

CHILE

Women and men are equal under the law, according to Article 19.2 of the Chilean Constitution.

1. Discriminatory family code

Discrepancies remain in regards to the information available about the **legal age of marriage**. On one hand, the Civil Code sets the minimum legal age to marry for both men and women at 18¹ and Law 19585 on Parental Relationship (1998) established that one cannot marry if younger than 18.² Law 19585 was never modified, according to the Library of the National Congress. On the other hand, Law 19947 of 2004³ stipulates that men and women younger than 16 cannot marry.⁴

Concerning **early marriage**, a 2009 United Nations report estimated that, in 1992, 11.7% of girls between ages 15 and 19 were married, divorced or widowed, compared to only 5.3% of men of the same age group. For 2011, the percentage had gone down to 5.9% for women and 3.2% for men.⁵

Since the Civil Code does not address de facto marriages directly; the question has been handled by the Chilean Judiciary, defining case by case based on evidence of shared property and labour, whether the couple can be considered a de facto marriage.⁶ Recent information on marriage registration indicates a trend in “co-habiting/partnership” – up to 8.9% in 2002 from 5.7% in 1992 – while married partnerships declined from 51.8% in 1992 to 46.2% during the same period.⁷ More recent data from the *Instituto Nacional de Estadísticas* (National Institute of Statistics) indicates that in 2002 3.9 for 1000 inhabitants were married, compared to 3.3 (for 1000) in 2008.⁸

Although Article 19.2 of the Constitution stipulates that women and men are equal under the law, when both parents live together, **parental authority** is held by the father; under Article 1749 of the Civil Code, the husband is “head of the conjugal partnership” and is in charge of the administration of assets.⁹

¹ Article 106

² Article 107

³ Article 5.2

⁴ Servicio Nacional de Mujer (2009), p. 5

⁵ United Nations (2009); OECD (2014), Gender, Institutions and Development Database, <http://stats.oecd.org>

⁶ Library for the National Congress of Chile. <http://bloglegal.bcn.cl/content/view/252417/El-concubinato-en-la-Jurisprudencia-Nacional-Primera-parte.html> (accessed 20/02/2014)

⁷ CEDAW (2004), p. 9

⁸ Instituto Nacional de Estadísticas (2010)

⁹ Chilean Civil Code, <http://bloglegal.bcn.cl> (accessed 20/02/2014)

The law established that parents must reach an agreement after separation in regards to the custody of the children.¹⁰ If an agreement is not established, the judiciary will decide on the matter.¹¹ In practice, after separation the children are more likely to be under the custody of the mother. This creates a problematic situation to the extent that mothers struggle to demonstrate de facto separation during the process of **divorce**.¹² The law requires that spouses demonstrate that they are no longer cohabitating for more than year in order to get a divorce.¹³ Since parental authority during marriage is granted to men by Article 1749 of the Civil Code, this means that, despite being separated, the father's permission or presence is required to execute certain legal deeds affecting a minor child under the mother's custody.¹⁴

In addition to the statutory privilege held by married men, women's parental authority is subject to discrimination based on sexual orientation. In 2012, the Inter-American Commission on Human Rights found the Supreme Court of Chile to be discriminatory in its decision to uphold the 2004 lower-court decision that stripped Judge Karen Atala of her parental rights because she is a lesbian.¹⁵ In 2008, the non-governmental organisation Movhil reported that a bill was submitted to the National Congress to set out equal rights for parents regardless of sexual orientation.¹⁶

In the matter of **inheritance**, women are free to inherit and are legally entitled to execute or administer wills in the same way as men.¹⁷ A law passed in 1998 (Law 19585) amended the Civil Code with regard to filiations, granting equal rights to all children (born in or outside of a marriage) and improving the inheritance rights of widows, by ensuring the surviving spouse has preferential right to ownership.¹⁸

There is some evidence that customary laws govern inheritance in detriment of women. According to the UN Food and Agriculture Organization, while in some regions of Chile there is a tendency to favour males over females in inheritance practices, in other regions parents benefit daughters when they have cared for them during their senior years. Moreover, based on the Civil Code provision¹⁹ which establishes that men are the head of the household, husbands become the administrators of property inherited by their wives if separation of property was not established before the celebration of marriage.²⁰

