



## 人权理事会

第三十二届会议

议程项目 3

增进和保护所有人权——公民权利、政治权利、经济、  
社会和文化权利、包括发展权

## 赤贫与人权问题特别报告员关于其对智利的访问的报告

### 秘书处的说明

秘书处谨向人权理事会转交赤贫与人权问题特别报告员关于其 2015 年 3 月 16 日至 24 日对智利的访问的报告。特别报告员发现，尽管智利在社会和经济发展方面已经迈出了大步，但它仍然是一个高度隔离和不平等的社会，贫困率和赤贫率都高得无法接受。特别报告员确定了阻碍智利消除贫困和不平等的努力取得成效的主要因素，其中包括消除贫困方案碎片化、缺乏足够的“体制化”来实现人权、劳动力市场机构保障劳工权益作用减弱、土著人民、儿童、男女同性恋者、双性恋者、变性者和两性人及移民等边缘化群体持续遭受歧视，得不到宪法、法律和制度保护。特别报告员的建议包括：通过各部委很好协调的全面消除贫困方案；设立资金雄厚、人手充裕的人权事务助理秘书办公室，纳入经济、社会和文化权利，作为其任务的关键部分。

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## Report of the Special Rapporteur on extreme poverty and human rights on his mission to Chile\*

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\* Circulated in the language of submission and in Spanish only.

## I. Introduction

1. Pursuant to Human Rights Council resolutions 8/11 and 26/3, the Special Rapporteur on extreme poverty and human rights conducted an official visit to Chile from 16 to 24 March 2015. The purpose of the visit was to gather information and engage in a dialogue on the situation of poverty and inequality in Chile and the relationship of these issues to human rights, with a view to offering constructive recommendations to the Government and other stakeholders.

2. During the course of his visit, the Special Rapporteur met with the President, Michelle Bachelet, the President of the Senate, members of Congress, the Minister for Social Development, the Vice-Minister of Finance, the Vice-Minister of Justice, the Vice-Minister for Health, the Minister Director of the National Service for Women, the National Director of the National Indigenous Development Corporation and many other officials. The Special Rapporteur visited Santiago and its outskirts, including Campamento San Francisco and Bajos de Mena and Temuco and Boyeco in the Araucan á region.

3. The Special Rapporteur is grateful to the National Human Rights Institute and the various non-governmental organizations whose representatives briefed him on the issues and arranged invaluable opportunities to speak with persons living in poverty. In addition, various experts from the Economic Commission for Latin America and the Caribbean (ECLAC) were extremely helpful. The Resident Coordinator and his team, as well as officials of the Office of the United Nations High Commissioner for Human Rights (OHCHR), the United Nations Development Programme, the United Nations Educational, Scientific and Cultural Organization (UNESCO), the United Nations Population Fund, the United Nations Children's Fund (UNICEF), the International Labour Organization (ILO), the Food and Agriculture Organization of the United Nations, the World Bank and the World Health Organization, also provided advice and information.

4. The Special Rapporteur is grateful to the Government of Chile for having invited him. He benefited from excellent cooperation from the Government, as well as from civil society, scholars and persons living in poverty. The OHCHR Regional Office for South America, in Santiago, also provided valuable support throughout the visit.

5. In section II, the Special Rapporteur provides an overview of the situation of poverty and inequality in Chile, finding that the persistently high levels of inequality are incompatible with full respect for human rights. In section III, he sets out the main factors hindering the effectiveness of the efforts of Chile to tackle poverty and inequalities, including the fragmentation of anti-poverty programmes, the lack of sufficient "institutionality" to implement human rights, the attenuated role of labour market institutions to protect labour rights, persistent discrimination against and the absence of constitutional, legal and institutional protection of marginalized groups such as indigenous peoples, children, lesbian, gay, bisexual, transgender and intersex persons and migrants. In section IV, the Special Rapporteur offers recommendations to the Government of Chile.

## II. Poverty, extreme poverty and inequality in Chile

6. The situation of poverty and inequality in Chile reflects a paradox. Since the end of the Pinochet era, the country has made extraordinary progress in terms of economic growth, overall development and poverty reduction, but at the same time troubling rates of poverty and extreme poverty persist among some population groups and inequality levels are extremely high. Those rates are neither sustainable nor acceptable in a society that prides itself upon a strong and deep commitment to respecting human rights for all of its peoples.

7. But the “bad” news must not be permitted to overshadow the good news. Since the end of the dictatorship, and especially under the three most recent administrations, Chile has taken giant steps forward in relation to social as well as economic development. It has turned itself from a widely condemned authoritarian State during most of the 1970s and all of the 1980s into a much-admired model for other States in terms of its economic growth, the rejuvenation and consolidation of its democracy and the concerted efforts it has made in relation to human rights. And the breadth and depth of the agenda of the Government of President Bachelet for enhancing respect for human rights across the whole society is as impressive as it is daunting.

8. The starting point for efforts to eliminate poverty is to acknowledge the extent of the challenge. Accurate, disaggregated measures of the key components are essential, as is the adoption of a methodology that is scientifically sound, independently applied and based on full consultation. While the most recent census was problematic and has been generally discounted as a result, Chile has developed an impressive and innovative national household survey, the National Social and Economic Survey (CASEN). The 2013 survey generated a report on modern and transparent measurement of poverty for Chile, published in January 2015.<sup>1</sup> In addition to the traditional focus on income poverty, the survey tracks multidimensional poverty, which is measured by giving equal weight to indicators relating to education, health, work and social security, and housing. This approach represents an important and commendable step towards measuring poverty as a multidimensional phenomenon.

9. According to the latest CASEN survey, income-based poverty levels dropped from 38.6 per cent of the population in 1990 to 7.8 per cent in 2013, with extreme poverty at 2.5 per cent. But, by using an adjusted poverty line, which takes into account changes in the consumption patterns of an average Chilean household today,<sup>2</sup> the poverty rate in 2013 was calculated at 14.4 per cent, with 4.5 per cent living in extreme poverty. These figures were down from 29.1 per cent and 12.6 per cent, respectively, in 2006. The survey also estimated a multidimensional poverty rate of 20.4 per cent.

10. These figures show both considerable progress but also significant continuing rates of poverty and extreme poverty, with almost 1 in 20 Chileans still living in a situation of extreme deprivation, and 1 in every 5 Chileans live in a situation of multidimensional poverty. But even these statistics do not capture the full extent of the challenges. Many of those not classified as living in poverty survive on very low incomes and live in precarious situations that make them very vulnerable to falling into poverty. According to the CASEN survey in 1996, 2001 and 2006, around 1 in 3 Chileans had fallen into a situation of poverty at least once in those years.<sup>3</sup> For a country that prides itself on being a model for Latin America and a member of the Organization for Economic Cooperation and Development (OECD), poverty levels in Chile remain unacceptably high, despite progress in recent decades.

11. The Special Rapporteur visited areas with high levels of poverty to speak with residents and learn first-hand about their situation. In Bajos de Mena, a social housing

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<sup>1</sup> See [http://observatorio.ministeriodesarrollosocial.gob.cl/documentos/Presentacion\\_Resultados\\_Encuesta\\_Casen\\_2013.pdf](http://observatorio.ministeriodesarrollosocial.gob.cl/documentos/Presentacion_Resultados_Encuesta_Casen_2013.pdf).

