



Chile

**Parallel report by the Association for Progressive
Communications and Derechos Digitales**

***Prepared for the 66th Pre-Sessional Working Group meeting
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for Chile's Compliance with the International Covenant on
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Introduction

1. The Association for Progressive Communications (APC) and Derechos Digitales welcome the opportunity to submit this Parallel Report ahead of the 66th session of the Pre-Sessional Working Group of the Committee on Economic, Social and Cultural Rights (CESCR).
2. APC is an international network and non-governmental organisation with consultative status to the United Nations Economic and Social Council (ECOSOC), established in 1995, and which wants everyone to have access to a free and open internet to improve lives and create a more just world.
3. Derechos Digitales is an independent non-profit organisation based in Santiago de 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 culture. Derechos Digitales is also a member of the APC network.
4. This submission is centred on cross-cutting issues related to the use of information and communication technologies (ICTs) affecting the exercise of economic, social and cultural rights in the International Covenant for Economic, Social and Cultural Rights (ICESCR), especially those related to the rights to health (Article 12), to work (Article 6) and just and favourable conditions of work (Article 7), to taking part in cultural life (Article 15), and the right to non-discrimination (Article 2.2) as a cross-cutting concern, as the equal enjoyment of all rights can be enabled or hindered by the use of ICTs.

Background

5. Access to the internet is widely recognised as a significant enabler of ESCRs. The internet can impact positively on most articles in the ICESCR, such as the right to education (Article 13), to take part in cultural life and to enjoy the benefits of scientific progress and its applications (Article 15), to work (Article 6), to health (Article 12) and to food (Article 11), among others.
6. Chile is one of the countries with the highest levels of internet connectivity in Latin America, with an average penetration of 87.5% of Chilean houses. According to official statistics (CASEN), access to the internet in urban areas is 68.8%, compared to 40.9% in rural areas.¹
7. Despite the good connectivity indicators, there are still digital gaps in access to some degree depending on gender, age, income, education, occupation and disabilities. Women are less connected than men in Chile: 65.3% of women are connected compared to 67.5% of men. Furthermore, indigenous people are less connected than non-indigenous people, with a

¹ Ministerio de Desarrollo Social. (2015). *Tecnologías de la información y comunicación (TICS). Síntesis de resultados*. Casen.
http://observatorio.ministeriodesarrollosocial.gob.cl/casen-multidimensional/casen/docs/CASEN_2015_TICS.pdf

rate of 63.2% compared to 66.7%, respectively.² 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.

Access to the internet and the right to culture (Article 15)

8. Inequality in access to the internet also impacts the kind of participation in online communication that is available, by affecting restrictions on the capacity to receive, produce and disseminate cultural content. That inequality can be artificially limited through differential pricing schemes for certain applications or online services. This is the case in Chile, where Law No. 20,453 enshrined into law the principle of net neutrality in 2010,³ but where nevertheless *zero-rating* programmes are allowed by the telecommunications authority.⁴ This means that the use of certain popular internet applications and services in mobile phones is not charged or is not calculated within data allowances, thus providing an incentive to their use to the detriment of other services, thereby limiting the ability to exercise the right to take part in cultural life to that allowed in those services.

Digitisation of public healthcare services and its impact on the right to health (Article 12)

9. Over the last decade, the advancement in data storage and processing have been welcome among others by the Chilean government through countless modernisation initiatives. These technological developments provide ever-increasing powers to gather and process information on citizens, and these developments are concerning given the rapid move to digitise and centralise all public services. Because of the risks involved in such modernisation, a strong framework for the security and confidentiality of information, and therefore for the protection of the people represented by that data, is necessary. But successive governments have not given priority to the regulatory update required by the intensive deployment of technologies that impact in the exercise of human rights, including human rights contained in the ICESCR.
10. One key area where several administrations in Chile's government have made modernisation announcements is that of healthcare. The Chilean system of healthcare involves many service providers, both public and private, with the possibility of public subsidies for those services. There have been many initiatives to start a digital centralised healthcare records system, which includes collecting and centralising the medical

² All these statistics can be consulted in Ministerio de Desarrollo Social (2015).

³ The net neutrality principle states that internet service providers must treat internet communications equally, and not discriminate against them (through blocking, throttling or pricing) based on their users, content, website, platform, application, type of equipment, source address, destination address or method of communication.

