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(OTD)

CEDAW

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Good afternoon Madam President,

I come representing 8 organizations of sexual diversity and feminism of Chile. In this declaration I will touch upon five issues relating to the population of lesbian, bisexuals and transgender women in Chile that requires our attention.

The topics include: (1) the Anti-discrimination law recently passed in Chile, (2) the problems of recognition of other types of families and of diversity, (3) the police and their abuse of power, (4) the invisibility and silence from the State regarding the existence of LBT people and (5) the Gender Identity Law.

Issue 1: The Anti-discrimination law that was passed this year fails to meet basic international parameters. It is widely criticized by our organizations because it fails to incorporate direct and indirect discrimination (and only addresses arbitrary discrimination); lacks the incorporation of affirmative action and lacks the incorporation of reparation to the victim. Moreover, the law is subject to Article 19 of the Chilean Constitution, which overrides any subsequent law. For example, it says that religion is superior to any human right. There is one type of discrimination that would be guaranteed by this law, which is that whether discrimination occurred would be up to the interpretation of the law by the judge.

Issue 2: In Chile, the family is considered the cornerstone of the political, social, cultural and religious development and this is where the largest problem is found. For the Chilean State there only exists one type of family; it is formed by a man and a woman, married by the church and that family is NORMAL and TRADITIONAL.

In this context, the case of Karen Atala is important for all of Chile. Karen lost custody of her children in 2002 when the Supreme Court decided that being a lesbian meant that you could not be a good mother, awarding custody to the father. In February of this year, the Inter-American Court of Human Rights in its decision noted that sexual orientation is not an impediment to being a mother or a father. However, the State of Chile still has not complied with the decision, which includes financial compensation as well as the training of State institutions. Karen's case is important because we are fathers and mothers and we have LGBT families and the State should implement the decision of the court because it would be a form of recognition of all types of families.

Issue 3: The abuse of police power and violence is supported by the State when it does not recognize the condition of human beings—trans women are considered the dregs of society.

Article 373 refers to “morality and decency.” This law is being used to temporarily detain trans women then while in detention, police sexually abuse, mistreat, humiliate, and then dispose of them. The women are then released without charges or any judicial process. The State continues to breach the earlier recommendation handed down by the Universal Periodic Review process to eliminate this article.

Issue 4: The invisibility and State violence persist for lesbian, bisexual and transgender women. According to the State LBT women do not exist; they are not incorporated in the programs and are not recognized as subjects with rights. Trans women are excluded, forgotten, relegated to second-class citizens without access to programs, trainings on access to protection from the National Women’s Service (SERNAME) the entity that has the primary commitment to protect and safeguard the integrity of women. Moreover, SERNAME keeps heterosexuality at the core of its programs, including intra-family violence so much that they do not attempt to eradicate violence between men and women, simply diminish it, as if there was a level of violence that women deserve and that level women must endure in order to remain a WELL-CONSTRUCTED FAMILY.

Issue 5: The gender identity law. A society grows, a country grows, when we recognize the contributions made by all individual human beings that comprise it and when each human being is recognized by one another as a HUMAN BEING. This is something so basic that one is supposed to acquire it at the moment of birth, but this is not so for us trans people.

Today without the gender identity law in Chile we have changes of name and sex but the judicial process to do this is degrading and inhumane. It is not regulated; therefore whoever has the judicial power acts according to her/his own subjective values to interpret the civil registration laws of name changes.

Under the law a trans person must get psychological and psychiatric certificates for hormone treatment and to change one’s name and sex, pathologizing our lives as if we are mentally ill. It is urgent to regulate the judicial process through the adoption of the gender identity law which trans organizations presented to the Chilean Congress in December which does not allow for value, religious or personal interpretations of the law and instead respect the body and the human rights.

This last time and after the passage of the law against discrimination, there have been repeated attacks against lesbians and trans women, brutal attacks that are silenced, receive no press, no recognition by the authorities, and there is no National Women’s Service that protects “those rights” and instead acts as if they are the rights of others.

Finally, each time that the state ignores bloodshed, it is life that does not receive equality and dignity, it is a violation of law that leaves a mark burned into the soul of a human being. We do not want more cases like Ariel, Maria Ignacia, Sandy, Nayareth or Valeska that we have detailed in the report delivered to you, we only want the Chilean State to comply with international law, to follow the recommendations given by you and to respect human beings, and to not continue on its path of ignoring and discriminating.

Thank you, Madam President.