<sup>2</sup> Chile, Ministry of Social Development, *Nueva Metodología de Medición de la Pobreza por Ingresos y Multidimensional*. Available from [http://observatorio.ministeriodesarrollosocial.gob.cl/documentos/Nueva\\_Metodologia\\_de\\_Medicion\\_de\\_Pobreza.pdf](http://observatorio.ministeriodesarrollosocial.gob.cl/documentos/Nueva_Metodologia_de_Medicion_de_Pobreza.pdf).

<sup>3</sup> See also La Fundación para la Superación de la Pobreza, *Umbral Social para Chile* (2009). Available from [www.superacionpobreza.cl/wp-content/uploads/2014/02/UMBRALES\\_SOCIALES.pdf](http://www.superacionpobreza.cl/wp-content/uploads/2014/02/UMBRALES_SOCIALES.pdf).

project in Santiago that is often described as a ghetto, the Special Rapporteur met people who were clearly living in substandard conditions. This neighbourhood is home to around 120,000 people but lacks the most basic government services, such as a hospital, a fire station, a police station and schools. Part of Bajos de Mena, Villa San Guillermo, is built on top of a former landfill and various families complained of explosions caused by the underground build-up of methane gas and a high rate of illness among residents.

12. The Special Rapporteur also visited Campamento San Francisco, the largest settlement of its kind in the Metropolitan region. According to Un Techo Para Chile, a leading non-governmental organization working on housing issues, there were a total of 676 settlements in Chile in 2014, housing 32,533 families or well over 100,000 people.<sup>4</sup> Those living in Campamento San Francisco have no running water for cooking or sanitation purposes and many use wood for heating and cooking, thus creating a high risk of fire. The residents complained of the poor care they receive when they go to health centres, long waiting times and a failure to take many of their problems seriously. Parents expressed concern about the poor quality of the education their children receive, as reflected in low test scores. The residents felt strongly that they were being denied access to the basic government services and assistance provided to better-off groups and that this denial undermined their opportunities and those of their children to be able to escape from living in poverty through their own efforts and merit. It is difficult to accept that, in a society as well off as Chile, such slum areas cannot be eliminated through concerted measures to respond to the needs and rights of the affected individuals.

13. In addition to significant poverty levels, Chile continues to experience extreme economic and social inequality. Its level of income inequality, after government taxes and transfers, is the highest among OECD countries. According to the latest CASEN survey, income inequality indicators have not improved significantly over the past decade. The Gini coefficient has remained around 0.5 and indicators measuring the amount of income earned by the top and the bottom income deciles show very little improvement. In 2014, OECD estimated the average income of the richest 10 per cent of the population in its member countries at about 9.5 times that of the poorest 10 per cent.<sup>5</sup> In Chile, the disparity is 27 to 30 times greater. Even by Latin American standards, a region with very high income inequality, Chile scores badly.<sup>6</sup> It is estimated that only 17 countries in the world have a worse Gini coefficient than Chile.<sup>7</sup>

14. But even apart from income inequality levels, Chile remains a highly segregated society in many respects. First, there are large geographical inequalities between regions and within cities. The CASEN data for 2013, which estimated 4.5 per cent of the national population to be living in income-based extreme poverty, masks wide variations across regions. In Araucanía, a region with a large Mapuche population, the extreme poverty rate in 2013 was 10.6 per cent, while it was only 2.6 per cent in the Metropolitan region, which includes Santiago. But even within Santiago, the differences are enormous. A 2013 study compared income levels near the city's subway stations and found that if you travelled by subway for only 20 minutes from the north-west (Lo Prado station) to the north-east (Pedro de Valdivia station), income per capita changed from a level comparable to Belize to one

<sup>4</sup> Figures available from [www.techo.org/paises/chile/?s=32.533](http://www.techo.org/paises/chile/?s=32.533).

<sup>5</sup> See F. Cingano, "Trends in Income Inequality and its Impact on Economic Growth", OECD Social, Employment and Migration Working Papers, No. 163 (2014), p. 9.

<sup>6</sup> See Economic Commission for Latin America and the Caribbean (ECLAC), *Compacts for Equality: Towards a Sustainable Future* (2014), p. 119.

<sup>7</sup> Data available from <http://hdr.undp.org/en/content/table-3-inequality-adjusted-human-development-index>.

comparable to that of Portugal.<sup>8</sup> The same study shows a high correlation between income levels and children's mathematics scores: the lower the income level, the lower the scores. Poverty and inequality are thus transmitted from one generation to the next.

15. Second, there are large differences in access to, and the quality of, essential services among different groups in Chile. Given its impact on intergenerational mobility, education is especially important. While inequality in the number of years of education enjoyed has been reduced, the education system is still highly segregated. The poorest children receive the poorest-quality education and children from poor, middle-income and high-income backgrounds rarely attend the same schools. In 2012, only 68 per cent of students from the poorest families met the basic proficiency mark in mathematics in the Programme for International Student Assessment exam, compared to 97 per cent of students from the richest families.<sup>9</sup> While tertiary education enrolment rates have increased since the early 1990s, in 2009, the number of students from the highest income quintile who completed tertiary education was 31 per cent higher than that of students from the lowest income quintile.

16. The challenge of reducing inequality in the education sector remains a pressing one and should be a central concern in the framing of the complex and ambitious agenda that the Government has set itself in this area. Because the proposed reforms continue to be the subject of discussion of lively and broad-based debate within the whole society, it is sufficient for the Special Rapporteur to stress that particular attention needs to be given to ensuring that those living in poverty help to shape the reforms and are able to benefit fully from them. Moreover, it is important to acknowledge that educational desegregation will not happen in the absence of broader societal desegregation achieved through equally targeted measures in other sectors.

17. Extreme inequalities are major obstacles to efforts to eliminate poverty. It has been shown that economic growth in countries with higher income inequality has less impact on poverty reduction than in countries with less income inequality.<sup>10</sup> As the World Bank has noted: "On average, for countries with low levels of income inequality, a 1 percentage point growth in mean incomes leads to about a 4 percentage-point reduction in the incidence of \$1 per day poverty. That power falls to close to zero in countries with high income inequality."<sup>11</sup> And not only do higher economic inequalities reduce the effect of economic growth on poverty reduction, economic inequalities actually hurt economic growth.<sup>12</sup>

<sup>8</sup> See Juan A. Echenique and Sergio S. Urzúa, "Desigualdad, Segregación y Resultados Educativos: Evidencia desde el Metro de Santiago", *Puntos de Referencia*, No. 359 (May 2013).

<sup>9</sup> Tamar Manuelyan Atinc and Carol Graham, "Can education reform address inequality and middle class frustration? An experiment in Chile", 9 May 2014. Available from [www.brookings.edu/blogs/education-plus-development/posts/2014/05/09-education-reform-inequality-middle-class-frustration-chile-atinc-graham](http://www.brookings.edu/blogs/education-plus-development/posts/2014/05/09-education-reform-inequality-middle-class-frustration-chile-atinc-graham).

