



EXECUTIVE SUMMARY

2013 ANNUAL REPORT. HUMAN RIGHTS SITUATION IN CHILE

NATIONAL HUMAN RIGHTS INSTITUTE

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2013 Annual Report. Human Rights Situation in Chile

DEBATES RELATING TO DEMOCRATIC CONSOLIDATION

Territory and human rights

Protests in Magallanes in early 2011 marked the beginning of a growing number of demonstrations across different Regions and districts demanding better living conditions. People from outside Santiago have been calling for equal access to public goods such as health, education and housing, connectivity and transport, protection against pollution and safeguarding the environment, in addition to greater benefits from the resources generated on their lands. Territorial, social and trade movements and organizations have highlighted the need for increased participation at the regional and local levels, as well as greater autonomy in the decision-making and management processes regarding resources.

In Chile, a person's life possibilities and opportunities depend largely on where he or she lives. Information available on this topic demonstrates inequalities in the levels of development reached according to social and territorial distribution. In terms of health, for example, the availability of specialists in the country's central zone is double that of other areas. In 2010, the north and south of Chile had rates of one public and private sector medical specialist per 1,836 and 1,777 people respectively, compared to one for every 878 people in the centre. One of the most significant aspects of territorial inequality is represented by the location of investment projects, a large proportion of which are based on the extraction of natural resource or the building of infrastructure. In accordance with existing legislation, the majority of the revenue from such activities directly benefits Santiago, whereas the social and environmental costs are borne by the local areas in which the extractive projects are located.

During 2012 and 2013, the National Human Rights Institute (INDH) has conducted research into territorial decentralization and development from a human rights perspective. This study has covered, in particular, the concern for inequality and discrimination which may be impacting people's rights because of where they live. This initiative is based on an interest to deepen analysis between territories and human rights. Rather than simply regarding these geographical areas from an administrative point of view, a greater understanding of them can be generated by identifying their cultural and social, economic and environmental realities.

In this chapter, the INDH examines international human rights standards relevant to territories and decentralization. It then provides a summary of the main regulations and policies where problems of territorial inequality have been observed, as well as people's perceptions of the problem. These perceptions have been provided by members of organizations and movements from different regions of the country.

Self-determination and self-government of indigenous peoples

The lack of constitutional recognition for the multicultural make-up of the Chilean State and society represents a deficiency in terms of relations with indigenous peoples. It is a shortfall which forms part of the intercultural conflict that currently exists in the country. In this section, the INDH examines certain cases from 2013, which demonstrate the complexities of the relationship between the State and indigenous peoples. Such examples are also shaping the conditions for dialogue on the self-government and self-determination of indigenous peoples at present. Subsequently, international human rights standards relating to this area are reviewed and a number of case studies are outlined.

Regarding events from 2013, reflections are made on the State's punitive response to violence, particularly the use of the Counter-terrorism Act. The passage of the Environmental Impact Assessment System Regulation is referenced, as well as the finalizing of the so-called Consensus Roundtable, devised to establish a general ruling on prior consultation.

On this matter, the INDH has maintained that there are grounds for arguing that the duty to conduct prior consultation should be strictly regulated by legislation, given that in this instance the subject being dealt with is the regulation of a human right.

The INDH recognizes and values the efforts made by the environmental authorities and the Executive branch in resolving the duty to conduct prior consultation. However, the Institute has maintained that the instruments stemming from both the environmental authorities, as well as the Consensus Roundtable, restrict the measures and topics open to consultation by limiting the nature of violations to certain pre-conceived ways of thinking. This is inconsistent with the State's obligations to submit to prior consultation any measure likely to directly affect indigenous peoples.

During such procedures, a pending discussion remains to be had in Chile relating to the principle of self-determination. This is a challenge which seeks to lay the foundations for inter-ethnic and intercultural coexistence by pursuing the recognition of the plurality of cultures which make up Chilean society, all within the context of the territorial integrity of the State. Unlike in Chile, the right of indigenous peoples to self-determination has been the subject of extensive legal development and guarantees in a number of other countries.

In light of legal developments in international human rights law and the examples examined in this section, the INDH deems it necessary to take steps towards recognizing the principle of the self-determination of indigenous peoples. This includes strengthening and increasing the institutional spaces which enable this principle to be addressed. A prerequisite for this, and a way of tackling the challenge, is to open up the debate and form dialogue agreements with indigenous peoples themselves.

Right to participation

Within the context of an election year, in conjunction with analyzing the right to participation from the perspective of international standards, it is useful to review gaps relating to one of this area's dimensions: the right to vote and to be elected. Furthermore, and as a way of deepening the process, the section reviews the situation relating to the right to vote of persons deprived of their liberty, persons with disabilities, and Chilean citizens living abroad. It also examines challenges faced by women and indigenous peoples regarding participation in political affairs.

The right to participate in the country's political affairs is affected by the current bi-nominal electoral system. During the second half of 2013, a number of different bills have been presented, by both Congress and the President's office, concerning the reform of this voting system. Although none of these have been passed to date, the INDH values the idea of opening up a debate on the subject of reform and expects any changes made to guarantee the right to equal participation.

