



Joint stakeholder contribution

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Chile

Human rights in the digital context

Joint contribution from the Association for Progressive Communications (APC) and Derechos Digitales

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I. Introduction and context

1. This submission is a joint stakeholder contribution to the third cycle of the Universal Periodic Review (UPR) mechanism for Chile by the Association for Progressive Communications (APC)¹ and Derechos Digitales.² APC is an international network and non-governmental organisation established in 1995, with consultative status to the United Nations Economic and Social Council (ECOSOC). Its mission is for everyone to have access to a free and open internet to improve lives and create a more just world. Derechos Digitales is an independent non-profit organisation based in Chile, established in 2005, working across Latin America to defend and promote the exercise of human rights in the digital environment, in particular related to freedom of expression, privacy and access to knowledge and information.
2. APC and Derechos Digitales appreciate the opportunity to participate in this cycle of the Universal Periodic Review and recognise the important human rights issues being raised by other stakeholder reports. Our organisations strongly believe that the same human rights that people have offline must also be protected online,³ which is why this submission focuses on human rights in the digital context, particularly on freedom of expression and association online; access to the internet; openness and access to information, knowledge and culture; and the elimination of all forms of discrimination and violence against women on the internet. It explores the extent of implementation of the recommendations made in the previous cycle of the UPR and also identifies emerging concerns in Chile regarding human rights in the digital context.

¹ <https://www.apc.org>

² <https://www.derechosdigitales.org>

³ UN Human Rights Council. (2018a). Resolution 38/L.10/Rev.1 "The promotion, protection and enjoyment of human rights on Internet". <https://documents-dds-ny.un.org/doc/UNDOC/LTD/G18/203/73/PDF/G1820373.pdf?OpenElement>

3. Human rights in the digital context are inextricably connected with meaningful access to and use of the internet. Chile is one of the most connected countries in Latin America, with internet penetration of 87.5% of Chilean houses, notwithstanding that there are several digital divides experienced by various populations. According to official statistics (CASEN), access to the internet in urban areas is 68.8%, compared to 40.9% in rural areas; women are less connected than men in Chile: 65.3% of women are connected compared to 67.5% of men. Finally, indigenous people are less connected than non-indigenous people, with a rate of 63.2% compared to 66.7%, respectively.⁴ Those digital divides reveal an inequality in the exercise of human rights, such as freedom of opinion or association as well as access to information or culture, among others. Equally as important as access to infrastructure is the appropriation of technologies in marginalised groups such as indigenous people and women, which requires the development of digital abilities and skills oriented toward the needs, expectations and daily requirements of women in their different roles.
4. Information and communications technologies (ICTs), including the internet, can give people access to information, discussions and networks, so marginalised groups can be better equipped to challenge discrimination, misogyny and xenophobia, and to work to address a more fair and equal society. In addition, by regarding the internet as a tool of development, increased penetration in marginalised groups (such as among women) contributes to raising income among poor people.⁵
5. Internet access can be a critical enabler of a range of human rights addressed in this submission. Consequently, the UPR should consider the internet and appropriation of technologies integrally linked with human rights, particularly but not exclusively freedom of speech, freedom of association and rights related to access to culture and information. The former Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression has noted the importance of promoting and protecting human rights in digital contexts and moving forward to ensure access to the internet for all individuals.⁶
6. Access to the internet is a powerful tool, which facilitates economic development and the enjoyment of a range of human rights (including freedom of speech and freedom of assembly, among others), because marginalised groups with access to the internet “can obtain information, assert their rights, and participate in public debates concerning social, economic and political changes to improve their situation.”⁷ For those reasons, it is a key point to continue and enhance internet penetration in Chile, particularly among marginalised groups, not only for their economic development but also to increase and facilitate the exercise of their human rights in digital contexts.

⁴ All statistics can be consulted in Ministerio de Desarrollo Social. (2015). *Casen. Tecnologías de la información y comunicación (TICS). Síntesis de resultados*. observatorio.ministeriodesarrollosocial.gob.cl/casen-multidimensional/casen/docs/CASEN_2015_TICS.pdf

⁵ CEPAL. (2017). *El uso de internet: Brechas de género y desafíos para la autonomía económica de las mujeres en la era digital*. conicyt.cl/gendersummit12/wp-content/uploads/2017/12/Luc%C3%ADa-SCURO-gender-summit_06.12.17.pdf

⁶ La Rue, F. (2011). Report of the Special Rapporteur on the promotion and protection of the right of opinion and expression. <https://www.right-docs.org/doc/a-hrc-17-27>

⁷ Ibid.