<sup>10</sup> Report of the Secretary-General on the role of the United Nations in promoting a new global human order and an assessment of the implications of inequality for development (see A/67/394, para. 17); and United Nations Research Institute for Social Development, *Combating Poverty and Inequality: Structural Change, Social Policy and Politics* (United Nations publication, Sales No. E.10.III.Y.1), p. 5. The Special Rapporteur of the Sub-Commission on Prevention of Discrimination and Protection of Minorities noted that income distribution in a society is directly related to existing levels of poverty. (see E/CN.4/Sub.2/1997/9, para. 22).

<sup>11</sup> World Bank, *World Development Report 2006: Equity and Development* (World Bank and Oxford University Press, 2005), p. 9.

<sup>12</sup> "Drawing on harmonised data covering the OECD countries over the past 30 years, the econometric analysis suggests that income inequality has a negative and statistically significant impact on

18. In another study, the World Bank concluded that “no country has successfully developed beyond middle-income status while retaining a very high level of inequality in income or consumption”.<sup>13</sup> The implications for the fight against poverty in Chile are evident: reducing economic inequalities is crucial to reducing poverty.

19. The inequalities described in the present report are deeply problematic and result in a highly segregated society in which the existence of unconnected residential areas and schools operates to entrench privilege and stifle mobility. Such high levels of inequality are incompatible with full respect for human rights. There is, however, an encouraging consensus within Chilean society on the need to take specific measures to tackle this issue. The Government’s agendas in the fiscal, educational and electoral arenas are all intended in part to address the problem of inequality. But it is widely acknowledged that fiscal reforms alone cannot suffice to reduce extreme inequality and it will be some years before any inequality-reducing benefits of educational reforms are apparent. Thus, significant reforms will continue to be needed in many of these areas to ensure that the effect on inequalities is not merely cosmetic.

### III. Main findings

#### A. Fragmentation of anti-poverty programmes

20. Chile has a wide and impressive array of programmes aimed at tackling poverty, including the Chile Solidario Programme, the Ethical Income Programme and Chile Crece Contigo (“Chile grows with you”). Despite these programmes, poverty and extreme poverty persist. It is thus necessary to go beyond these separate programmes and to develop a coherent and integrated poverty eradication programme. While steps have been taken to improve programme coordination, including through the creation of the Office of the Executive Secretary for Social Protection and a council of ministers working in the area of social protection, the work of the Government to tackle poverty seems to be unduly fragmented among key ministries. Many people to whom the Special Rapporteur spoke, both in the Government and civil society, confirmed the existence of significant coordination problems and the absence of a truly intersectoral approach to poverty eradication that transcends individual ministries.

21. The Ethical Income Programme, for instance, consists of multiple components, including unconditional or conditional cash transfers and psychosocial and employment support. It appears, however, that a lack of interministerial coordination, particularly between the Ministry of Social Development and the Ministry of Labour and Social Security, results in the fragmented implementation of what could potentially be a truly innovative and effective programme.

22. In addition, many of the reforms of the current Government seem to be predominantly driven by the interests of the middle classes and there is a major risk that the interests of those living in poverty will be overlooked. At present, poverty remains below the radar for most policymakers. Most anti-poverty programmes target the extreme poor

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subsequent growth”: Cingano, “Trends in Income Inequality and its Impact on Economic Growth”, p. 6. “Second, lower net inequality is robustly correlated with faster and more durable growth, for a given level of redistribution. These results are highly supportive of our earlier work”: Jonathan D. Ostry, Andrew Berg and Charalambos G. Tsangarides, “Redistribution, inequality, and growth”, IMF Staff Discussion Note, February 2014, p. 4.

<sup>13</sup> See Francisco H.G. Ferreira and Martin Ravallion, “Global poverty and inequality: a review of the evidence”, World Bank Policy Research Working Paper, May 2008, p. 8.

and cash transfer levels are low. In 2012, the average unconditional monthly cash transfer was US\$ 27 per household, and US\$ 13 per person. This programme is not ambitious enough for a middle-income country such as Chile.

23. Given the strongly sectoral nature of reform discussions, there is also a real risk that issues such as pensions, health care or education will be treated in isolation rather than as part of an integrated set of solutions. The fragmentation of programmes among key ministries is, of course, not unique to Chile, but it needs to be addressed.

## **B. Constitutional, institutional and democratic human rights reform**

24. Post-dictatorship Chile has warmly embraced the language of human rights. There is, however, much to be done before it can be said that human rights provide the foundations upon which social and economic policy rest. Too many Chileans still seem to equate human rights with the crimes of the dictatorship. In fact, the international obligations accepted by Chile extend far beyond issues such as disappearances, torture, killings and arbitrary arrests and apply as much to the present as they do to the past. A thriving democracy needs to pay attention to the quality of political participation and the ability of people to influence the shape of the society in which they live. And economic, social and cultural rights must be acknowledged as fully fledged human rights, not just as matters of social policy.

25. The existing Chilean Constitution has some economic, social and cultural rights provisions concerning health, education and social security. However, the formulations used do not generally conform to international standards and are not firmly anchored in the language of rights and obligations. The methods of implementation envisaged are relatively open-ended and non-empowering and do not explicitly include judicial action. The Committee on Economic, Social and Cultural Rights expressed concern in 2004 that some economic, social and cultural rights, including the right to housing, are not considered justiciable in the State party (see E/C.12/1/Add.105, para. 12). A 2015 report by the Chilean Supreme Court indicates that progress has been made with regard to the justiciability of economic, social and cultural rights in the past decade.<sup>14</sup> However, various experts with whom the Special Rapporteur met in Chile called for stronger legal protection of these rights. In June 2015, the Committee on Economic, Social and Cultural Rights reiterated its concerns both about the inadequacy of existing constitutional recognition and of available remedies (see E/C.12/CHL/CO/4, para. 7).

26. While expanded constitutional recognition and greater judicial engagement are important, more needs to be done in terms of *institucionalidad*. This is a Spanish term whose English translation — institutionality — is used only rarely and even then without particular significance. It refers to the institutional arrangements that are needed to underpin the rule of law and human rights. Despite a strong and now long-standing commitment to human rights, there has never been a comprehensive institutional structure to promote the policies necessary to their implementation.

27. An important initiative on institutional structure is the proposal to create a new Office of the Under-Secretary for Human Rights within the revamped Ministry of Justice and Human Rights.

28. There is a significant need for an entity with the responsibility, authority, funds and resources to coordinate government-wide human rights policies. The process of setting up

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<sup>14</sup> See Chile, Supreme Court, Study, Analysis and Evaluation Directorate, “Reporte preparatorio para el 4º Informe Periódico de Chile sobre el cumplimiento del Pacto Internacional de Derechos Económicos, Sociales y Culturales de las Naciones Unidas”, March 2015.



the Office seems, however, to have stalled and it is desirable that a message be sent from the highest level of Government that its establishment is a priority. Once created, owing to the new ministerial structure, it should be ensured that economic, social and cultural rights are an integral part of the Office's mandate and that those rights receive attention equal to that given to civil and political rights.

29. Chile has been a highly responsible international citizen in terms of its consistent high-quality engagement with human rights monitoring bodies, but the one area in need of significant reform concerns the way in which international recommendations are dealt with at the national level. The new Office of the Under-Secretary for Human Rights could take the lead in ensuring systematic and coordinated follow-up to such recommendations.