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Divorce was authorized in 2004 through Law 19947 (the Civil Marriage Act). Article 56 establishes that both spouses can **initiate divorce**. This law calls for marital assets to be equally divided and guarantees compensation for the spouse who has "borne the bulk of childcare and domestic responsibilities" and,

¹⁰ Law 19947 (2004), Article 21 ; Law 20680 (2013) Article 225

¹¹ Law 19947 (2004), Article 23 ; Law 20680 (2013) Article 225

¹² CEDAW/C/CHI/4, pp. 19-20

¹³ Article 55 of Law 19947 (2004)

¹⁴ CEDAW/C/CHI/4, pp. 19-20

¹⁵ Human Rights Watch (2012)

¹⁶ Movilh (2013)

¹⁷ Law 19585/98

¹⁸ CEDAW (2004), pp. 60-61; FAO (n.d.) (accessed 24/02/2014)

¹⁹ Article 1749

²⁰ <http://www.fao.org/gender/landrights/home/report/en/>

therefore, could not fully develop a remunerated professional activity.²¹ In 2008, reforms to the pension system (Law 20255) provided basic pensions to those who have not obtained pension savings through traditional work. This law mainly benefits women, as it includes a bonus amount of savings per child and authorises that pension savings from one spouse can be allocated as part of the economic compensation received in a divorce.²²

2. Restricted physical integrity

Chile has undertaken several commitments to ending violence against women, including: co-sponsoring Resolution 61/143, on the "Intensification of efforts to eliminate all forms of violence against women"; co-sponsoring Res 62/134 on the "Elimination of violence and other forms of sexual violence in all their manifestations, including in conflict and similar situations." It is also a founding member of the Friends of Security Council Resolution 1325 ("Women, Peace and Security") and Friends to End Violence against Women, led by France and the Netherlands.²³

Domestic violence is addressed by the 2005 Intra-Family Violence Law 20066.²⁴ Under Article 5 of this law, domestic violence is defined as any sort of abuse affecting the life or integrity (mental or physical) of anyone who is or was the spouse of the perpetrator, or who cohabitated with the perpetrator. The offense is aggravated when the victim is a minor or a person with disabilities.

Mechanisms to recognise and help prosecute domestic violence crimes have been set in place. For example, in 2005, Law 20066 set state standards regarding the prevention, protection and punishment of domestic violence and enabled SERNAM to sponsor lawsuits for these crimes.²⁵ In 2008, a health policy on gender violence was instituted requiring that all health care providers, regardless of their position, must be aware of domestic violence in the health care context, even when care is not requested for this purpose.²⁶

According to the last available report on Chile's progress toward the Beijing Platform for Action goals, a Prevention and Protection Programme on Violence against Women was put in place by the government in 2008, entailing three components: 1) prevention (aimed at social and cultural contributors to violence), 2) attention (creating centres to deliver legal, social, and psychological support for women victims of violence) and 3) prevention (providing temporary protection for women who are in life-threatening situations of domestic violence).²⁷ As of 2009, there were approximately 25 Centres for Women throughout the country, which aimed to increase the prevention strategy through socio-educational training and through strengthening community networks around the subject.²⁸ Similarly to what was done for raising awareness about sexual harassment, the Library for the National Congress of Chile offers audio- and video-guides explain in simple terms the laws and the mechanisms available for

²¹ Article 62 of Law 19947 (2004)

²² Servicio Nacional de Mujer (2009), p. 4

²³ Servicio Nacional de Mujer (2009), p. 22

²⁴ OAS (2012)

²⁵ Servicio Nacional de Mujer (2009), p. 5

²⁶ Servicio Nacional de Mujer (2009), p. 8

²⁷ Servicio Nacional de Mujer (2009), p. 21

²⁸ Servicio Nacional de Mujer (2009), p. 11

victims of domestic violence. Dramatisations of domestic violence scenarios are also diffused on the radio.²⁹