II. Follow-up from previous UPR cycle and other recommendations

7. The previous UPR of Chile (2014) did not include any recommendations with explicit references to the internet in relation to human rights issues. Nonetheless, Chile accepted several recommendations on issues related to the focus of this submission. For example, Chile supported a recommendation to “establish an effective system to address and prevent violence against women” (No. 121.86, by the Islamic Republic of Iran). Chile also supported the adoption of effective measures to prevent discrimination and violence against women, including the adoption of relevant strategy and plans of actions (121.90, by Uzbekistan). We understand that those commitments extend to digital spheres and internet spaces; therefore, prevention of violence and discrimination against women must be considered within digital contexts.
8. In addition, Chile committed during the 2014 UPR process to promoting the development and education of marginalised groups, particularly indigenous populations and women. For example, Chile accepted the recommendation to “continue current national strategies and programs for enhancing employment opportunities, social welfare, education and health-care system especially for families in rural areas, migrants and indigenous and tribal people in Chile” (129.39, by Viet Nam); and another recommendation to “take steps to eradicate female illiteracy among rural and indigenous women and implement equal education opportunities for rural and indigenous girls” (121.154, by Estonia).
9. According to Human Rights Council Resolution A/HRC/38/L.10/Rev.1, co-sponsored by Chile, it is important to empower all women and girls by “enhancing their access to information and communications technology, by promoting digital literacy and participation of women and girls in education and training on information and communications technology, and by encouraging women and girls to embark on careers in the sciences and in information.”⁸ In the same resolution, Chile supports efforts to “bridge the digital divides, including the gender digital divide (...) to promote the full enjoyment of human rights.”⁹
10. In summary, we encourage the Chilean government to follow up on several Human Rights Council resolutions on the enjoyment of human rights and the internet, particularly that the same rights that people have offline must also be protected online.

III. Legal framework and international human rights obligations

11. Chile is a state party to the International Covenant on Civil and Political Rights (1972), the International Covenant on Economic, Social and Cultural Rights (1972) and the Convention on the Elimination of all Forms of Discrimination against Women (1999). Thus, Chile has obligations and duties under international law to respect, to protect and to fulfil all civil, political, economic, social and cultural rights without discrimination between men and women. In addition, Chile has the obligation to eliminate discrimination and violence in both public and private spheres, by state and non-state actors. This includes women in online contexts, as stated by Human Rights Council

⁸ UN Human Rights Council. (2018a). Op. cit.

⁹ Ibid.

Resolution A/HRC/38/L.6, co-sponsored by Chile, regarding the prevention of and response to violence against women and girls in digital contexts. Within this framework it is necessary to ensure that women and girls not only have rights to freedom of opinion and expression online but also “do not experience violence or threats of violence while exercising these rights.”¹⁰

12. Under the Chilean Constitution (second paragraph, fifth article), the international treaties on human rights that have been endorsed and ratified by the state enjoy the same hierarchy as rights stated in the Constitution. In addition, Article 19 (2) states that the Constitution ensures to all persons “equality before the law. In Chile, there is no privileged person or group;” Article 19 (12) ensures the freedom of opinion and the freedom to inform without prior censorship; and Article 19 (13) guarantees the right to peaceful assembly.
13. However, there is neither a constitutional recognition of indigenous peoples (recommendation 121.163 and 121.164), nor a constitutional prohibition of any forms of discrimination against women. Finally, there is no mention of the internet in the Chilean Constitution.
14. Regarding the Chilean legal framework concerning the internet, we can highlight the adoption of a net neutrality law in 2010 (Law n° 20.453); a law that punishes virtual child pornography or its possession, as well as sexual harassment of minors (Law n° 20526), enacted in 2011; and, in 2015, Chilean Congress passed a bill to protect the freedom of choice of internet services (Law n° 20.808). Also relevant within the internet context is the Data Protection Law (Law n° 19.628) passed in 1999, implemented even without a proper comprehension or addressing of the evolution of the digital context. Notwithstanding Chile’s international human rights obligations, Chile does not have specific legislation concerning violence against women in digital environments.
15. Despite a lack of recognition of human rights in online environments by the legal framework, several court decisions have recognised human rights in digital contexts, such as the right to be forgotten,¹¹ right to privacy and integrity of communications,¹² physical and psychological integrity in online contexts,¹³ and freedom of speech against the right to honour,¹⁴ among others. In addition, Chile has supported several Human Rights Council resolutions that recognise that “the same rights that people have offline must also be protected online.”¹⁵
16. Finally, we note that the Chilean government’s “Digital Agenda 2020”¹⁶ includes no explicit promotion of access to internet for marginalised groups, though it does include some measures to “strengthen gender equality in digital environments” (Point no. 7 of