30. The Special Rapporteur notes that the proposed permanent commission on the crimes of the Pinochet dictatorship is expected to have significantly more staff and a higher budget than the proposed Office of the Under-Secretary for Human Rights. This distribution of funds risks being seen as giving greater importance to addressing the violations of the past than to developing appropriate policies and institutions to ensure respect for human rights today. Adequate budgeting and staffing for the new Office of the Under-Secretary for Human Rights is thus crucial.

31. Another area of necessary institutional reform is the democratic system of Chile. Although very impressive progress has been made since 1990, there is ample evidence that the full realization of democratic rights is closely linked to the reduction in inequalities. During the years of the Pinochet dictatorship, income distribution in Chile worsened steadily.<sup>15</sup> After the return to democracy, the period 1990-2009 saw a rapid decline in poverty, as well as a more moderate decline in income inequality. The reintroduction of democracy in 1990 seems to have had a positive impact on the reduction of poverty and inequality, a process described by ECLAC in the following terms:

The political dynamic behind the recent decline in inequality has also been important. Democratic life has given rise to new electoral preferences and brought social demands to greater prominence. This means that, in a positive cycle of economic stability, governments respond to these demands for social inclusion with new, more redistributive policies.<sup>16</sup>

32. It is widely accepted that a more inclusive democracy, with high levels of participation and effective representation of the different groups in society, will lead to more equality. It is thus the quality of the democracy, rather than just democracy itself, that will affect inequality.<sup>17</sup> An acknowledged structural flaw in the Chilean democratic system has been the "binomial" electoral system, said to have been designed by the dictatorship to prevent democratic parties from achieving congressional majorities. According to one source, this functioned as "the linchpin of the authoritarian institutional framework holding the various authoritarian enclaves together and preventing reforms to the 1980 Constitution without the agreement of the Right".<sup>18</sup> Others have written that the "heavily biased"

<sup>15</sup> Dante Contreras and Ricardo Ffrench-Davis, "Policy regimes, inequality, poverty, and growth: the Chilean experience, 1973-2010", in *Falling Inequality in Latin America: Policy Changes and Lessons*, Giovanni Andrea Cornia, ed. (Oxford, 2014), p. 95.

<sup>16</sup> See ECLAC, "Compacts for Equality", p. 71.

<sup>17</sup> "The quality of democracy is influenced also by its consolidation (the uninterrupted number of years during which democratic rule has existed in a country) and by the extent of popular participation to free elections": Giovanni Andrea Cornia, "Inequality trends and their determinants: Latin America over the period 1990-2010", in *Falling Inequality in Latin America*, p. 39.

<sup>18</sup> Daniel Pastor, "Origins of the Chilean Binominal Election System", *Revista de Ciencia Política*, vol. XXIV, No. 1 (2004).

binomial electoral system that “favors the wealthy” was “one of the most consequential legacies of former dictator Augusto Pinochet’s 1980 constitution”.<sup>19</sup> The legislature’s decision to end the binomial system is therefore welcome.

33. In addition to the obvious impact of significant economic and social inequalities on the functioning of a democracy, high inequality also greatly distorts political participation, thereby affecting the quality of democracy. One Chilean study found that the higher the socioeconomic status of students, the higher their expected electoral participation.<sup>20</sup> Another study by the same authors concluded that a school’s socioeconomic composition also influenced the expected future political participation of its students:

Belonging to a public school in both years implied lower expectations of formal involvement in the political system ... In other words, rather than administrative dependency itself, it is the socioeconomic composition of schools that matters most in predicting future political participation ... This effect seems relevant for the Chilean case, since the high socioeconomic segregation of the educational system implies that the students from the few schools with high socioeconomic status will be eventually overrepresented in terms of political voice in the future, thereby economic inequality breeds political inequality.<sup>21</sup>

34. Thus, the elimination of the binomial system, while an important reform, will need to be accompanied by sustained measures to enhance broad-based participation in the political system through eliminating the obstacles generated by extreme inequality.

### C. Discrimination, poverty and inequality

35. In 2012, Chile adopted the new Anti-Discrimination Act (Act No. 20,609). That law had been proposed in Congress years earlier, but was effectively stalled until a 24-year-old gay man Daniel Zamudio was beaten to death in Santiago. Public outcry and international criticism after the killing of Mr. Zamudio finally led to the adoption of the Anti-Discrimination Act in 2012. Because of the link between the brutal killing of Mr. Zamudio and the adoption of the law, the latter is almost synonymous in the public mind with the prohibition of discrimination against lesbian, gay, bisexual, transgender and intersex persons.

36. The new law was a major step forward in tackling discrimination, but there is still much to be done to bring Chile into line with its international obligations. A major criticism of the 2012 Anti-Discrimination Act is that it lacks a proper enforcement mechanism. At present, there is no separate agency or government entity that is responsible for enforcing the law. Under article 3 of the Act, those who are directly affected by an act of “arbitrary discrimination” are entitled to bring an action before a judge. This leaves it up to those individuals who are often the most vulnerable members of society to seek enforcement of the law. It is clear that leaving enforcement up to the courts, rather than establishing a separate agency or government entity, was a political compromise to reassure those who

<sup>19</sup> Mike Albertus and Victor Menaldo, “South Africa, unequal by design”, *Foreign Policy*, 3 January 2014.

<sup>20</sup> See Juan Carlos Castillo and others, “Mitigating the political participation gap from the school: the roles of civic knowledge and classroom climate”, *Journal of Youth Studies*, vol. 18, No. 1 (2015).

<sup>21</sup> See Juan Carlos Castillo and others, “Social inequality and changes in students’ expected political participation in Chile”, *Education, Citizenship and Social Justice*, vol. 9, No. 2 (2014), p. 153.

opposed the law. The jurisprudence to date seems to confirm, however, that courts in Chile are not particularly well-disposed towards enforcing the Anti-Discrimination Act.<sup>22</sup>

37. The law has a number of weaknesses, in addition to the problem described above: (a) the definition of discrimination is very narrowly drawn; (b) the principle of equality between men and women is absent; (c) the emphasis is upon achieving “equity”, but this is very different from the goal of substantive equality; and (d) there are no provisions relating to affirmative action or temporary measures, which thus deprives the law of much of its potential impact.

38. If anti-discrimination laws are to be effective in tackling forms of discrimination that directly or indirectly cause poverty and inequality, they will need to be significantly strengthened. This includes provisions relating to discrimination against women, persons with disabilities, indigenous peoples, non-citizens and others.

39. There is a particular need to strengthen measures to combat gender discrimination and gender inequality. The 2013 CASEN survey indicates that 11.2 per cent of male-headed households were living in poverty, compared to 15.4 per cent of female-headed households. For households living in extreme poverty, the figures are 3.1 per cent and 5.3 per cent, respectively. Gender discrimination remains a major problem in the labour market and the origin of many gender inequalities. Based on its mission in 2014, the Working Group on the issue of discrimination against women in law and in practice concluded that there does not appear to be any specific and systematic enforcement of equal employment opportunity, as shown by a wage gap between men and women of 30 per cent.<sup>23</sup> The gap is larger between men and women with 13 or more years of schooling than between men and women with less schooling. This is problematic because it suggests that women cannot escape their relative disadvantage through education.<sup>24</sup> Female participation in the labour market remains low, especially in relation to the lower income deciles, where many women work in the informal sector or perform unpaid care work.