Data show that domestic violence is a problem affecting over 50% of women living in Chile. According to 2008 data from National Women's Service (SERNAM), 35.7% of women between the ages of 15 and 59 had suffered some sort of abuse from their partners (37% suffered psychological violence, 24.6% minor physical violence, 15% serious physical violence and 15.6% sexual violence).³⁰

Law 19617 of 1999 modified the Penal Code by addressing sexual offences. The word "women" was replaced by "person"³¹, **rape** within a marriage or a de facto union was recognised³² and provisions were made for aggravated crime when the victim is younger than 12, has a disability or is in a vulnerable situation.³³

These reforms were underway during Chile's last report to the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), so there is little information on how this law has been implemented in practice, on any increase in reporting of rape, or on rape conviction rates. A report on the prevalence of rape in Chile, conducted by the Ministry of Health in 2000, found that more than 7 of every 100 women reported being raped, with most women (78%) stating that their attackers were known to them.³⁴ A study on sexual violence in marital relations, conducted by the NGO *Educacion Popular en Salud* in 2001, found that 21.4% of women experiencing sexual violence did so at the hands of a male partner.³⁵

The National Public Ministry has a Special Unit on Violent Sexual Crimes, which appoints prosecutors who routinely receive training on sexual violence. In its latest report on the Beijing Platform for Action (2009), Chile counted 157 such prosecutors country-wide.³⁶

Passed in March 2005, Law 20005 penalises **sexual harassment** in the workplace and allows the Labour Department to take safeguard measures in response to written complaints by employees. Under Article 1.A of the law, sexual harassment is defined as inappropriate requests and behaviours of a sexual nature, without the consent of the other party, that impair his or her work situation and future professional opportunities. The law also established sexual harassment as grounds for dismissal of the perpetrator without right to compensation.³⁷ Additionally, it requires employers with over ten employees to adopt procedures for lodging and processing sexual harassment complaints.³⁸

²⁹ Library for the National Congress of Chile, <http://www.bcn.cl/leyfacil/recurso/violencia-intrafamiliar> (accessed 26/02/2014)

³⁰ Casas B. et al. (n.d.)

³¹ Article 1 of Law 19617

³² Article 3.b of Law 19617

³³ Article 8 of Law 19617

³⁴ CEDAW (2004), p. 66; OAS (2012), p. 192

³⁵ CEDAW (2004), p. 67

³⁶ Servicio Nacional de Mujer (2009), pp. 12-13

³⁷ Servicio Nacional de Mujer (2009), p. 5

³⁸ FLACSO and UNFPA (2008), p. 3

In 2004, sexual harassment affected 20% of women in Chile.³⁹ During 2009, the Inspection Service of the Ministry of Labour received 195 reports of sexual harassment.⁴⁰

In terms of awareness-raising programmes, the Library for the National Congress of Chile offers online audio-guides, and video-guides for the hearing-impaired, that explain in simple terms the provisions established by the laws and the mechanisms available for victims of sexual harassment. They also diffuse information about the law over the radio through dramatisations of sexual harassment scenarios.⁴¹

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

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Chilean law also recognises other specific forms of violence that affect women's physical integrity. Law 20358 (2009) typifies sexual violence in **armed conflict** as a crime against humanity.⁴² Moreover, Chile reported to the Organization of American States that training on gender and peacekeeping is being conducted as part of its compliance with United Nations Security Council Resolution 1325 on Women, Peace and Security.⁴³

According to data from *Servicio Nacional de la Mujer* (SERNAM), there were 55 **femicide** cases in 2009, 48 in 2010 and 40 in 2011.⁴⁴ That year Chile passed the Femicide law⁴⁵ modifying the Penal Code's provision on parricide and adding the definition of femicide as the violent death of a woman by the current or former partner.⁴⁶

According to the NGO Movilh, violence against lesbians and transsexual women occurs in Chile.⁴⁷ For example, in their 2011 study, 75% of lesbian, gay, bisexual and transgender people reported being discriminated against, and 77.8% reported assaults.⁴⁸

Abortion in Chile is illegal. In 2005, laws on abortion were amended to remove all grounds on which abortion might be performed legally (cases of rape or incest, health of the mother or foetus) and, in 2012, the Senate rejected three bills that would have eased the ban.⁴⁹