In line with the Chilean Constitution, as well as existing legislation, individuals accused of a crime (whether they are held in detention or not) or sentenced to imprisonment for less than three years and one day, are entitled to exercise their right to vote (INDH, 2012). However, in practice this might not be taking place, given its restrictive interpretation by SERVEL (the Electoral Service).

Regarding disability and the right to vote, the format of the Braille ballot template constitutes two challenges for its users: firstly, having all the necessary candidate information to hand (including the their political affiliation and list number); and secondly, having to memorize the selected candidates' code when searching the template, given that candidates' names do not form part of the template itself. In addition to user-friendly ballots, the inclusion of persons with disabilities in the electoral process implies that polling stations should guarantee the provision of adequate infrastructure and support. This would facilitate the access of people with impaired movement.

The low participation of women in political affairs was reflected in recent elections. There were 100 women candidates for Congressional seats, 12 in the Senate and 88 in the Chamber of Deputies. This represents a figure of 18.8% of the total number of candidates (Centre for Social Studies and Public Opinion, CESOP, 2013). In the case of the elections for Regional Councillors (CORE), women's overall participation was 19.3%; 250 out of the 1,020 accepted candidacies (Montecinos, 2013).

Indigenous peoples have also been confronted with obstacles when exercising their right to participation in political affairs. They are currently unrepresented in the national Congress and, although rates of participation in local government have risen in recent years, it remains low in relation to their overall population. This latter figure is especially large in regions with high rates of indigenous peoples (INDH, 2013).

Finally, there are approximately 850,000 Chilean citizens living abroad who are unable to exercise their right to vote. Accordingly, in its report to Chile, the UN Committee on the Protection of the Rights of All Migrant Workers and Members of their Families recommended that the State, "resume(s) the efforts undertaken in view of enabling Chilean migrants working abroad to exercise their right to vote in elections organized in the State party".

ACCESS TO JUSTICE

Judicial reforms and access to justice

For over a decade, the Chilean State has proposed an extensive modernization of the administration of justice. The starting point was the Criminal Procedure Reform in 2000, based on fulfilling guarantees of due process enshrined in both the Constitution and various international human rights treaties ratified by Chile.

This chapter covers the right of access to justice, which does not simply consist of the right of all persons to access a jurisdictional body. It also examines broader aspects which seek to ensure the justice system provides effective remedy in resolving legal disputes, and, in the process, guaranteeing the human rights of all.

Similarly, the chapter provides a general review of the bill seeking to establish the new Civil Procedure Code. In particular, it examines how this reform requires the consideration of additional amendments, both institutional and legal, in order to effectively guarantee access to justice. Lastly, the chapter investigates the process known as the "Reform of the Criminal Procedure Reform", which has been said to enhance the workings of the country's current criminal justice procedure.

VIOLENCE AND HUMAN RIGHTS

Torture and other cruel, inhumane or degrading treatment

The INDH has noted deficiencies in legal planning and institutional practices that favour abuse constituting acts of torture, or cruel, inhumane or degrading treatment. Such acts are primarily confined to environments of detention or of persons in law enforcement custody. Within the legal sphere, the Chilean definition fails to clearly establish the punishable offense (or crime) as torture. In addition, there are two regulations penalizing acts which, from the international perspective, are considered torture: the Penal Code and the Military Justice Code. If these acts are committed by officers of the Chilean police, any subsequent case will be heard before the military courts. This contravenes the obligations and principles established by due process, including guaranteeing access to an independent and impartial judge. As a consequence, military justice fails to comply with these standards.

This is a significant issue. Research by the INDH throughout the geographical area between Coquimbo and Los Lagos Regions from 1990-2012 has given rise to some preoccupying statistics. A total of 20,742 complaints were filed to military courts from the sample period and area. In 2012, there were 1,775 complaints filed. This represents an average of almost 5 complaints per day filed against police for unnecessary violence (all cases of which proceeded to military courts). The conviction rate of the military tribunals during this time period did not exceed 1.78%.

If other State officials participate in such acts, such Prison Service or Investigations Police officers, the case is heard before the ordinary courts, under the charge of 'unlawful coercion'. According to information from the Public Prosecutor's Office, 127 such investigations were initiated during 2012. In 2013 (until September), 100 such cases had been opened.