40. Women in Chile face discrimination at all ages. The 2008 pension reform had a positive impact on the position of women, especially through the establishment of a new “solidarity pillar” and a motherhood allowance. But discriminatory aspects remain. On average, women earn lower salaries than men and are overrepresented in informal jobs that do not lead to pension contributions. As a result, their pensions are considerably lower than men’s.<sup>25</sup> Because women retire with lower pensions but live longer than men, they are at greater risk of spending old age in poverty. In addition, because gender-specific mortality tables are used to calculate pensions, women receive smaller monthly pensions than men because they live longer, even when they have the same amount of pension savings as men.<sup>26</sup>

<sup>22</sup> See Lidia Casas Becerra, “Análisis crítico de la acción de no discriminación arbitraria a la luz de los primeros casos”, *Anuario de Derechos Humanos* (2014), pp. 127-137.

<sup>23</sup> Available from [www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=15005&LangID=E](http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=15005&LangID=E).

<sup>24</sup> Alicia Puyana, “Economic growth, employment and poverty reduction: a comparative analysis of Chile and Mexico”, *Employment Working Paper*, No. 78 (ILO, 2011), p. 41.

<sup>25</sup> Aida Caldera Sánchez, “Policies for Making the Chilean Labour Market More Inclusive”, *OECD Economics Department Working Papers*, No. 1117 (2014), p. 9.

<sup>26</sup> Comments and contributions of civil society for the list of issues and questions related to the consideration of the fourth periodic report of Chile by the Committee on Economic, Social and Cultural Rights, 1 October 2014. Available from [http://tbinternet.ohchr.org/Treaties/CESCR/Shared%20Documents/CHL/INT\\_CESCR\\_ICO\\_CHL\\_18430\\_E.pdf](http://tbinternet.ohchr.org/Treaties/CESCR/Shared%20Documents/CHL/INT_CESCR_ICO_CHL_18430_E.pdf).

41. Teenage girls, especially from poorer backgrounds, face both health-care and education-related discrimination when they become pregnant. This is even more problematic given the high number of teenage pregnancies. While promoting sexual and reproductive rights is highly controversial in Chile, a more open debate about sexual education, contraception and abortion is essential to reduce the high level of teenage pregnancies and their detrimental impact on the life prospects of the girls involved. The Government has proposed a bill decriminalizing abortion where the life of the mother is at risk, the fetus is non-viable or the pregnancy resulted from rape. Lifting the blanket ban on abortion would be an important step, but this bill does little to address the problem of teenage pregnancies.<sup>27</sup>

42. Gender equality is almost never championed by institutions that are heavily male dominated. In all three branches of government in Chile, men are much better represented than women. There are still almost six times as many men as women in Congress and less than one in five of the judges of the Supreme Court and the Constitutional Court are female. The introduction of a quota system that requires at least 40 per cent of a party's candidates for Congress to be women is an important step forward. Such quotas have had a positive impact on the proportion of women in many national parliaments in Latin America.<sup>28</sup> But candidacy quotas do not, on their own, ensure equal representation and additional steps will also need to be considered.

43. Significant problems persist in terms of discrimination against lesbian, gay, bisexual, transgender and intersex persons. While the 2012 Anti-Discrimination Act was a landmark achievement in this regard, many lesbian, gay, bisexual, transgender and intersex persons still face discrimination on a daily basis at school, at work and when trying to access basic services, such as health care and housing. The unacceptable discrimination and violence they encounter also makes it more likely that they will end up living in poverty. And those who come from poorer socioeconomic backgrounds are often subject to multiple forms of discrimination, thus making it extremely difficult to lift themselves out of poverty.

44. Transgender persons, particularly transgender women, often face the most severe forms of discrimination and other violations of human rights. Because of a lack of societal understanding and acceptance of transgender persons and the paucity of government policies and institutions to assist them, they are often forced to find work in the informal sector. Sex work may often be the only employment option effectively available to them, but this leaves them especially vulnerable to violence, diseases such as AIDS and unable to earn a steady income. The vulnerability of transgender persons is also reflected in a life expectancy of 35-40 years of age, compared to 79 in the country as a whole.

45. Deep discrimination against lesbian, gay, bisexual, transgender and intersex persons cannot be eliminated by legislative fiat alone and there is a need for concerted government policies to reinforce the legal commitment through education, resource commitment and policy changes. One fundamental step would be better data collection about the lesbian, gay, bisexual, transgender and intersex population. The CASEN surveys do not take account of sexual orientation or gender identity and the Government has not undertaken other comprehensive surveys or studies of this group, their socioeconomic situation or the nature and extent of violence and discrimination against them. Such data is an essential foundation

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<sup>27</sup> Alternative report submitted to the Committee on Economic, Social and Cultural Rights at its fifty-fifth session for the consideration of the fourth periodic report of Chile (June 2015), para. 97. Available at [http://tbinternet.ohchr.org/Treaties/CESCR/Shared%20Documents/CHL/INT\\_CESCR\\_CSS\\_CHL\\_20163\\_E.pdf](http://tbinternet.ohchr.org/Treaties/CESCR/Shared%20Documents/CHL/INT_CESCR_CSS_CHL_20163_E.pdf).

<sup>28</sup> See ECLAC, "Compacts for Equality", p. 104.

for the development of coherent government policies addressing the needs of lesbian, gay, bisexual, transgender and intersex persons.

46. The absence of an institution specifically tasked to protect and promote the rights of lesbian, gay, bisexual, transgender and intersex persons is also a critical gap. No government entity is responsible for enforcing the Anti-Discrimination Act and the National Service for Women has not embraced the rights of transgender women as part of its agenda. Given the nature and depth of the discrimination involved, appropriate institutional arrangements are indispensable.

47. Furthermore, the right of transgender persons to change their name and gender identity should be protected by law and put into effect through simple civil procedures. While the bill on gender identity that the Senate initiated in May 2013 was a positive step, the proposed procedures to register a change in gender identity were cumbersome and required judicial approval. Consideration of this bill appears to have stalled and human rights groups have expressed concern that the new Chair of the Senate's Human Rights Commission is opposed to the bill. The opposition of a single legislator should not be permitted to obstruct progress on a vitally important non-discrimination measure.

#### **D. Labour rights, poverty and inequality**

48. Chilean labour law, much of it a legacy of the Pinochet era, facilitates the maintenance of forms of economic inequality. Meaningful collective bargaining is made extremely difficult and the scales are consistently tilted in favour of employers. The right to strike is also unduly restricted. Under the Pinochet dictatorship, core labour rights were restricted, unions were segmented and union leaders were repressed.<sup>29</sup> The Pinochet years have weakened the power of labour organizations in Chile and the effects are still apparent today.