3. Son bias

The male/female **sex ratio** for the working age population (15-64) 2014 is 0.98 while the sex ratio at birth is 1.04.⁵⁰

³⁹ CEDAW (2004), p. 14, citing SERNAM (2001), "Detection and Analysis of the Prevalence of Family Violence", Santiago, (the study used the basic protocol of the WHO)

⁴⁰ OAS (2012), p. 192

⁴¹ Library for the National Congress of Chile, <http://www.bcn.cl/leyfacil/recurso/acoso-sexual> (accessed 24/02/2014)

⁴² OAS (2012), p. 120

⁴³ OAS (2012), p. 54

⁴⁴ Casas B. et al. (n.d.)

⁴⁵ Law 20480

⁴⁶ Library for the National Congress of Chile, <http://www.bcn.cl/de-que-se-habla/promulgacion-femicidio> (accessed 24/02/2014)

⁴⁷ Movilh (2013)

⁴⁸ Movilh (2012)

No evidence suggests that Chile is a country of concern in relation to **missing women**.

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There is a slight gender gap in detriment of girls in pre-primary and primary **school** enrolment for the 2008-2012 period. However, females are in a better position when it comes to secondary school enrolment for the same period. There is no gender gap regarding the literacy rate for youth (15-24 years).⁵¹

According to a 2003 survey, girls contributed somewhat more than boys in household chores.⁵²

4. Restricted resources and assets

Under the Civil Code's Article 1720, married women's access to property is contingent on the type of marriage settlement under which they wed. Law 19335, adopted in 1994, introduced the option of spouses having joint ownership to both **land** and assets.⁵³

Since 1992, the government has enacted several initiatives to increase women's land ownership, including: National Programme for Peasants and Women Heads of Households (1993-1996), the establishment of an Advisory Committee on Equal Opportunities in the Ministry of Agriculture (1999), agreements to support rural women between the National Agricultural Development Institute, the American Institute for Cooperation on Agriculture and Promotion and Development of Women (2001 and 2004).⁵⁴

There are no restrictions on women **owning non-land assets**. However, married women have a diminished decision-making power as men are recognised as the head of the household by the Civil Code.⁵⁵

Concerning **access to financial services**, both married and unmarried women can open bank accounts in the same way as men.⁵⁶ According to the latest data from the World Bank, 41% of women in Chile have an account at a formal financial institution, compared to 43% of men.⁵⁷

While no information was found on women experiencing discrimination in accessing credit, according to the most recent data from financial institutions in Chile, 9.8% of men had a loan from a financial institution in the last year, while only 5.9% of women did.⁵⁸ Women do, however, make up a large percentage of microfinance borrowers in Chile: 65.47% in 2010 and 76% in 2011.⁵⁹

⁵⁰ CIA (n.d.). <https://www.cia.gov/library/publications/the-world-factbook/fields/2018.html> (accessed 28/03/2014)

⁵¹ UNICEF. http://www.unicef.org/infobycountry/chile_statistics.html (accessed 31/03/2014)

⁵² UNICEF. http://www.unicef.org/infobycountry/chile_statistics.html (accessed 31/03/2014)

⁵³ FAO (n.d.) (accessed 26/02/2014)

⁵⁴ FAO (n.d.) (accessed 26/02/2014)

⁵⁵ World Bank (2013a)

⁵⁶ World Bank (2013a)

⁵⁷ World Bank (2012)

⁵⁸ World Bank (2013b)

⁵⁹ Microfinance Information Exchange (2013)

5. Restricted civil liberties

There are no laws in place which affect women's free **access to public space** and freedom of movement. Article 19.7a of the Constitution establishes freedom of movement for all citizens.⁶⁰

There is evidence of reduced mobility for women based on sexual orientation. Lesbians and transgender women are subject to harassment and violence in the public space. However, according to the NGO Movilh, reforms have recently been put in place to decriminalise homosexual acts and promote a safer environment for lesbian, gay, bisexual and transgender Chileans. The 2012 Law Establishing Measures Against Discrimination⁶¹ includes gender identity and sexual orientation as protected categories.⁶²