From 2011 until the present date, the INDH has filed or been party to 25 lawsuits which have sought to determine criminal responsibility for the crime of torture. Ten of these lawsuits were filed against police officers; eight against Prison Service officers; and seven against members of the Investigations Police (PDI). The cases documented by the INDH highlight serious aggression and cruel and degrading treatment of particularly vulnerable members of society: indigenous peoples, mentally disabled homeless persons, girls, boys and women, and prisoners. For example, the unwarranted application of police checks have been identified, in which young female detainees have been forced to strip: thereby constituting humiliating treatment. The INDH has received testimony from children under the guardianship of SENAME (the National Service for Minors), who have been beaten by Prison Service officers, with the consent of SENAME staff, causing serious injuries to the victims. Similarly, background checks have been collected on 14 PDI officers accused of running a corruption ring, which expropriated narcotics and money from people suspected of involvement in drug trafficking. The PDI officials involved were also charged with torturing the suspects in order to extract confessions and information relating to where drugs and other materials could be found. Cases filed by the INDH cover various Chilean cities, including Santiago, Concepcion, Puerto Montt, Rancagua, Cañete, Temuco, Viña del Mar, Talcahuano, Linares and Vicuña. All relate to abusive and coercive attacks against the dignity and integrity of persons in law enforcement custody. The INDH recalls at this point that torture is prohibited at all times and places, and constitutes an act which is unjustifiable under any circumstance. It is the responsibility of the State to verify acts of this nature, as well as its obligation to investigate, hold to account and provide reparations to victims as necessary.

Without prejudice to the legal proceedings into these cases, another significant control measure is that of internal investigations. The aim of such investigations is to determine the management responsibility and disciplinary measures necessary for any staff involved in violations against the integrity of persons in their custody. Such internal controls, in conjunction with guarantees of effective legal remedy, are important in eradicating impunity. They are also crucial in increasing confidence in, and efficiency and legitimacy of the institutions responsible for upholding the law.

Violence against children

The chapter examines, from a broad perspective, the multiple forms and contexts in which violence occurs and how it threatens the integrity of children in Chile. It examines genuine cases of relationships between adults and children.

Recent research shows that seven out of every ten children in Chile experience some form of violence from their father and/or mother. Findings also reveal that levels of serious physical violence against children between 2000 and 2012 remain almost unchanged (at around 25%), and that the prevalence of sexual abuse against children fluctuates between 7.3% and 8.7% (UNICEF, 2012; GfK Adimark, 2013). This data also provides evidence of the structure and type of violence committed against children.

Regarding complaints filed and access to justice, the acts of violence which usually come to light are those perpetrated by individuals not constituting part of the child's immediate environment. While cases of intra-family violence reached 30,430 during the period of this research, the number having taken place beyond the scope of the investigation is, according to Chile's Childhood Observatory, 62,218 victims (Childhood and Adolescence Observatory, 2013). Further evidence indicates that of all the children to have suffered physical injury at the hands of their parents, only 10.3% of cases have led to complaints being filed before the police or courts (UNICEF, 2012). Of the 15,906 complaints of sexual crimes received between January and August 2013, the majority (58.33%) were closed, while only 10.81% led to the guilty party receiving a prison sentence.

Another form of violence is the commercial sexual exploitation of children (ESCNNA by its Spanish acronym), which according to latest official data (from 2013) affects 3,719 boys and girls. However, the underground characteristics of the phenomenon and the socio-demographic changes witnessed in Chile during the last few years lead experts to believe the magnitude of the problem is in fact much greater. This belief is based on the social toleration of certain ways in which sexual exploitation is manifested in Chile, the misconception of child consent, and downplaying acts for means of compensation. All such behaviour impedes cases from being detected and minimizes the number of complaints from being made (Raices NGO and ECPAT International, 2012).

It is important to stress the indeterminate nature of the overall figure relating to violence affecting children, in both home and institutional care environments, in terms of cases that go unreported. This is relevant, not only because a complaint represents the point of access for State-provided remedial action, but also because it constitutes access to justice.

Over the last few years, Chile has made efforts to improve its Penal Code and to pass legislation to bring into effect new criminal offenses and an improved adherence to State obligations regarding violent acts against children. While such progress is positive, it is necessary to emphasize that the State has still not passed a bill relating to comprehensive child protection. The passage of such a bill would bring the State in line with the principles enshrined in the Convention of the Rights of the Child (which would amend or repeal the current Minor's Act). The State must also ensure all necessary institutional and public policy modifications to safeguard the integrity of children across a number of different spheres (INDH, 2012).

Violence against women

Since the early 1990s, the State has passed legislation and implemented public policy aimed at preventing and investigating violence against women, holding perpetrators to account, and providing assistance and compensation to victims. The legislation's main efforts have gone into targeting the eradication of domestic violence. However, it is preoccupying that 23% of women murdered between 2010 and 2012 had previously filed complaints or lawsuits to the authorities, while 19% of offenders had either been previously reported by other victims or had served sentences for domestic violence (VIF, by its Spanish acronym). Regarding the 82 failed incidents of femicide in 2012, 35% of victims had previously filed a complaint and 7.3% had protective

measures in place. According to data from the Public Prosecutor's Office, of the 34 femicides it registered in 2012, 44% of victims had filed prior complaints against their murderer. In this chapter, the INDH investigates the State's duty to act with due diligence (i.e. working to prevent, investigate and hold to account) any violence committed against women. In particular, it covers due diligence relating to cases proceeding to court, or those that come to the attention of any other state body, such as local health centres or educational institutions.