¹⁰ UN Human Rights Council (2018b). Resolution 38/L.6 “Accelerating efforts to eliminate violence against women and girls: preventing and responding to violence against women and girls in digital contexts”. <https://undocs.org/A/HRC/38/L.6>

¹¹ Chilean Supreme Court, case number: 11746-2017.

¹² Chilean Constitutional Court, case number: 2153-2011.

¹³ Chilean Supreme Court, case number: 2619-2006.

¹⁴ Chilean Supreme Court, case number: 3840-2002.

¹⁵ Human Rights Council. (2018b). Op. cit.

¹⁶ www.agendadigital.gob.cl/#/

“Rights to digital development”). Along the same line, there is not a single reference in the programme of the Chilean Women’s Ministry¹⁷ concerning online gender-based violence (GBV).

IV. Areas of concern

- Violence against women

17. Online gender-based violence is an extension of violence against women (hereinafter, “VAW”) in offline contexts that can infringe on numerous human rights such as privacy, reputation or honour, capacity to move freely, physical and psychological integrity, freedom of expression and access to information, among others. Women and girls face specific threats including online harassment, cyberstalking, attacks on their sexuality, exposure of personal information, threats based on morality or religion, manipulation of images, non-consensual distribution of intimate images or distribution of “sex videos” that are used for blackmail and can result in repeated trauma every time they are reposted online.¹⁸
18. Although nowadays it is one of the most common forms of sexual violence, there is no specific law dedicated to preventing and combating VAW in digital contexts in Chile. In 2017, 38% of internet users declared being victims of sexual harassment by electronic means or non-consensual pornography.¹⁹ According to police, the complaints are referred to prosecutors and most of the time dismissed, because it is impossible to prosecute perpetrators considering their acts are not classified as crimes.²⁰ This context creates a burden of responsibility for both the Chilean state and internet platforms.
19. One of the first cases of non-consensual disclosure of intimate images on the internet that had public relevance in Chile was what was popularly known as “Wena, Naty”. In this case, a teenager having oral sex with another minor after having consumed alcohol and marijuana that had a strong effect on the young woman, who also consumed psychiatric drugs by medical prescription, was recorded by a third minor and went viral on the internet.
20. As explained in the civil lawsuit filed by the victim, the consequences of the publication of the video and its subsequent popularisation were immediate: the teenager was expelled from school (the victimiser filming without the girl's consent was not), her personal data and those of her family were published on different internet platforms, and for several years after the incident she continued to be harassed – even by means of traditional communication – which caused her severe depression and even an attempted suicide.

¹⁷ <https://www.minmujeryeg.cl/agenda-de-genero/programa-de-gobierno>

¹⁸ Boyd, D. (2010). *Social Network Sites as Networked Publics*.
<https://www.danah.org/papers/2010/SNSasNetworkedPublics.pdf>

¹⁹ Microsoft. (2017). Microsoft Digital Civility Index (DCI) - Chile.
<https://query.prod.cms.rt.microsoft.com/cms/api/am/binary/RE1LWqL>

²⁰ El Mostrador. (2017, 10 February). Cuidado con el acoso digital: no existe ley que sancione.
www.elmostrador.cl/braga/2017/02/10/cuidado-con-el-acoso-digital-no-existe-ley-que-sancione