Regarding **political voice**, Chile elected its first female head of state in 2006.⁶³ President Michelle Bachelet appointed nearly 50% women for her first cabinet.⁶⁴ Bachelet was sworn in as President of Chile for a second time in March 2014. In her cabinet, out of the 23 ministers appointed by Bachelet, nine are women.⁶⁵ This brings the representation of women to 39.1%.⁶⁶

While there are no legislated **quotas** for women at the national or sub-national level,⁶⁷ voluntary quotas are instituted on a party-by-party basis. According to the latest data collected by the Global Quota Project, two parties' rules state that neither men nor women should constitute more than 60% of electoral lists, and one party requires a 20% quota for women on electoral lists. Reportedly, all of the voluntary quotas are weakly enforced.⁶⁸

Women remain under-represented in decision-making roles. According to Inter-Parliamentary Union's online database for women in Parliament, there are 19 female members in the lower house of Congress, out of 120 seats, and 7 women, out of 38, in the Senate.⁶⁹ In addition, 18 women hold ministerial positions, compared to 82 men.⁷⁰

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According to recent data from the International Women's Media Foundation, men outnumber women two to one in Chile's **media**.⁷¹

In relation to **workplace rights**, discrimination based on gender is proscribed under the Labour Code's Article 2. Furthermore, there have been recent legislative attempts to address discrimination against women in the workplace. In June 2009, Law 20348 modified the Labour Code to prevent employers from

⁶⁰ Article 43 of the Constitution

⁶¹ Law 20609

⁶² Movilh (2013)

⁶³ ECLAC (2012), p. 31

⁶⁵ ECLAC (2010), p.40

⁶⁵ Notimérica (2014)

⁶⁶ Perfil (2014)

⁶⁷ The Quota Project (2013)

⁶⁸ The Quota Project (2013)

⁶⁹ <http://www.ipu.org/wmn-e/classif.htm> (accessed 02/27/2014)

⁷⁰ World Economic Forum (2013), p. 61

⁷¹ IWMMF (2011), p. 148

discriminating on grounds of sex for the duration of employment.⁷² Moreover, the Chilean government delivers the Iguala Certificate for Good Labour Practices to companies that promote gender equality.⁷³

As of July 2008 (Law 20279) some aspects of domestic work began to be covered under anti-discrimination legislation as well. Law 20279 recognises the right to minimum wage to workers in private homes, equivalent to other workers.⁷⁴

Under Section 195 of the Labour Code, women are entitled to 18 weeks of compulsory paid **maternity leave**, at 100% of their salary. This extends to women in the public and private sectors and to those covered by a welfare system.⁷⁵ Maternity leave is funded through a single fund, financed through a contributions tax set in the Budget Act.⁷⁶ Recent (2011)⁷⁷ additions to the Labour Code allow women an additional 12 weeks of paid parental leave at 100% of their salary, or partially-paid parental leave for 18 weeks at 50% maternity wages, 50% of their salary.⁷⁸

According to the Global Entrepreneurship Monitor 2012 Women's report, traditional gender roles are still present in Chilean society, and **female entrepreneurs** must often place their family needs before their professional goals.⁷⁹ Nonetheless, programmes have been put in place to promote female entrepreneurship, such as the *Capital Semilla Abeja* (Honeybee Seed Capital) programme by Technical Cooperation Service (Sercotec).⁸⁰ Also, under the *Chile Crece Contigo* (Chile Grows with You) programme, the number of public nurseries was raised by 240% compared with 1990, in order to aid working mothers.⁸¹

⁷² Servicio Nacional de Mujer (2009), p. 6

⁷³ ECLAC (2010), p. 45

⁷⁴ Servicio Nacional de Mujer (2009), p. 6

⁷⁵ International Labour Organization (n.d.)

⁷⁶ International Labour Organization (n.d.)

⁷⁷ Labour Code Act 20545, enacted October 2011

⁷⁸ International Labour Organization (n.d.)

⁷⁹ Kelley et al. (2012), p. 6

⁸⁰ Kelley et al. (2012), p. 23

⁸¹ ECLAC (2010), p. 45

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