⁴ Derechos Digitales and Intervozes. (2017). *Neutralidad de red en América Latina: reglamentación, aplicación de la ley y perspectivas*. <https://www.derechosdigitales.org/wp-content/uploads/neutralidad-de-la-red.pdf>

data of citizens, with the aim of increasing efficiency while preserving confidentiality and trust.⁵ For marginalised communities and the poor, who depend on the state for healthcare, such information schemes may directly influence the quality of the healthcare they receive; however, the poor conditions of data protection in Chile make it risky to have any sort of centralised data system without proper safeguards. So far the bill introduced in 2017 for updating the general framework of data protection has not been approved, and neither has a sectoral regulation update been proposed to address those issues. There is only political priority for modernisation but not for accompany that purpose with proper protection of rights, including the right to health.

Identification and biometric information for access to rights and services (Articles 2, 6, 11 and 12)

11. For decades, the Chilean state has maintained a practice of connecting national identity with social protection programmes, in particular when making the former a requirement for the latter. In Chile, a nine-digit number is issued as part of the birth registration process, known as the RUN (*Rol Único Nacional*). This number is featured on the Chilean identity cards. The exact same number is more commonly known as the RUT (*Rol Único Tributario*, or Unique Tax Number). Having a RUT number is necessary for various activities, from opening a bank account to getting health insurance. It is also necessary for the signing of most legal contracts, including employment, housing and marriage.
12. The usage of the RUT number, however, is not restricted to interactions between the Chilean state and the citizens. It is also used by private actors as a unique identifier of all people, including the possibility of creating databases with personal information around each RUT number. Because of the low protections provided under data protection law,⁶ linkage to a RUT number has been used in the past to discriminate against certain people in access to housing, employment and credit, based on credit scoring.⁷ Even though the law limits the usage of such scoring, it does not fully limit the power to create databases.

Biometric identification and access to rights (Articles 2, 11 and 12)

13. Increasingly, following global trends, biometric technology is being integrated in Chile within social protection programmes as well as other government functions such as policing and law enforcement.⁸ The justifications provided may vary, but they often include goals of transparency, efficiency, fraud prevention and even the empowerment of individuals.
14. Identity verification through fingerprints is widely used in the publicly-funded healthcare system (FONASA), in which access to services and

⁵ Hernández, V. (2016). *The Salud+Desarrollo e-Health programme and its impact on the most marginalised population groups*. <https://giswatch.org/sites/default/files/gw2016-chile.pdf>

⁶ Law No. 19,628 (1999) on the protection of private life.

⁷ Velasco, P., & Viollier, P. (2016). Big Data. Derechos Digitales. <https://www.derechosdigitales.org/wp-content/uploads/big-data-informe.pdf>

⁸ Díaz, M. (2018). El Cuerpo como Dato. Derechos Digitales. https://www.derechosdigitales.org/wp-content/uploads/cuerpo_DATO.pdf

information on their co-payment are mediated by verification of the user's identity. This not only restricts access to healthcare services to people with a valid identification (therefore likely excluding an unknown amount of undocumented immigrants, hindering their exercise of their right to health); it also means that access to healthcare is either limited, delayed or unavailable for people without legible fingerprints due to skin disease, erasure of fingerprints or lack of upper limbs.

15. The use of biometrics has also become a part of the delivery of food in public schools. The institution in charge of managing the delivery of food to schools in Chile is in the process of implementing a system of identity verification, and has requested the consent of the students' parents to collect, store, organise, extract, compare and transfer the students' information, specifically their fingerprints. Although the Council for Transparency has requested that the system be evaluated before further implementation,⁹ JUNAEB has defended the system, citing its security and insisting in its convenience to ensure efficiency.¹⁰ Like in the case of healthcare, the provision of basic services by the state is subject to the surrender of sensible data, in this case usually by minors through their legal guardians, linked to other sensible information such as their food intake and their belonging to a vulnerable segment of the population. This entails a risk of discrimination as well as an erosion of control over one's body from an early age, as a disproportionate precondition for the exercise of the rights to education and to food, for more vulnerable sectors of the population.
16. Facial recognition systems have also been deployed or have been announced in connection with public transportation. In Valparaíso, it has been implemented in the urban metro train system to control the identity of the beneficiaries of transportation ticket discounts, such as students.¹¹ In Santiago, it has been announced repeatedly that facial recognition cameras would be added to identify people who have evaded validation of payment in their transportation cards, in order to curb evasion.¹² It would join other measures, such as the registry of evasion offenders, already enacted into law, that registers people who have failed not only to pay for their public transportation, but also failed to pay the fines. Because users of public transportation are regularly people of mid or low-level income, including the many poor in big city centres, poverty is punished on multiple levels, and sensitive information is registered just for the fact of being users of public transportation.