49. The Bachelet Government has proposed reforms to strengthen the bargaining power of trade unions, including by prohibiting non-union negotiating groups, extending collectively negotiated benefits to non-union employees with their consent and allowing unions to represent and collectively negotiate on behalf of workers with fixed-term or project-related contracts, who are currently outside the scope of collective bargaining. The reform would prohibit employers from replacing workers in the event of strikes, although companies using outsourced workers would retain the possibility of replacing them. It also envisages a bipartite commission to review the definition of essential service sectors in which strikes are prohibited. A new compulsory arbitration procedure would be established in sectors where strikes continue to be prohibited.<sup>30</sup>

50. While these proposals would be important steps in the right direction, some trade union representatives and civil society organizations considered them to be insufficient and to fall short in terms of international labour standards. Currently, the right to collective bargaining exists only at the enterprise level and employers can choose whether or not to bargain with inter-enterprise unions. This provision remains intact under the proposed reforms. Another practice that undermines union organization is that of permitting firms to splinter by using multiple tax identities, thereby avoiding the thresholds that would require them to permit collective bargaining at the company level.<sup>31</sup> The proposed labour reform does not resolve the fundamental problem with this practice, as it still allows two or more

<sup>29</sup> See Contreras and French-Davis, "Policy regimes, inequality, poverty, and growth", p. 101.

<sup>30</sup> See OxResearch Daily Brief Service, "Chile: Labour reform will pass this year", 29 January 2015.

<sup>31</sup> Sarah Gammage, Thomás Albuquerque and Gonzalo Durán, "Poverty, inequality and employment in Chile", ILO Conditions of Work and Employment Series, No. 46 (2014), p. 16.

enterprises to be treated as a single employer only if they have a common business address and provide similar or complementary products or services, or if they have a common controller. Thus, it is still possible, for example, for a newspaper to bargain separately with its journalists, printers and administrators as though these groups constitute separate lines of business. The reforms also leave in place the requirement that strikes can only occur within the context of collective bargaining.

51. The legacy of the dictatorship, combined with excessively modest subsequent reforms, has severely weakened the trade union movement. As a result, unions are seen as organizations that can do little to protect workers. Current unionization rates of around 14 per cent represent a radical decrease from the pre-Pinochet era and are very low in comparison to other OECD countries. The percentage of contracts covered by collective bargaining agreements is also very low in comparison to other OECD countries. If Chile wants to tackle high levels of income inequality, it should strengthen the bargaining power of unions vis-à-vis employers by respecting core labour rights, including those protected under the ILO Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87) and the ILO Right to Organise and Collective Bargaining *Convention*, 1949 (No. 98), which Chile ratified in 1999.<sup>32</sup> While corporations may legitimately strive for a labour market that conforms to their needs, it cannot be denied that the balance of power between corporations and unions in Chile is tilted so much in favour of the former that corrections are necessary to create a more level playing field.

## E. Indigenous rights, poverty and inequality

52. The rights of indigenous peoples are the Achilles' heel of the human rights record of Chile in the twenty-first century. The matters of contention are complex and wide-ranging and the solutions not straightforward. But there seems all too little preparedness to tackle them other than in a superficial way. Yet if the Government is serious about its commitment to ending extreme poverty and reducing inequality, indigenous policy must be an essential element in such efforts.

53. The fact that the State does not have a clear picture of the number of its indigenous citizens is symptomatic. It also impedes effective policy design and targeting and raises questions about consultation. In the 2002 census, the figure for the proportion of indigenous persons among the population was 4.6 per cent. The disputed 2012 census yielded a figure of around 11 per cent and the 2013 CASEN survey suggested 9.1 per cent. It is not contested, however, that poverty rates are especially high among indigenous peoples in Chile. In 2013, their income poverty rate was almost double that of the non-indigenous population (23.4 per cent compared to 13.5 per cent). The extreme poverty rate of the indigenous population, also measured by income, was exactly double that for the non-indigenous population (8.2 per cent compared to 4.1 per cent). In 2013, 27.4 per cent of the households with an indigenous head of household were living in multidimensional poverty, compared to 15.1 per cent of the non-indigenous population.

54. There exist profound inequalities between indigenous and non-indigenous groups. One study concluded that "income disparity between Chile's ethnic groups is ... among the

<sup>32</sup> Reference is made to the 2012 report of the ILO Committee of Experts on the Application of Conventions and Recommendations, which contains a long list of requests of the Committee to the Government of Chile to improve the implementation of ILO Conventions Nos. 87 and 99 through amendments of its Labour Code. Available from [www.ilo.org/ilc/ILCSessions/101stSession/reports/reports-submitted/WCMS\\_174843/lang--en/index.htm](http://www.ilo.org/ilc/ILCSessions/101stSession/reports/reports-submitted/WCMS_174843/lang--en/index.htm).

highest in Latin America”.<sup>33</sup> There are many other inequalities between indigenous and non-indigenous groups in Chile. While 56.6 per cent of non-indigenous people aged 20 years and over have completed secondary education, the figure is only 42.8 per cent for the indigenous population.<sup>34</sup> In 2006, life expectancy was 77 years for non-indigenous people, compared to 65 for the indigenous population.<sup>35</sup> Lack of political representation is also a problem. In 2013, the Committee on the Elimination of Racial Discrimination expressed its concern about the low level of participation by indigenous peoples in public affairs (see CERD/C/CHL/CO/19-21, para. 16). Despite the fact that around 1 in 10 Chileans self-identifies as indigenous, there is not one indigenous member of Congress in Chile.

55. The response by the Chilean State to what is widely acknowledged as a problem of exclusion, marginalization and discrimination has been piecemeal and the State has been especially reluctant to address the major issues of concern. As a result, Chilean policies have been strongly criticized by a broad range of international bodies. The Committee on the Elimination of Racial Discrimination devoted an important part of its 2013 concluding observations to the marginalization of indigenous peoples (see CERD/C/CHL/CO/19-21). The Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism highlighted problems faced by indigenous peoples in a compelling analysis in 2014 (see A/HRC/25/59/Add.2). There is no need to repeat here what was said and what other international bodies have said. Suffice it to add that no serious effort to eliminate extreme poverty in Chile can succeed without a concerted focus on the situation of indigenous peoples.

## F. Rights of children

56. Chile ratified the Convention on the Rights of the Child in 1990, but significant gaps in the protection of children’s rights persist. In the Constitution, no provision is made for the protection of children’s rights nor is there yet a comprehensive law on the rights of children and adolescents. Many of the Special Rapporteur’s interlocutors during the mission observed that a sufficiently resourced institutional structure to coordinate and implement children’s rights is also lacking.

57. Children and adults face many of the same problems of poverty and inequality, but the former are more vulnerable and less able to deal with those hardships. Although indigenous and migrant children are among the most vulnerable groups in Chile, there is no comprehensive law or policy directly addressing their situation. Various experts to whom the Special Rapporteur spoke lamented the inadequacy of existing childcare and early childhood education facilities and noted that this works to exacerbate inequalities. While early childhood education is part of the Government’s education reform package, there is a risk that it will be given a low priority.

58. Domestic violence against children is an alarming issue in Chile. UNICEF found that 71 per cent of children in Chile suffer some type of violence (physical or psychological) from their mother and/or father.<sup>36</sup> While children from all socioeconomic backgrounds face high levels of domestic violence in Chile, those from poorer backgrounds are more likely to suffer physical violence. This rapidly turns into a vicious circle, because child victims of

<sup>33</sup> Claudio A. Agostini, Philip H. Brown, and Andrei Roman, “Poverty and inequality among ethnic groups in Chile”, ILADES-Georgetown University Working Papers (2008), p. 4.

<sup>34</sup> See ECLAC, “Compacts for Equality”, p. 108.

<sup>35</sup> See ECLAC, “Pueblos indígenas y afrodescendientes de América Latina y el Caribe: información sociodemográfica para políticas y programas” (2006), p. 114.