The INDH reviews the case of KS, who murdered her partner after having suffered extreme violence for 18 years. The Institute appreciates the sentence handed down by the court and the application of the exonerating doctrine of necessity. The latter principle was incorporated as part of the Femicide Act precisely to deal with situations like the one confronted by KS. In such cases, the doctrine applies when an individual commits a crime in order to defend themselves from their attacker, but when this act does not fit within the grounds of self-defence. Simultaneously, the case of KS demonstrates the weaknesses in programmes of detection and protection of female victims of violence. Even when the State has adopted various measures to this end, it appears that the only genuine way of activating the system of protection is through the filing of a complaint. However, it is known that women can take a number of years or endure various violent episodes before turning to the police or courts.

Of the cases that proceed to court, the proportion of extra-judicial settlements continues to be high: 39.4% in 2012 and 37.8% in the first half of 2013. The relationship between prison sentences and suspended sentences remains stable: in 2012 it was 8.2% and 44.3% respectively; in 2013, 8.5% and 43.2%. The INDH has noted its concern for some of these types of prosecution, given the significant number of cases that never reach the court system (all those concluding in extra-judicial settlement). Of those that are heard before the courts, a substantial proportion finishes in a conditional sentence, in which the victim has no say. The case of KS demonstrates that, in spite of current legislation and public policy, the State must act early, do so with sufficient determination when detecting situations of violence against women, and ensure effective methods of prevention.

EXERCISING RIGHTS WITHOUT DISCRIMINATION

Persons deprived of their liberty and social reintegration

One particularly relevant area for any public policy seeking to reduce street crime over the short, medium and long terms, relates to opportunities of social reintegration for persons deprived of their liberty. The idea is that, upon leaving prison, men and women are then able to find work and begin their new lives with more and better tools at their disposal. This year, measures aimed at the social reintegration of prisoners have been assessed, including a review of the main international standards, as well as the main reintegration programmes developed by the State.

The chapter examines a number of existing programmes aiming to provide tools for reintegration, and in the process minimize recidivism. It is clear that this issue requires a new perspective, because, in practice, access to such programmes is currently viewed as a mere benefit. It is crucial that the drawing up of any reintegration and rehabilitation policy takes into account a number of factors. For example, it must have a broader scope and enhance collaboration between the State and civil society organizations working in this field. Furthermore, a new institution must take charge of implementing such a policy. This institution must, in turn, develop procedures for evaluating the programmes as well as their effectiveness. Currently, the number of inmates accessing and benefiting from these types of programmes is minimal compared to the overall prison population.

Rights of young people

In Chile, the definition of a young person according to the National Institute for Young People (INJUV) is someone between 15 and 29 years of age. This age group represents 24% of the country's total population. In general, social perceptions of this group are sometimes opposing:

young people's actions in defending the right to education has been praised. At the same time, references are made about young people's disinterest in politics and how there is a high percentage of them dubbed "*ni-ni* (neither-nor)", meaning they "neither study nor work". Indeed, in the 7th National Survey of Young People in 2012, only 19% of respondents claimed to be interested in politics. However, 45% noted their participation in some kind of organization over the previous 12 month period, 35% had taken part in some sort of community help activity during the same period, and 23% had participated in some form of demonstration. Furthermore, the news media frequently portrays young people as being associated with crime and delinquency. However, out of all the cases heard by the criminal justice system, less than 4% relate to crimes committed by under-18s.

For the first time in one of its Annual Reports, the INDH addresses the reality of young people as a specific collective, distinct from the world of childhood and adulthood. It does so in the knowledge that this is still a category under construction in the field of human rights. Indeed, there is still no specific international instrument relating to the human rights of young people. This is despite concern for the group having been firmly established in the international community for decades (for example, reflected by the Youth Action Plan and Lisbon Declaration, 1998), as well as in Committee recommendations overseeing compliance of human rights treaties. Recently, in the Guanajato Declaration, adopted at the World Youth Conference in Mexico in 2010, States agreed to discuss an international legal framework for recognizing the particular rights of young people.

In Chile, despite the existence of INJUV, the country lacks comprehensive public policy on young people. Instead, policies relate to specific sectors like health and employment, as well as the work undertaken by INJUV itself. Information gathered by the National Survey of Young People shows that, "the building of life projects for young people depends on the socio-economic and gender reality of the individuals. This situation is evident when career paths of each young person are compared, according to age. These paths change as young people get older, while social integration becomes more difficult for those with fewer resources and for women" (INJUV, 2012).

The INDH believes in the importance of visualizing the reality of this particular collective. This includes documenting the problems it faces in the exercise of rights on the grounds of age, as well as other categories relating to sex, socio-economic conditions, and ethnicity, among others. A public debate on the rights of young people is required. This way, corrections can be made to possible violations or omissions stemming from legislation and public policy, from the perspective of respecting and guaranteeing the full exercise of fundamental rights.