21. The victim of this aggression filed a civil suit in 2012 for damages against the young man who recorded and disclosed the video, and in 2015, the 2nd Civil Court of Santiago issued its sentence, placing responsibility on the young man, as well as on his parents (because he was a minor) for not stopping the actions of their son, condemning them to payment of 35 million Chilean pesos (at that time equivalent to around USD 58,000) for damage caused.
22. The interesting point about the decision was that the court recognised that there must be consent in the capture, reproduction and publication of images when the identity is easily recognisable and the honour and image of a person can be damaged. Although there could exist consent to practice acts of a sexual nature in the presence of other people, such tolerance does not mean permission for the subsequent recording and dissemination of the scene. This is particularly pertinent if it could damage the rights of minors, where there is no allowable excuse for sexual behaviour that turns minors into objects of exploitation.²¹
23. The Chilean Penal Code could be used to punish the recording, capture or sharing of sexual photos or videos solely when there is no consent by any of the persons involved. But a worrisome point is that article 161 A of the Criminal Code does not expressly cover the dissemination of images or videos obtained with the consent of the victim, nor is there sufficient regulation to prevent subsequent dissemination, which requires the expedited removal of content.
24. After the decision of the aforementioned case, Derechos Digitales suggested that legal reform was needed, which includes sanctions against those who violate the privacy of a person when there is trust established, but at the same time to allow quick action to prevent that content from spreading on the network. However, "the regulation should not necessarily be thought of as a specific regulation for the internet, but as a way to make a normative expression of the necessary rejection of the action of denigrating, harming or attacking others (almost always women) as acts of sexual violence, either sharing this type of erotic content, as well as through acts of harassment."²²
25. The social relevance that this type of gender-based violence on the internet has acquired in Chile motivated the introduction of a bill in 2014 that proposed sanctions for anyone who posts images of sexual content, either photos or videos, that have been captured in the context of a couple's privacy and disseminated without consent. Likewise, the proposal seeks to stop the dissemination of harmful content through the extension of the same penalty to those who disclose the material to "internet site administrators who do not remove these images immediately upon the request of the affected party."
26. To find a sensitive response to this widespread problem is not easy. Any system that considers the obligation to remove content from the internet should, ideally, include

²¹ Second Civil Court of Santiago, 13 March 2015.

www.pjud.cl/documents/396729/0/INDEMNIZACION+VIDEO+INTERNET+PRIMERA+sin+nombres.pdf/9f50c53c-1c8b-4b8b-b51a-5597a63c273c

²² Campusano Barra, R. (2015, 12 June). Pornovenganza en Chile: lo que queda detrás de uno de los casos más populares. *Digital Rights Latin America and the Caribbean*.
<https://www.digitalrightslac.net/es/pornovenganza-en-chile-lo-que-queda-detras-de-uno-de-los-casos-mas-populares>

safeguards to avoid such requests being the basis of acts of private censorship; for example, a court order. But there is no general procedure in Chilean law for these cases, with internet intermediaries in an uncomfortable position regarding a range of illicit or harmful content. The guarantees that are required must not only aim to respond to those affected, but also to ensure that at least there is a correct identification of the offended party, the infringing content and its location, the reason for that infraction, and the need for its retraction.²³ For now, the bill is stuck in Congress.

27. Addressing online gender-based violence requires a multi-faceted response and engaging with a range of stakeholders. For example, police officers, prosecutors, judges and all officials in charge of justice administration must be trained to be able to deal in the most appropriate way with cases of gender-based violence through digital means, in order to avoid impunity, harm and secondary victimisation. For this, the Chilean government must have the necessary tools to provide immediate attention to the victim. As an example of good practice, in some countries in the region, action protocols have been implemented to address these types of cases. However, application and compliance with these guidelines may be relegated due to lack of training as they require the implementation of a true gender perspective.
28. In addition, according to the "Report of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression", platforms must be agents of due diligence that identify, address and account for actual and potential human rights impacts of their activities.²⁴ There is space for government engagement and incentive for private companies to support more sensitive and opportune action in this matter that could be considered as part of public policies addressing online VAW.
29. Currently, internet platforms often lack timely and appropriate responses to handle coordinated attacks against feminists. In Chile, after the dissemination of its campaign "Do Not Say", which sought to denounce and eradicate sexist language in educational spaces, the Facebook fan page of the Gender and Sexualities Vocabulary of the University of Santiago de Chile was banned from the platform. The administrators did not have any opportunity to clarify to Facebook that this was a coordinated attack, and they could only restore the fan page because Fundación Datos Protegidos contacted the company directly to explain the situation.²⁵

- Access to information related to sexual health and reproductive rights

30. It has been reported that a group that advocates for free abortion in Chile (Aborto Libre) has faced online harassment and received aggressive messages through emails, in the comments section of their web page and on their Facebook page. The organisation uses the internet to share information with women all around the country, particularly women who live in outlying regions and isolated places, to offer advice on how to induce a safe

²³ Lara, J. C. (2014, 25 September). La difícil misión de un proyecto de ley necesario. *Derechos Digitales*. <https://www.derechosdigitales.org/7900/difusion-de-fotos-intimas-en-internet-la-dificil-mision-de-un-proyecto-de-ley-necesario>

²⁴ UN Human Rights Council. (2018a). Op. cit.