<sup>36</sup> See Soledad Larraín and Carolina Bascañán, “4th Study on Child Abuse” (UNICEF, 2012), p. 6.

serious physical violence also gain lower school grades and thus less likely to escape from situations of deprivation. The Special Rapporteur is not aware of specific government policies to address prevention of domestic violence against children.

## G. Rights of migrants

59. Although the 2013 CASEN survey estimated that migrants form 2.1 per cent of the total population, the true figure is almost certainly higher given the reliance of CASEN on self-identification and self-reporting. Over 80 per cent of the migrants recognized in the survey came from other Latin American countries, most notably Argentina and Peru. Some are highly educated and well paid and earn up to three times more than an average Chilean-born national.<sup>37</sup> However, migrants in Chile are a diverse group in terms of socioeconomic status and the income gap between the poorest and the richest quintiles is significantly higher than for the Chilean population.<sup>38</sup> Migrants, particularly those in irregular situations, often face obstacles in accessing education, health care, employment opportunities and housing. It is concerning that 25.2 per cent of migrants recognized by the CASEN survey live in multidimensional poverty, a percentage that would be much higher if the situation of irregular migrants were taken into account.

60. Although Chile is now a major destination for immigration, there is a marked absence of coherent legislative frameworks and comprehensive policies governing the situation of migrants, let alone their rights. The Aliens Act of 1975, adopted in the early years of the dictatorship, is the only legislative framework that applies to migrants, but it is primarily concerned with border control and the prerogatives of the Ministry of the Interior. There is clearly a degree of political will to guarantee the human rights of migrants, as demonstrated by the ratification by Chile in 2005 of the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families and the adoption of the Presidential Instruction No. 9 in 2008, which sets out national migration policy founded on certain principles, including respect for migrants' labour rights, non-discrimination and the integration and social protection of migrants in the field of education, health and employment. However, these steps have not been translated into a binding legal framework. Although a draft migration law was prepared and considered by Congress in 2013, it appears that the process has stalled.

61. Instead of developing a legal framework, the Government of Chile has adopted a number of ad hoc administrative measures governing the access of migrants to various services, particularly education and health care. In the field of education, the Ministry of Education issued Instruction No. 07/1008 (1531) in August 2005, in which it seeks to promote the admission of all migrant children to primary and secondary schools.<sup>39</sup> However, a variety of factors hinder irregular migrant children's access to education, such as

<sup>37</sup> Baltica Cabieses, Helena Tunstall and Kate Pickett, "Understanding the socioeconomic status of international immigrants in Chile through hierarchical cluster analysis: a population-based study", *International Migration*, vol. 53, No. 2 (2013), p. 310.

<sup>38</sup> *Ibid.*

<sup>39</sup> Office of the United Nations High Commissioner for Refugees, International Organization for Migration and UNICEF, *Los derechos de los niños, niñas y adolescentes migrantes, refugiados y v íctimas de trata internacional en Chile. Avances y desafíos* (2012); see chapter 1, section 1.2, for an overview of the administrative measures related to access to education for migrant and refugee children (English translation available at [www.unicef.cl/web/wp-content/uploads/doc\\_wp/WD%20The%20rights%20of%20migran%20children.pdf](http://www.unicef.cl/web/wp-content/uploads/doc_wp/WD%20The%20rights%20of%20migran%20children.pdf)). See also concluding observations of the Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families (CMW/C/CHL/CO/1, para. 34).



discrimination and the inability of migrant parents to produce documents required for admission. Children also need a national identity card number in order to have their grades registered in the system. This requirement effectively prevents irregular migrant children from pursuing their studies, as the number can only be issued to those with a student visa or a temporary residence visa.<sup>40</sup>

62. Similarly, various administrative instructions and agreements govern migrants' access to health-care services. For instance, Ordinary Decree No. 2284 of 2007 guarantees the right of regular migrants to register with the National Health Fund and the right of irregular migrants to access emergency health services in designated public health-care facilities or to be treated privately. The Ministry of the Interior and the Ministry of Health signed a cooperation agreement in 2007 to allow all migrant children access to public health-care services regardless of their migration status or that of their parents, guardians or legal representatives. With respect to pregnant migrant women in irregular situations, under circulars Nos. 1179 of January 2003 and 6232 of May 2003, their right to receive health care in health clinics and public hospitals during their pregnancies, childbirth and post partum is guaranteed. Notwithstanding these measures, significant barriers still exist for migrants in accessing health care in practice, reportedly owing to discrimination, a lack of awareness of these measures on the part of personnel in health-care facilities and the lack of identity cards.<sup>41</sup>

63. With respect to housing, reports indicate that migrants often live in overcrowded, unsanitary and unhygienic conditions.<sup>42</sup> According to the 2013 CASEN survey, 14.9 per cent of migrants live in medium to high situations of overcrowding, compared to 7.9 per cent of Chileans. Furthermore, 9.1 per cent of migrants live in a situation of critical overcrowding, compared to only 1.1 per cent for Chilean nationals. Migrants do not benefit from State housing subsidies, which require proof of five years of permanent residence.

## IV. Conclusions and recommendations

### A. Anti-poverty programmes and coordination

**64. The Special Rapporteur urges the Government of Chile to adopt a comprehensive anti-poverty plan. It should be carefully targeted and well integrated and specifically address both poverty and extreme poverty. Even the adoption of the major reforms in education, pensions and entitlements that are currently being considered would not, in the absence of more targeted measures, assure sustained decreases in the proportion of the population living in poverty and extreme poverty.**

<sup>40</sup> Red Chilena de Migración e Interculturalidad, "Informe alternativo: Chile, Convención Internacional sobre la Protección de los Derechos de Todos los Trabajadores Migratorios y de sus Familiares", July 2011. Available from [http://tbinternet.ohchr.org/\\_layouts/treatybodyexternal/Download.aspx?symbolno=INT%2fCMW%2fNGO%2fCHL%2f15%2f8326&Lang=en](http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=INT%2fCMW%2fNGO%2fCHL%2f15%2f8326&Lang=en).

<sup>41</sup> *Ibid.*, sect. 7.2. According to this report, one of the most extreme cases concerned a young Peruvian woman, six months pregnant, suffering from gestational diabetes. In 2010, she was denied health care at a clinic in Arica as she could not present a residence certificate, which eventually contributed to symptoms of irreversible loss at eight months. See also *Articulación Feminista por la Libertad de Decidir*, "Shadow Report to the UN Committee on the Elimination of Discrimination against Women". Available at [www2.ohchr.org/english/bodies/cedaw/docs/ngos/AFLD\\_E\\_CEDAW53.pdf](http://www2.ohchr.org/english/bodies/cedaw/docs/ngos/AFLD_E_CEDAW53.pdf).

<sup>42</sup> See Red Chilena de Migración e Interculturalidad, "Informe Alternativo: Chile", section 7.3.

65. In addition to such a plan, there is a need for more effective mechanisms to coordinate the disparate poverty eradication programmes that currently exist. The Ministry of Social Development is unlikely to be able to achieve this on its own.

66. Given the crucial leadership role of Chile at the international level in championing the Social Protection Floor Initiative, it is disappointing that the country's own programme is not more developed. It is widely acknowledged that the existing Ethical Income Programme stops well short of achieving a true minimum income for all those in Chile living in poverty. The debate on a real minimum income programme needs to be revived.