Rights of migrants

The need for new legislation and public policy on migration is well-documented, given the daily violation of the rights of migrants, asylum seekers and refugees in Chile. These violations relate to the weaknesses of existing laws, the discretionary nature of the immigration authorities and the institutional practices that do not always also conform to human rights principles. Despite State efforts, certain migrant groups still face difficulties in entering the country. Examples of the limited impact achieved by State initiatives include: the large amounts of paperwork required for ensuring a legal stay in Chile, which complicates matters, above all, for migrants who reside beyond Santiago; obstacles faced in accessing health and education; and the precarious conditions in which many migrants live. Further problems include: those identified by the filing of complaints by migration organizations and other civil society groups about refugee claimants being denied entry to the country at border crossings; degrading and discriminatory treatment by officials towards Colombian citizens of African descendancy; and arbitrary demands for unclear requirements in order to authorize entry into the country. Such situations lead to irregular migration and migrant smuggling.

In August 2013, the Executive branch presented a bill on migration matters before Congress. The INDH appreciates this bill, which accepts recommendations made on this issue by the UN Committee on the Protection of the Rights of All Migrant Workers and Members of their Families. Simultaneously, the INDH deems the bill as containing the necessary provisions for the full recognition of migrants' human rights. This chapter examines those aspects that still require

revision, including: the large margin of discretion the bill grants to migration authorities in determining the approval or rejection of entry into the country; the weakness of judicial remedies and the absence of legal support for the lodging of an appeal in light of expulsion procedures; and the power granted to authorities to detain migrants for a period of five days, without access to legal recourse. The INDH recommends their condition is recognized as subject to the rights of migrants, regardless of their immigration situation, including; guaranteeing the exercise of economic, social and cultural rights; access to an effective appeal when faced with expulsion procedures; incorporating a basis of prioritization in favour of children and the reunification of the family as among the guiding principles of the legislation; observance of the principles of Convention 169 in border areas where indigenous peoples are present; and the full respect of the rights of victims of people trafficking, including the rights to health, residence in Chile and protection.

The INDH has identified cases of discrimination and situations of vulnerability throughout its reports, observer missions and legal appeals. The bill in question deals insufficiently with a number of areas, and it fails to clearly establish the State's obligation in terms of others. These include the obligation to prevent such incidents from taking place, hold to account the perpetrators, provide reparations to victims and guarantee the rights of the migrant population.

Indigenous peoples in urban settings

An aspect which has been insufficiently examined in terms of the rights of indigenous peoples relates to the impact of urban growth and expansion and the migration from the rural to urban setting. Findings from the 2011 National Socio-Economic Survey (CASEN) showed that 73.4% of Chile's population lives in cities. This phenomenon relates to the expectations generated by cities for improving the quality of life in underdeveloped sectors in terms of access to social and economic benefits. In the particular case of indigenous peoples, it relates to the impact of policies of land expropriation, settlement and assimilation implemented by the State at the end of the 19th and beginning of the 20th centuries. These policies were responsible for cutting off access to vast territories in which indigenous peoples lived, making their living conditions precarious and limiting their chances of subsistence.

As a result of numerous factors, efforts by indigenous peoples to preserve their identity through a process of redefining the indigenous condition can be seen in cities. Examples of these preservation efforts include: the expansion and growth of urban indigenous organizations; the redefining of urban spaces for celebrating religious, sporting and cultural activities; the increase in the number of indigenous demands specific to the urban context; the implementation and workings of local government offices on indigenous affairs; and the undertaking of projects specifically targeting indigenous communities (language-related, among others). The aforementioned factors which have driven this movement include: the emergence of the indigenous topic within the public debate; the development of international law that demands the establishment of a relationship based on respect and recognition of rights; and the intervention of the State itself through the provision of benefit transfers and the design and execution of public policies aimed at indigenous peoples.

On the other hand, evidence suggests that, in terms of social indicators (access to health, education, social security and employment, among others), cities offer better living conditions. By comparing the situation of urban indigenous peoples with their rural counterparts, the former achieves better indicators of accessibility than the latter. However, analysis of indicators from the 2011 CASEN survey relating to the poverty line, educational coverage and access to health insurance shows that in overall terms, urban indigenous peoples are worse off than the non-indigenous population in the same urban setting. This is preoccupying, and indicates that the incidence of ethnicity as a variable in exercising and enjoying rights without discrimination needs to be analysed.

The main institution in charge of safeguarding the design and implementation of public policy aimed at indigenous peoples is the National Indigenous Development Corporation (CONADI). Its legal

mandate in this respect is weak and the State must deal with this reality from the ethnicity point of view. This is crucial, not only for providing a comprehensive response to its commitments towards indigenous peoples, but also for identifying and focusing public policy on appropriate and effective measures.

Rights of trans people

During 2013, progress has been made in Chile towards respecting and guaranteeing the rights of trans people. The first of these steps relates to a bill, introduced on 7 May 2013 (Official Gazette No. 8924-07), which recognizes and protects the right to gender identity. This represents a response to the lack of recognition concerning a person's gender preference.

In previous years, the INDH has examined different aspects of situations relating to rights of trans people. These examinations have been conducted within the analysis framework of the rights of persons to sexual diversity, such as health, and the violence to which they are subjected. This year, the INDH analyzes the right to identity, as well as investigating the implications thereof in terms of respecting and guaranteeing the rights of trans people.