⁹ Consejo para la transparencia. (2019, 17 January). *CPLT recomienda a JUNAEB evaluar el uso de sistema biométrico de identificación en menores beneficiarios con raciones alimentarias*. <https://www.consejotransparencia.cl/cplt-recomienda-a-junaeb-evaluar-el-uso-de-sistema-biometrico-de-identificacion-en-menores-beneficiarios-con-raciones-alimentarias/>

¹⁰ Azócar, V. (2019, 17 January). *Protección de datos de los niños: Transparencia insta a Junaeb a terminar con biometría facial de menores de edad*. La Tercera. <https://www.latercera.com/la-tercera-pm/noticia/proteccion-datos-los-ninos-transparencia-insta-junaeb-terminar-biometria-facial-menores-edad/488854/>

¹¹ Miño, R. (2018, 2 August). *Metro de Valparaíso inaugura circuito de cámaras de reconocimiento facial*. Meganoticias. <https://www.meganoticias.cl/nacional/232107-metro-de-valparaiso-inaugura-circuito-de-camaras-de-reconocimiento-facial.html>

¹² El Desconcierto. (2017, 25 May). *Al estilo del «Gran hermano»: Transantiago instalará cámaras de reconocimiento facial para combatir evasión*. <https://www.eldesconcierto.cl/new/2017/05/25/al-estilo-del-gran-hermano-transantiago-instalara-camaras-de-reconocimiento-facial-para-combatir-evasion/>

Automated and algorithmic decision-making in state services and the right to non-discrimination (Article 2.2)

17. Digital public services are increasingly designed to integrate automated systems, often in parallel to non-automated elements. One area in which the use of artificial intelligence has emerged has been to identify children who may be at risk of harm before they are harmed. Automated programmes have been deployed aimed at identifying families needing attention. Chile began in 2019 the pilot implementation of a tool that seeks to detect children and adolescents at risk. According to the Ministry of Social Development and Family, the tool, called Alerta Niñez, is a preventive instrument that "identifies the set of individual, family, environment and peer conditions of children and adolescents, which tend to occur when there is a risk of violation of their rights".¹³ Processing large amounts of data from public entities, the system gives a score to individual children based on their probability to suffer a violation of their rights.
18. Its goal notwithstanding, Alerta Niñez is an invasive initiative, that collects sensitive data of under-age persons, especially those coming from poverty or reside in low-income areas, carrying a great risk of deepening prejudice and stigmatisation towards the younger members of historically vulnerable groups, particularly single-parent homes headed by women, and potentially non-binary families.¹⁴ State intervention thus becomes a source of further discrimination.
19. In addition, these processes involve the transfer of personal data to third parties and the possibility that such data is used for purposes other than those agreed on. There are not sufficient legal bases and safeguards to guarantee that the information generated will not be used in the future for other purposes, such as predictive policing or future employment opportunities, that could result in discrimination against children and family members targeted by this programme.

Labour rights in the digital economy (Article 7)

20. Technological developments have allowed for the emergence of new companies that provide intermediary services between independent service providers and potential customers. These platforms have deepened the transformations of the labour-capital relationship in post-industrial societies. In countries with low job security (not only from economic pressures but also from high unemployment rates, high informality in labour relations, and lax labour protection laws), including emerging economies like Chile, the appearance of these platforms, (with business schemes based on technological innovation under the guise of intermediation) presents new risks for effective enjoyment of working conditions standards, including fair wages and social security for people offering their labour to these platforms. These risks are enhanced by the scale (the high number of users and social interactions that the platform

¹³ Ministerio de Desarrollo Social y de la Familia.

https://cdn.digital.gob.cl/filer_public/8a/e7/8ae7acf1-230b-45b3-806f-4cd6d4d837fb/11_mindesarrollosocial-f.pdf

¹⁴ Verdad Ahora. (2019, 15 January). *Futura base de datos de niños chilenos genera preocupación de expertos*. <https://verdadahora.cl/futura-base-de-datos-de-ninos-chilenos-genera-preocupacion-de-expertos.html>

encourages) and by the absence of state regulation and supervision. Occupation is thus obtained without sufficient safeguards for the right to just and favourable conditions of work, as is the case in Chile for services of short-term housing, delivery of purchases and transportation services.