²⁵ El Desconcierto. (2017, 4 May). Eliminan fanpage de Vocalía de Género y Sexualidades Usach tras campaña contra el machismo y crean parodia. www.eldesconcierto.cl/2017/05/04/eliminan-fanpage-de-vocalia-de-genero-y-sexualidades-usach-tras-campana-contra-el-machismo-y-crean-parodia

abortion through the use of abortive pills, all following guidelines given by the World Health Organization, thereby asserting their right to provide access to information. Besides online harassment, members of the groups have stated that their communications may have been intercepted, threatening not only members' privacy, but also women who have called or written to Aborto Libre.

31. Until 2017, abortion was generally illegal in Chile regardless of the particular circumstances, and that is why Aborto Libre has been investigated by the authorities on at least three occasions. One of them was on the grounds of the felony of inciting the commission of crime and criminal association, despite no formal charges being filed. This kind of prosecution is a form of criminalisation and is against the Yogyakarta Principles regarding the protection of freedom from criminalisation and sanctions on the basis of gender identity (principle 33), particularly letter b, which establishes that states shall repeal other forms of criminalisation of abortion. Also, it is a way of denying women's reproductive rights and access to information in the internet context.

- Freedom of expression, assembly and association on the internet

32. The internet is used widely by Chileans to express themselves, assemble and associate for social action, and participate in public life. While constitutionally guaranteed, these rights are under threat due to the monitoring of social networks, surveillance of journalists and activists, and the political use of social networks.

(i) Monitoring of social network comments referring to the government

33. A concerning topic regarding freedom of expression is how the Chilean government has been monitoring social networks. In 2011, President Sebastián Piñera announced that the government will monitor people's debates in social networks through comments in blogs, Facebook, Twitter and other digital spaces, including following "influencers" and georeferences of targets. The justification provided was that the government has "the responsibility to hear what is happening in social networks."²⁶ In addition, there is evidence that during Michelle Bachelet's last presidency, two technological companies (Analitic and Bandmetric) were hired to monitor social networks and, among other functions, create a list of "influencers".²⁷
34. As the Inter-American Commission on Human Rights has said, "the systematic collection of public data – voluntarily submitted by the owner of such data, including as blog posts, social network activity, or any other public domain content – also constitutes interference in the private lives of people."²⁸ Indeed, this kind of intrusion not only affects privacy

²⁶ Bio-Bio. (2011, 20 June). Asesor web de Piñera justifica monitoreo del gobierno a redes sociales. <https://www.biobiochile.cl/noticias/2011/06/20/entregan-justificacion-por-monitoreo-del-gobierno-en-redes-sociales.shtml>

²⁷ Valenzuela, F. (2017, 21 April). Cómo funciona el monitoreo a redes sociales del Gobierno de Bachelet. *El Dínamo*. <https://www.eldinamo.cl/nacional/2017/04/21/como-funciona-el-monitoreo-a-redes-sociales-a-ciudadanos-del-gobierno-de-michelle-bachelet>

²⁸ Office of the Special Rapporteur for Freedom of Expression. (2017). Standards for a Free, Open and Inclusive Internet. OEA/Ser.L/V/II CIDH/RELE/INF.17/17. Inter-American Commission on Human Rights. www.oas.org/en/iachr/expression/docs/publications/INTERNET_2016_ENG.pdf

rights and creates a chilling effect on free expression, but also goes against the rule of law.²⁹

35. Last year, eight indigenous Mapuche leaders (members of the lands rights group “Coordinadora Arauco Malleco”) were surveilled by intelligence forces and police, who were trying to intercept their communications through WhatsApp and Telegram. Police claimed that Mapuche leaders had allegedly committed terrorist crimes.³⁰ This episode took a dramatic turn when the public ministry (criminal prosecutor) accused the police and intelligence forces of planting false evidence in Mapuche leaders’ cell phones. The public ministry insisted that the police and intelligence forces had never actually intercepted Mapuche activists’ private communications from their cell phones, but only sent them a phishing document (fake email to extract login credentials or account information).³¹ This intelligence case was named “Operation Huracán”.
36. Despite an ongoing criminal process against the police and intelligence members, it is highly concerning that state actors (including high officials) allegedly tried to intercept cell phones of Mapuche leaders. Furthermore, the Chilean state had been declared guilty by the Inter-American Court of Human Rights of violating indigenous Mapuche human rights, specifically, freedom of speech and freedom of association.³² Even more concerning is what the police captain in charge of the investigation against the Mapuche leaders said to the media: “The important thing to us was to obtain information to prevent terrorism and rural violence in La Araucanía; sadly, our prosecutors did not take advantage of this. Our country lost the opportunity, because now any person who commits a crime already knows that if they receive a strange email it could be ‘Antorcha’ (the name of the phishing software).”³³
37. The attempt to monitor Mapuche political leaders through internet applications without any legal authorisation is a violation of the freedom of association and expression of indigenous people. In this context, it necessitates Chile taking action to repeal this discriminatory and illegal intrusion against a marginalised group and their political leaders, such as the Mapuche people.