The chapter also examines the obstacles confronted by trans people in the exercise of their right to participation in political affairs. This comes in the light of the State authorities' lack of legal recognition for a person to choose their own name. In the last local elections, which took place on 28 October 2013 across 346 municipalities around the country, there were five trans women standing as candidates for Local Councillor. They were: Alejandra Gonzalez, who since 2004 has been Councillor for the Lampa District, is the first trans woman to be democratically elected to office in Latin America, and who this year was re-elected with 1,097 votes (9.38%); Zuliana Araya, candidate for Councillor in Valparaiso, supported by the Party for Democracy (PPD), who was elected with 2,556 votes (4.31%), the eighth largest amount of votes in the District; Pepa Flores Campos, candidate for the Municipal Council of San Clemente, supported by the National Renovation (RN) party, who obtained 412 votes (2.49%); Tatiana Sepulveda, candidate for Councillor in Talca for the Independent Regionalist Party (PRI), who obtained 236 votes (0.50%); and Alexandra Bravo, representing the Progressive Party (PRO) in the Cerro Navia District, who obtained 127 votes (0.32%).

In all of these cases, the person standing for election was obstructed by a series of obstacles relating to the lack of recognition for gender preference on the electoral roll. Despite the presence of each candidate's photo and an expression of their feminine gender, it was their legal masculine names that appeared on the actual ballot sheets and all publicity campaign material, rather than their chosen names. This year, in the context of Congressional elections, there was once again discrimination relating to trans people's participation in political affairs. This was the case for Valentina Verbal, who withdrew her candidacy for what she deemed to be a lack of recognition for her right to identity.

ECONOMIC, SOCIAL AND CULTURAL RIGHTS

Business and human rights

The role of business in the globalized world today is irreplaceable. However, tensions exist and there are reasons for concern when business infringes or puts in danger the dignity and rights of people. This is a concern for the international community, as reflected by the numerous multilateral initiatives to have been implemented in recent years. Such initiatives include guidelines, principles and alignments, of a voluntary character, non-binding and programmatic in nature, which aim to establish the obligations of businesses relating to human rights. Such initiatives have been accompanied by a growing sense of social responsibility from businesses themselves. This is manifested within the context of different groups adopting a growing sense of awareness of their

rights and of States increasingly more alert to their responsibilities of regulation, supervision and accountability reporting. This scenario demands reflections from various actors from across society.

In Chile, free enterprise is guaranteed. This reflects the prevailing option conferred by constituents to private sector action, granting to the State a subsidiary role in those areas which private initiatives are unable or unwilling to cover. Another feature of this institutional design, as implied by the doctrine, is that it defines the regulatory capacity of the State.

There have been some well-known cases in which business proceedings have clashed with domestic legal obligations and respect for human rights standards. Such incidences highlight the need to promote debate on the importance of improving and strengthening State action in the field of regulation and supervision. The perspective from which this action should be undertaken needs to guarantee the prevention of acts which violate human rights. Furthermore, when such acts do occur, it is crucial for the State to ensure solutions and reparation measures have been established to rectify any damage caused.

The chapter examines two cases demonstrating the complex relationship between the actions of non-state actors and the possible violation of fundamental rights. The first of these cases is that of the Pascua Lama mining project. As a consequence of repeated breaches of environmental permits, the project was forced to cease all activities until mitigating measures are put in place. Such measures must guarantee the integrity of the environment and the health of workers and local residents. The second case examined is known as the 'Collusion of the Pharmacies', and its associated violation of the right to access medicines (viewed as a component of the right to health). These two cases reflect diverse problems. They provide evidence of the need to strengthen the State's capacity of prevention, as well as to review the adequacy and effectiveness of existing legislation. This relates as much to the regulation of different types of business activities, as it does to the area of supervision and control.

Right to quality education

In 2013, the situation relating to Chilean education continues to be at the forefront of public debate. Since the beginning of 2012, new political points of view have been unveiled and have kept the topic of the national education system going. Some of the most visible public expressions of this crisis have stemmed from the closure of the Universidad de Mar, following complaints of bribery in the accreditation process of different universities, and the subsequent prosecution of distinct university authorities and the National Accreditation Commission (CNA)¹. To this list should be added the dismissal of Harald Beyer from the Ministry of Education (MINEDUC), for "failure to comply with ministerial duties, particularly, those relating to the supervision of activities under the responsibility of the Ministry of Education"². Similarly, questioning of profit-making in education, particularly in relation to universities, has formed part of the debate on the quality of educational processes. Questions have also been raised about the ability of the State to guarantee this dimension of the right to education across all levels. Such questioning has been reinforced by the low levels of compliance with minimal legal requisites in the running of kindergartens. This is also the case for the existence of learning gaps between primary and secondary educational institutions, according to social conditions (income, rural environment, ethnicity), as evidenced by the annual results published by Education Quality Measurement System (SIMCE).

At the same time as these events, secondary student demonstrations continued during the first half of 2013. Their central demands were for free and quality education, and were often expressed by

¹ Investigations from the Public Prosecutor's Office, Metropolitan Region East, cases RUC: 1200653250-9; 1200763278-7; 1200763208-6; 1200763227-2; 1200655762-5; 1200763318-k; 1200763175-6; 1200763146-2.

