men and they do not need permission from their husband or legal guardian to either choose a profession or register a business.

Women in Chile are entitled to 18 weeks of paid maternal leave (Labour Code, Art 195). However, it is important to note that only women in formal employment – and who have contributed to social security for a mandated amount of time - have the legal right to paid leave. These criteria exclude many working women in the informal sector (OECD, 2016). Over the past years, progress has been made in terms of workplace rights for working women. Act No. 20.166 extended the right of all working women to breastfeed their children under two years of age during the working day, while the Childcare Act, obliges employers to provide childcare facilities for women in paid employment.

Significant progress was also made in recognising men's role in caring for and raising children through the introduction of new provisions on arrangements for fathers to be present during childbirth, in particular men's right to take time off if their children are ill and a five-day paid paternity leave, paid in full by the employer (Labour Code, Art 195).

The inclusion of post-natal parental leave (Labour Code, Art 197) is also an indicator of advancement towards co-responsibility. Unfortunately, the percentage of men that has made use of this leave in 2016 was only 0.2% (CEDAW, 2017).

In order to support the incorporation of female heads of household into the labour force, the government also established a program "+ Capaz" and "Mujeres Jefas de Hoga". Those programs provide women with specific training, childcare facilities and after-school programs (Ministerio de la mujer y de la equidad de genero, n.d.)

The discriminatory cultural attitudes towards women's work and child- and elderly-care commitments still persist. The Inter-American Commission on Human Rights noted the link between Chilean women's unequal status within the family and their limited participation in Chile's public life and job market, due to stereotyped notions of their role in society as women and mothers. Indeed, despite the increasing, although still low, number of Chilean women joining the workforce, the division of family responsibilities between the two partners is still uneven, with the result that women have fewer options when it comes to entering and moving up in the workforce and politics (OAS, 2009)

4. Restricted Civil liberties

a) Citizenship rights

Women, regardless of their marital status, have the same rights as men to acquire, change, retain and confer their nationality to their children and foreign spouse (Constitution, Art 10). Women also enjoy the equal rights as men to register the birth of their children (Act 4808, Art 28). Married and unmarried women have equal rights as men to apply for identity cards and passports and the law does not discriminate against women with respect to the passports and other travel documents of minor children. In addition, both unmarried and married women have the same rights as men to travel outside the country.

Although anti-discrimination legislation includes the prohibition of discrimination based on sex, gender identity and sexual orientation, multiple and intersectional discrimination are not explicitly addressed in national legislation.

b) Voting

In 1934, literate Chilean women were given the rights to vote and being elected in municipal elections. In 1935, an umbrella organisation for several women's groups was founded to campaign for complete legal equality of men and women. Even though women were elected mayors and city councillors, Congress did not give them the right to vote in national elections until December 1948 (Ley 20568, Art 5).

Since that date, researchers have debated whether female voters would be more likely to support candidates of their same gender than would men. A study conducted in 2017 found evidence of a small but significant negative gender bias: women overall in Chile were less likely than men to vote for female candidates (Pino, 2017). In addition, women voters living in municipalities where traditional gender roles are more prevalent had a preference for centre-right male candidates instead of female candidates (Pino, 2017).

c) Political voice

There is currently no legal quota at the national level in Chile. However, in 2015, a new law (law 20840, Art 1.b) introduced quotas on candidate's lists to increase the participation of women in the Congress. The Act aims to ensure that the electoral system reflects the country's ideological, gender, age, ethnic, social and cultural diversity and to strengthen democracy, improve political and territorial representation and upgrade women's participation. Under the Act, neither gender's representation may exceed 60%. Any political party that violates this rule forfeits all of its candidatures for deputy and senate seats (Ley 20840, Art 17). Moreover, women candidates for such seats, regardless of whether they are elected, are entitled to additional reimbursement for their election expenses; if they are elected, their party is entitled to 500 Development Units for each successful woman candidate. The parties may use such funds to implement programmes and develop activities to promote women's inclusion and participation in politics. Both of these measures are temporary and shall apply to the parliamentary elections of 2017, 2021, 2025 and 2029 (CEDAW, 2016).

Furthermore, two highly relevant amendments to Organisation Act No. 18,603 on Political Parties

entered into force in 2016. First, Act No. 20.900 on the strengthening and transparency of democracy established a State contribution to political parties, with 10% of that support to be used to promote women's political participation. Second, under Act No. 20.915 enhancing the public and democratic character of political parties and facilitating their modernisation, neither gender may account for more than 60% of the members of any collegiate body of a party. The same Act obliges the parties to provide statistical data on political participation, disaggregated by, inter alia, gender (CEDAW, 2016).

In parallel, the State is trying to encourage women's leadership. For instance, in 2014, the National Service for Women set up 43 Leadership Training Schools in the country's 15 regions, providing training to 746 women. The purpose of these schools is primarily to foster and strengthen female leadership, enabling participants to become spokespersons for their communities or interest groups, always from a gender perspective and to provide a place where women of varying ages and backgrounds can meet and identify shared needs relating to their status and position in comparison with their male counterparts (CEDAW, 2015). In addition, Act No. 20.820 provides for the establishment of a gender equity fund to finance projects, programmes, training initiatives and dissemination activities to promote associative arrangements and the exercise of leadership by women.

d) Access to justice

Married and unmarried women have equal capacity as men to sue and to be sued (Constitution, Art 19). Married and unmarried women's testimony also carries the same evidentiary weight as a man's in civil, criminal, family court and tribunals (Constitution, Art 19).

As mentioned above, there are several institutions tasked with monitoring gender equality. The National Service for Women and Gender Equality (SERNAM) is a specific institution in charge of monitoring and implementing gender equality programs while the Ministry for Women and Gender Equity (created in 2015) is in charge of ensuring the coordination, consistency and coherence of gender equality policies, plans and programmes. In addition, the Council of Ministers for Gender Equality was set up to promote the mainstreaming of gender equality in the ministries and services and provide relevant technical assistance, so that the gender perspective cuts across all State policies and activities (CEDAW, 2016). In addition, Decree No. 305 of the Ministry of Economic Affairs, Development and Reconstruction requires that information on the sex of each person must be included in source data used to produce statistics and generate administrative records. This regulation establishes that ministries, public services and civil service agencies must identify the sex of each individual on all surveys and records used to produce statistics (CEDAW, 2011).

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