## **B. Measures to tackle discrimination and inequality**

67. The Special Rapporteur urges the Government of Chile to adopt a more systematic approach to promoting a broad and affirmative notion of non-discrimination and strengthening the institutional arrangements designed to give substance to the provisions of the Anti-Discrimination Act.

68. The Special Rapporteur further urges the Government of Chile to adopt legislation that does more than just recognize the principle of equal pay for the same work, but also recognizes the principle of equal pay for work of equal value. As long noted by ILO and the Committee on the Elimination of Discrimination against Women, more effective mechanisms are needed in order to implement this principle (under the Equal Pay Act (No. 20,348)).

69. Women remain overwhelmingly responsible for caregiving in Chilean society. This situation guarantees low rates of participation in the formal labour market by those carers. In addition to programmes designed to encourage the male population to take greater responsibility for caring, the Special Rapporteur recommends that there be greater investment in community care facilities and measures to give economic recognition to the work done by unpaid care workers be considered.

70. Women's work opportunities are severely undermined by the phenomenon of adolescent pregnancy, which remains at a very high rate in Chile, especially among the poorest. The challenge goes well beyond the current debate about access to abortion, as important as that may be. The Special Rapporteur recommends that a sustained effort be made to acknowledge and promote sexual and reproductive rights, both as a matter of human rights and as a necessary complement to labour market reforms.

## **C. Constitutional and institutional reform**

71. President Bachelet has announced that a dialogue on constitutional reform will begin in late 2015. The Special Rapporteur urges the Government of Chile to ensure that the full range of economic, social and cultural rights are recognized in a revised constitution. The rights of particular groups such as women, children, persons with disabilities, lesbian, gay, bisexual, transgender and intersex persons and others should also be specifically recognized in the revised constitution. Recognition should also be accorded to the indigenous peoples of Chile and their rights.

72. The Special Rapporteur further urges the Government of Chile to ratify the Optional Protocol to the International Covenant on Economic, Social and Cultural Right, which it signed in 2009 and which entered into force in 2013. Ratifying the

Optional Protocol will improve the protection of the economic, social and cultural rights of Chileans.

73. The Special Rapporteur recommends that the President ensure the establishment of a well-funded and well-staffed Office of the Under-Secretary for Human Rights. The resulting ministerial structure should ensure that economic, social and cultural rights are an integral part of its mandate and should receive attention equal to that given to civil and political rights. The human rights obligations of Chile extend far beyond remedying the historical violations of the dictatorship. The new Office of the Under-Secretary could also take the lead in ensuring systematic and coordinated follow-up to recommendations that emerge from international human rights bodies and should be empowered to report to Congress on what has been done in this regard.

#### **D. Indigenous peoples**

74. The Special Rapporteur strongly urges the Government to respect its obligations under the ILO Indigenous and Tribal Peoples Convention, 1989 (No. 169), which it ratified in 2008. ILO and most other observers do not consider that this is currently the case. The tendency of government officials to dismiss the relevance of the United Nations Declaration on the Rights of Indigenous Peoples on the grounds that it is not legally binding is simplistic and unhelpful. The Declaration represents an international consensus on an appropriate framework for dealing with these issues and its provisions must be taken into account in policy formulation. The Special Rapporteur recommends that the Government of Chile integrate the Declaration into its domestic legal system.

75. The Government of Chile should require the Ministry of Social Development to prepare, in consultation with all concerned groups, a comprehensive strategy for the elimination of indigenous poverty. There is, at present, no such integrated strategy. Addressing the issue of land rights is central to the elimination of indigenous poverty. But, until there is a major increase in the financial resources allocated for this purpose, stated commitments to resolve the land issue will remain entirely unconvincing.

76. The proposal to create a ministry for indigenous affairs is extremely important. Given the relatively short timetable envisaged by some for achieving this, there would seem to be a serious risk that inadequate attention will be paid to the need for the new ministry to have a structure and functions that are very different from those of other ministries. Meaningful consultation with indigenous peoples is indispensable in devising an approach that meets both international standards and the specific needs of the peoples concerned.

77. The lack of any representative in Congress of indigenous origin, despite the fact that around 10 per cent of the population is indigenous, is a symptom of highly unsatisfactory arrangements to ensure meaningful political participation by indigenous groups. The Special Rapporteur recommends that a formula be sought that will enable an appropriate level of representation in Congress. The Special Rapporteur also strongly recommends that the 2017 census should retain a question that permits the respondent to self-identify his or her ethnicity, including indigenous and Afro-descendant peoples.

78. The Special Rapporteur recommends that the handful of corporations that dominate the extractive, forestry and agricultural industries on the lands claimed by the indigenous people should adopt a set of human rights policies that conform, as a

minimum, to the requirements of the Guiding Principles on Business and Human Rights.

#### **E. Lesbian, gay, bisexual, transgender and intersex persons**

79. The Special Rapporteur urges the Government of Chile to collect accurate statistics about the number of lesbian, gay, bisexual, transgender and intersex persons in Chile, which task is a prerequisite to effective policy elaboration. The Special Rapporteur also recommends that future CASEN surveys and the census should offer an alternative to the male/female binary option. In addition, the registration of a change in gender identity should not require time-consuming, expensive and potentially problematic processes of judicial approval. Other States permit individuals to register their own status at civil registries.

80. The Special Rapporteur recommends that the Government should set up a specialized institution to examine, in consultation with the groups concerned, the full range of social and other policies that need to be reformed to take account of the specific needs of lesbian, gay, bisexual, transgender and intersex persons and to ensure equal treatment. Examples of problem areas include housing for transgender persons, the responsibility of an agency such as the National Service for Women for dealing with transgender women, and the facilities and medical treatments made available in prisons. In general, the Special Rapporteur recommends that all social programmes take account of sexual orientation and gender identity implications.

#### **F. Children**

81. The rights of children and adolescents need to be more adequately recognized in the Chilean legal system, including through inclusion in a revised constitution and the adoption of a framework law. The Special Rapporteur recommends that a special entity with sufficient resources and power to coordinate the Government's policies addressing the situation of children be established.

82. The Special Rapporteur urges the Government to prioritize the reform of early childhood education policies and programmes as part of its planned education reform package.

83. The Special Rapporteur recommends that the Government adopt a nationwide policy to tackle domestic violence against children. The task is urgent, given the scale of this problem in Chile.

#### **G. Migrants**

84. The current protection of the human rights of migrants is ad hoc and there is a critical need for a comprehensive overhaul of the law and policy. In addition to the lack of a legal framework, the absence of a ministry specifically responsible for migration contributes to the gaps in the protection of migrants' rights. The Special Rapporteur considers it crucial to ensure that the migration bill, which is once again under consideration, clearly spells out the human rights of all migrants in accordance with international human rights law and standards and creates a separate ministry mandated to uphold these rights.

## **H. Bajos de Mena**

85. Neighbourhood leaders in Bajos de Mena (Villa San Guillermo) claim to have repeatedly requested that authorities undertake a thorough survey of the health status of the population, but no comprehensive and systematic survey has been done. Given the extent of the problems reported, the Special Rapporteur urges the local and national authorities to undertake such a survey as a matter of urgency.

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