² National Congress, daily report on proceedings in the Senate. Official Legislature Publication 361, Session 14, Tuesday 16 April 2013.

students seizing control of educational institutions for long periods of time. Despite warnings from municipal authorities and the Ministry of the Interior and Security, events came to a head in June with the forced evacuation by law enforcement of the occupied locations (which were going to be used as polling stations during the presidential primary elections). Throughout this period, there was no dialogue or negotiation between the students and the Executive branch. The reason for this was because the debate had proceeded to Congress³ via a combination of bills on institutionalization, the teaching profession and educational financing.

This year, the INDH has analyzed in particular detail the issue of quality in education as a constituent part of the right to education. This chapter briefly examines relevant international standards on the subject and their incorporation into domestic legislation. It then provides analysis of certain situations affecting the public regarding education. For example, how the lack of a clear and shared notion of what constitutes a quality education restricts State action, while also generating new gaps in exercising the right to education. These gaps then widen and deepen inequality regarding access to, and financing mechanisms of, the education system. These topics have been covered previously in the 2011 Annual Report.

Right to adequate housing

In 2012, the INDH tackled the issue of the right to adequate housing by identifying international standards on the subject, the domestic regulatory framework in which it is governed, the institutions responsible and current public policy development. Within this context, it was noted that, “in the current subsidiary model, housing is not considered as a right, but rather in terms of merchandise, the quality of which depends on the financial resources of those involved. This is linked to the definition of State-subsidized housing: low cost, with minimal standards of materials and located on land for which it is possible to cover payment. This bears no relation to the definition provided by the United Nations or to the attributes of adequate housing” (INDH, 2012, p261).

To ensure an ongoing review of the right to adequate housing in Chile, especially in terms of investigating the situation of the country’s lowest-income section (the main beneficiaries of the State housing policy), the INDH has developed a study on compliance with this right, across a number of different urban settings. The results of this research are provided in the current section.

Among social housing developments, the apartment blocks constructed in the 1990s on the periphery of large cities are those which give rise to the largest gaps in terms of standards of the right to adequate housing. In many of these settlements, the policy of social housing has accentuated socio-spatial segregation. It has concentrated the vulnerable population on the margins of the city, into areas with few employment opportunities, public service and transport links.

In the case of the *campamentos* (literally “encampments”), the results of the research show that the attributes most lacking in terms of the right to adequate housing are the security of ownership, access to services and housing conditions.

³ Minister of Education rejects dialogue on bill with students, saying “it will be debated in Congress” (26 July 2013), *La Tercera* newspaper. Article found on 15 November 2013 at <http://www.latercera.com/noticia/educacion/2013/07/657-534794-9-ministra-de-educacion-descarta-dialogo-de-proyectos-de-ley-con-estudiantes-y.shtml>;
Education Minister Schmidt responds to the Coordinating Assembly of Secondary School Students (ACES): “The measures are not ministry changes” (Bio-Bio Radio, Monday 8 July 2013). Article found on 15 November 2013 at <http://www.biobiochile.cl/2013/07/08/ministra-schmidt-responde-a-la-aces-los-medios-no-son-los-cambios-de-ministro.shtml>
Students blame Minister Chadwick for events taking place during the eventual forced evacuations of schools (CCN Chile, 26 June 2013). Article found on 15 November 2013 at <http://www.cnnchile.com/noticia/2013/06/26/estudiantes-responsabilizaran-a-ministro-chadwick-por-lo-que-suceda-en-eventuales-desalojos-de-liceos>

Similarly, research conducted inside a *ciudad* (a row of small dwellings that extend down narrow alleyways) presents the reality faced by many different Latin American migrant groups. Many of these groups live in precarious conditions and suffer from the violation of almost all the attributes of the right to adequate housing. The only attribute that is fulfilled is location, because by residing in the city centre, inhabitants are able to access services and work opportunities.

Regarding the “*aldeas de emergencia*” (“emergency villages”), problems relate to access to services, housing conditions, preferential access to vulnerable groups and an adequate location. Notwithstanding the aforementioned, the study shows that inhabitants also hold fears relating to ownership. These have less to do with living in temporary housing and more to do with the subsequent achievement of securing permanent housing.

It should be noted that, although the results of the study highlight the challenges in complying with the right to living in Chile, large-scale housing policies implemented by the State over the last few decades have addressed and reduced the housing deficit that once afflicted a large part of society (INDH, 2012). In this sense, it is hoped that the policy and institutional changes stemming from the upcoming implementation of the National Urban Development Policy will enable these challenges to be addressed.