(ii) Evidence of surveillance of journalists by intelligence agencies

38. In the context of the aforementioned Operation Huracán case, it was not only Mapuche leaders who were electronically monitored by phishing. According to a press release from Ciper, journalists from the newspapers *La Segunda* and *El Ciudadano* were monitored by police agents because, in the words of the police, “they spread fake news” about former

²⁹ Ibid.

³⁰ Gutiérrez, F. (2017, 24 September). Dictan prisión preventiva a los ocho detenidos de la “Operación Huracán” basándose en conversaciones por Whatsapp. *Mapuexpress*. www.mapuexpress.org/?p=20717

³¹ Sepúlveda, N., & González, M. (2018, 13 March). “Operación Huracán”: testimonios y confesiones confirman que fue un montaje. *CIPER*. <https://ciperchile.cl/2018/03/13/operacion-huracan-testimonios-y-confesiones-confirman-que-todo-fue-un-montaje>

³² Inter-American Court of Human Rights, Case of Norín Catrimán et. al. (leaders, members and activists of the Mapuche indigenous people) v. Chile, Judgment of May 2012 (Merit, reparation and costs), Series C No. 279. www.corteidh.or.cr/docs/casos/articulos/seriec_279_ing.pdf

³³ Sepúlveda, N., & Arellano, A. (2018, 14 February). “Operación Huracán”: la trama que dinamitó los puentes entre Carabineros y Fiscalía de Temuco. *CIPER*. <https://ciperchile.cl/2018/02/14/operacion-huracan-la-trama-que-dinamito-los-puentes-entre-carabineros-y-la-fiscalia-de-temuco>

President Michelle Bachelet and Justice Minister Javiera Blanco; those publications were about private connections between the former minister and the police director. Two others journalists from "Radio Bio-Bio", Carlos Martínez and Nicole Briones, were targeted by police agents, and their press publications were analysed. Finally, police agents were monitoring the Mapuche media outlets *Mapuexpress* and *Werkén*, identifying their hosts and monitoring their geolocalisation. According to the press release, there is no judicial authorisation or criminal process against those journalists.³⁴

(iii) Political use of social networks

39. Another threat to social movements and freedom of expression is how Chilean political candidates have been using social networks for their political campaigns, for example, using the massive data doxing carried out by the Chilean Electoral Office (SERVEL). In order to make the Chilean election process more transparent, SERVEL published the entire voter register on its website with personal, sensitive data including names, ID numbers, domiciles and legal sex.
40. This information can be used to identify and geolocalise voters, activists and political leaders. Furthermore, several companies currently offer to match such electoral data with public data available on Twitter, Facebook or Instagram, which can create an accurate map that identifies voters' interests and their political inclinations. The current Chilean president, Sebastian Piñera, used one of these services (provided by the company INSTAGIS) during the last presidential campaign. The results were astounding: Piñera's political party (Renovación Nacional) is now the most popular and highest voted party in Chile (it was the highest voted party in the last congress election, rising 7.39% in the Chamber of Deputies and 4.7% in the Senate Chamber), and most probably, the data usage contributed to the fact that he was elected as president of Chile.³⁵
41. The political use of social networks to map voters and their personal profiles and political inclinations not only affects the right to privacy but also creates risks of opinion manipulation and a chilling effect on voters. Politicians and companies are monitoring their political opinions in social networks to create specific and targeted campaigns, in order to inhibit people from expressing their political opinions in digital contexts. In addition, these targeted campaigns can create echo chambers that inhibit people from accessing different political information, eroding public online forums and limiting access to information.