21. Moreover, the development of applications that intermediate the offer of services traditionally provided by specialised workers represents a new risk for the human right to work. These applications use and process information available publicly and by various means on various areas of knowledge (medical, accounting, legal and linguistic, among others) or even information initially provided by professionals in these areas of knowledge for future reference, and without the need for direct human intervention, replacing the expertise and workforce of these professionals. This is the case in Chile as well: not only are new providers of intermediated services deprived of proper working conditions, but specialised or licensed professionals see their skills and certifications devalued. Although the Chilean government has been an active party in the congressional discussion of a law to regulate intermediated transportation services,¹⁵ there are no advances in place allowing for better protections of workers' rights, and no initiatives in place for other forms of "gig" workers.

Sexual health and reproductive rights (Article 12)

22. Foreign companies have become an important part of the provision of sexual health services, in particular those consisting of information products for technology users. Smartphone applications are one way in which health information, especially that related to sexuality and sexual health, is obtained and logged for better decisions in that regard. However, many of those services are provided without sufficient protection for sensitive private information. Last year, Privacy International reported that many popular smartphone apps for the control of menstrual cycles share the data they gather with social networks and other companies, including data brokers.¹⁶ Chilean data protection law is not effective enough to provide protection for users of such apps within its territory, therefore exposing users.
23. Moreover, *The Guardian* reported last year that the smartphone application Femm is funded by anti-abortion groups with linkages to the Catholic Church, sowing doubts with regards to its usefulness for health decisions such as pregnancy prevention and birth control measures.¹⁷ The Institute for Reproductive Health Research, an organisation that provides scientific support to the Femm application, is led by Chilean specialists.¹⁸ In a country like Chile, where abortion is restricted to very specific cases and where big healthcare institutions can legally become conscientious

¹⁵ CNN Chile. (2019, 4 July). *Ley Uber avanza en el Senado: Comisión de Transporte aprobó el proyecto en general*. https://www.cnnchile.com/pais/ley-uber-senado-avance-cambios-transporte-taxistas_20190704/

¹⁶ https://www.eldiario.es/tecnologia/Hola-app-menstruacion-vendiendo_0_940706659.html

¹⁷ <https://www.theguardian.com/world/2019/may/30/revealed-womens-fertility-app-is-funded-by-anti-abortion-campaigners>

¹⁸ El Mostrador. (2019, 31 May). *Femm: la aplicación de fertilidad para mujeres financiada por activistas antiaborto y respaldada por médicos de la PUC*. <https://www.elmostrador.cl/braga/2019/05/31/femm-la-aplicacion-de-fertilidad-para-mujeres-financiada-por-activistas-antiaborto-y-respaldada-por-medicos-de-la-puc/>

objectors by refraining from providing services that include abortions, the continuous availability of such applications for users risks their own capacity to make relevant and well-informed healthcare decisions.

Recommended questions for the List of Issues Prior to Reporting

Article 2, paragraph 2: Non-discrimination¹⁹

24. Please provide information on the human rights impact assessment methodologies implemented for evaluation of the deployment and usage of automated and algorithmic decision making systems within state programmes. Specifically, please provide information on the components of the algorithms used and the measures adopted to independently evaluate and to prevent adverse human rights impact from the Alerta Niñez system.
25. Please provide information on the adoption of measures to limit or stop the use of biometric identity verification systems for the provision of public services, including publicly-funded healthcare and food services in schools. Please also provide information on the studies conducted to ensure less intrusive measures of control are put into place.
26. Please provide information on the adoption of measures to stop the use of automated facial recognition technology systems in public transportation services. Please also provide information on the studies carried out to ensure less intrusive measures of fare control have already been put in place. Please also provide information on measures adopted to prohibit the use of automated facial recognition systems in all state services and public spaces.

Article 7: Right to just and favourable conditions of work

27. Please provide information on the adoption of measures to improve the working conditions of workers providing services intermediated by mobile phone applications, and on whether they include systematic labour inspections, the capacity to organise in trade unions, and their relation to application operators.

Article 12: Right to physical and mental health

28. Please provide information on the adoption of joint bills 11.092-07 and 11.144-07 amending the personal data protection law. Please also provide information on the measures supported by the government to ensure full application and enforcement of data protection rules against exploitation by national and/or foreign entities, especially with regards to sensitive information related including health and physical personal data.

Article 15: Right to culture

29. Please describe the steps taken by the state party to guarantee affordable and meaningful access to the internet for disadvantaged and marginalised persons and groups in rural areas and elsewhere. Please provide information on the adoption of measures to enforce the full application of Law No. 20,453 on Net Neutrality, including the prohibition

¹⁹ Here listed as a cross-cutting concern involving many aspects of economic, social and cultural rights.

of zero-rating schemes.