³⁴ Sepúlveda, N. (2018, 7 March) Los periodistas que fueron objeto de espionaje electrónico de Carabineros. *CIPER*. <https://ciperchile.cl/2018/03/07/los-periodistas-que-fueron-objeto-de-espionaje-electronico-de-carabineros>

³⁵ Toro, I. (2018, 22 March). InstaGIS, la empresa de datos que trabajó para Piñera: "El límite es trabajar con información pública". *La Tercera*. www.latercera.com/la-tercera-pm/noticia/instagis-la-empresa-de-datos-que-trabajo-para-pinera-el-limite-es-trabajar-con-informacion-publica/108576; Equipo CIPER. (2018, 3 January). Instagis: el "gran hermano" de las campañas políticas financiado por Corfo. *CIPER*. <https://ciperchile.cl/2018/01/03/instagis-el-gran-hermano-de-las-campanas-politicas-financiado-por-corfo>

Access to ICTs and the exercise of economic, social and cultural rights (particularly among traditionally disadvantaged groups)

42. Guaranteeing greater access to the internet by states is a necessary part of fulfilling their obligation to guarantee the exercise of economic, social and cultural rights. This obligation extends beyond simply connecting to a network; it needs to take into account that such connections have implications for cost, stability and accessibility that can affect whether the internet can be used as an efficient tool for access to employment, health, social security services and culture, among others. It is not enough to have digitisation or technologisation of state services through the creation of online platforms; such services must be available in accessible languages and formats to provide effective access for different sectors of the population, particularly those in a more vulnerable situation due to conditions of disability, illiteracy, gender, geographic location, belonging to ethnic groups or minority groups, or even age.
43. As previously noted, there is a clear digital divide in access to the internet between urban and rural areas, with 68.8% in urban areas against 40.9% in rural areas. Along this line, women are less connected than men in Chile, as are indigenous people compared to non-indigenous people.³⁶
44. The efficiency sought by the state through the implementation of technology in compliance with its obligations to promote the exercise of economic and social rights should take into consideration alternative mechanisms for exercising such rights that are consistent with not further marginalising segments of its population.³⁷ Digital solutions for state action and services should take into consideration the limitations of the technological systems that they offer to not further marginalise populations.³⁸
45. States must take a human rights-based approach to internet access. This requires developing and implementing policies that enable everyone in society to access the benefits of the internet so that they are able to exercise their human rights online and offline. It also requires addressing economic, social and cultural barriers to access, facilitating access to information and knowledge, and respecting the right to privacy so that there is trust in the technology.
46. In particular, big data and surveillance technologies impact the exercise of all the rights mentioned, to the extent that through these technological solutions it is possible to obtain a complete profile of the behaviour of people in each of the areas in which they are applied. This allows companies in control of such technologies to make decisions that impact employment opportunities as well as access to culture, health coverage, social benefits and education. This is because the massive collection of data allows an

³⁶ All statistics can be consulted in Ministerio de Desarrollo Social. (2015). Op. cit.

³⁷ Viollier, P. (2017, 28 July). Biometría: tecnosolucionismo a costa de nuestros derechos. *Derechos Digitales*. <https://www.derechosdigitales.org/11333/biometria-tecnosolucionismo-a-costa-de-nuestros-derechos>

³⁸ Roa, Y., & Pérez, M. J. (2018, 8 March). Carabineros explica por qué detuvo nueve horas a anciano que olvidó pagar limones en Jumbo. *Bio-Bio*. <https://www.biobiochile.cl/noticias/nacional/region-de-valparaiso/2018/03/08/carabineros-explica-por-que-detuvo-nueve-horas-a-anciano-que-olvido-pagar-limones-en-jumbo.shtml>

increasingly clear discrimination between individuals, whether they are workers, clients or simple citizens to whom the state provides its services as part of its public function.

47. Many of the state's services have been outsourced to private companies. Greater efficiency in the distribution of services by the state should not be used as an excuse to violate the dignity and rights of the recipients of such services.³⁹ The state should assume responsibility for the use of technology tools in a manner consistent with the respect for the different categories of rights stated in the international human rights framework.

- Human rights and business

48. The responsibility of companies in respecting human rights has been recognised in the Guiding Principles on Business and Human Rights of the United Nations, approved by the Human Rights Council in its resolution 17/4 of 16 June 2011 (hereinafter, Guiding Principles).
49. In 2017, Chile launched its first National Action Plan on Human Rights and Business, which will last for three years until 2019. This plan is presented as the materialisation of the commitment assumed by the state within the 2030 Agenda for Sustainable Development Goals to end poverty, reduce inequality and fight against climate change. This agenda recognises the role of companies and highlights the need for joint work, public/private, to achieve these goals. According to what is stated in the action plan, it seeks to provide clarity regarding what is understood by human rights in the business field and also constitutes a platform to identify, prevent, address, mitigate and repair the adverse impacts that can be generated by companies when carrying out their activities.
50. As described in the plan, the main objective is to establish in Chile a culture of respect for human rights in business activities in order to prevent negative impacts and, if possible, go beyond respect by promoting positive contributions that companies can make to society and the environment. It is recognised directly in this that according to the Universal Declaration of Human Rights, both individuals and institutions must promote and respect human rights.
51. The action plan is based on the commitments of various state institutions, which act under the responsibility of human rights protection. In preparing the plan, the state called on third parties, including companies, to contribute to the development process. There is also the expectation that various social actors participate in its implementation, monitoring and follow-up.
52. There is no explicit mention in the plan of the provision of technology or technological services by companies. We believe that given the impact that ICTs have in the daily activities of citizens, especially when it comes to the use of internet services, the state should include the respect of human rights in the provision of technology and digital services as part of corporate responsibility. Such respect demands from the companies,

³⁹El Mostrador. (2018, 31 May). Transantiago: Gobierno evalúa usar tecnología de reconocimiento facial para frenar evasión. www.elmostrador.cl/dia/2018/05/31/transantiago-gobierno-evalua-usar-tecnologia-de-reconocimiento-facial-para-frenar-evasion

according to what is stated currently in the plan but without specific reference to technology, among others, "that they apply due diligence in human rights matters in order to identify the potential risks of impacts on human rights in the context of their operations"; and "that they establish operational grievance mechanisms that allow them to identify potential impacts and repair them should they occur."

- **Privacy rights**

53. Concerns regarding privacy issues in the digital context in Chile are stipulated in a special stakeholders report for the UPR issued by Derechos Digitales, Ciudadano Inteligente, Fundación ProAcceso and Privacy International. APC supports the issues and recommendations raised in the report.

V. Recommendations

54. In light of the abovementioned issues, we call on the UN member states to make the following recommendations to the Chilean government:
1. Ensure that protections for human rights are extended to the online environment, in particular freedom of expression, freedom of association and elimination of any forms of discrimination and violence against women.
 2. Ensure effective remedies for human rights violations, including those relating to the internet, in accordance with its international obligations.
 3. Recognise online gender-based violence as part of the continuum of structural, systemic gender-based discrimination.
 4. Review and strengthen laws, policies, and regulations to address violence against women in digital contexts and ensure that all responses are in compliance with Chile's international human rights obligations. In particular, develop a specific programme in the Women's Ministry agenda to eradicate violence against women in digital contexts.
 5. Allocate adequate resources to address the historical, structural and underlying causes, including unequal power relations, and risk factors of violence against women.
 6. Review and strengthen laws, policies and regulations to address violence against women in digital contexts and ensure that all responses are in compliance with Chile's international human rights obligations, avoiding criminalisation of speech or censorship of women's sexual expression.
 7. Build the capacities of judges, prosecutors and law enforcement agents to address gender violence cases through digital means, in order to combat impunity and secondary victimisation of women.

8. Maintain and enhance efforts to promote access to information on the internet as one way to facilitate affordable and inclusive internet connectivity, underlining the need to erase any digital divides between women and men, indigenous people and non-indigenous people, and rural and urban populations.
9. Promote the creation of enabling online environments and promotion of ICTs to ensure the enjoyment of human rights particularly in marginalised groups such as indigenous populations and women, understanding internet access and appropriation of technologies as a tool of development and the enjoyment of economic, social and cultural rights.
10. Promote a legal framework that encourages internet companies and platforms to work towards enabling technical solutions to secure and protect women's rights, particularly in the context of online VAW. This includes a framework that respects due process, follows up on reported cases of gender-based violence and adds transparency statistics of the reported cases.
11. Seek to improve, in law and in practice, a safe, enabling online environment for the enjoyment of human rights so that journalists, human rights defenders and people engaging in political life can perform their work and political activities without undue or unlawful interference, including guaranteeing a secure environment for their communications in internet applications and platforms by protecting the availability and use of enabling technical solutions for anonymity and encryption.
12. Eliminate any form of monitoring and surveillance of the Chilean population in digital contexts, particularly of their communications and political activities on social networks and blogs.
13. Promote through its National Action Plan on Human Rights and Business specific recommendations for ICT companies to conduct due diligence assessments in human rights matters in order to identify the potential risks of impacts on human rights in the context of their operations.