Right to water

Water is essential to life as well as being a limited resource. It has been the object of growing demand, and its access and control have been the cause of socio-environmental conflict. This, in turn, has been accompanied by the questioning of its ownership models and patterns of use. In Chile, these conflicts are associated with questions of a legal character. There is a debate taking place on the way in which the law treats water and of the rights of its use enshrined in the Water Code. In addition, there are problems of the sustainability of water systems, and situations of exploitation and contamination. This all demonstrates the regulatory challenges currently facing the Chilean water authorities in safeguarding the integrity of ecosystems, guaranteeing the environmental, social and economic operations of water, and eliminating gaps in access to this indispensable resource.

This section outlines the current state of the debate on the right to water in international human rights law. It also analyzes existing Chilean regulation and public policy, as means of identifying State levels of compliance with international obligations.

According to the current legal framework, water is conceived of as a *commodity*. As a consequence, the concentration of water rights is held in the hands of private individuals for various purposes, which in turn has affected the high market price of water.

This ownership concentration of water is concerning to the INDH. It could generate situations of inequality for traditional users (the rural population, indigenous people and small-hold farmers) as well as infringed groups. Groups such as these have been excluded from accessing existing water resources on their lands or coastal or riverside underground water reserves in many areas. The INDH believes that, in whatever form access is regulated, it must guarantee accessibility, affordability, quality and versatility, free from all forms of discrimination.

Likewise, the INDH reviews whether the Chilean water system complies with the demand of access from the most vulnerable segments of the urban population, in line with international standards. However, it is preoccupying that a large percentage of this population has to pay high prices for the service, especially the poorest sections, which lack access to State subsidies.

Equally, and as documented by other studies, gaps of up to 20% still exist in access to drinking water in rural areas. The gap is even greater in terms of rural sanitation, where there is a sewage-system deficit of 48.1% (Chile Sustentable).

This section examines different cases which demonstrate the tense situation generated by the concentration of water rights, by public bodies and private companies, and the impacts these generate within communities. For example, case studies include the River Loa water basin, the River Huasco watershed, and the River Baker river basin, among others.

MEDIA AND HUMAN RIGHTS

Human rights issues in the news

The chapter examines, on one hand, the way in which the media currently covers the field of human rights, following preliminary observations from a study undertaken by the INDH in 2012. On the other hand, the chapter identifies specific standards relating to the right to access information, in light of questioning of how human rights violations during the dictatorship were covered by the media. Its particular relevance for human rights violations is also covered.

A number of different public documents addressing this matter are reviewed in the section. Among them is a Ruling by the Ethics and Discipline Tribunal of the Journalists of Chile, from May 2006. The judgement's concluding remarks note, "the foundation of this investigation lies in the evidence, in addition to the Chilean School of Journalism having failed in its duty to ensure appropriate professionalism, as well as to provide a positive example in defending ethical values in exercising moral journalism for the good of society. It lacked the determination to defend the society's need for being correctly informed and denouncing the responsibility of the press and journalists who were complicit in this situation" (Ruling by the Metropolitan Ethics Council Tribunal of the Chilean School of Journalism. Complainant: Cecilia Radrigán Plaza and Roberto D'Orival Briceño, on behalf of a family members' collective of detained and disappeared victims of Operation Colombo. Accused: Directors of El Mercurio, La Segunda, Las Ultimas Noticias newspapers, Mercedes Garrido Garrido and Beatriz Undurraga Gómez, 21 March 2006, p23.)

MASSIVE, SYSTEMATIC AND INSTITUTIONALIZED HUMAN RIGHTS VIOLATIONS DURING THE PERIOD 1973-1990

Massive, systematic and institutionalized human rights violations during the period 1973-1990

Four decades have passed since events gave rise to a *de facto* regime that made human rights violations a State policy. Chileans, as well as the international community, have not forgotten the victims of the dictatorship, nor to reflect on the breakdown of the democratic coexistence. In general, the main political and social actors have discussed and critically evaluated what happened to thousands of Chileans during this period. The President of the Republic, the Supreme Court and political representatives have expressed their condemnation of the violations. They have also declared their critical opinions of the behaviour of individuals and institutions, who, by straying from their principal duties, enabled, tolerated or assisted those perpetrating crimes against humanity.

Notwithstanding this consensus, a significant proportion of the population (22.1%) believes that it was necessary to violate the human rights of certain people in 1973 in order to bring about social harmony (2013 National Human Rights Survey, INDH). This is a concerning statistic, because while it is legitimate that diverse views of history exist as to what caused the institutional breakdown, these should not be used as a justification for the human rights violations that took place.

The Chilean State, under the scrutiny of different international organizations, has been noted for its efforts in the area of access to justice, as well as advances made in the search for truth and programmes of reparation. The 40 years that have passed, and certain events that have taken place in 2013, highlight the new challenges that need facing. We are probably witnesses to a

different cycle of events, which must respond to the impact of the passage of time, by guaranteeing that such events are never repeated.

In terms of access to justice, the Chilean State has made positive steps in providing a legal response to the crimes. It has presented lawsuits in relation to forced disappearances and extrajudicial execution; provided support and legal and social advice to family members of victims through the Ministry of the Interior's Human Rights Programme; and strengthened the cooperating bodies in legal investigations, especially the Investigations Police and the Forensic Medical Service. However, this has been a slow response. Steps taken in 2013 include the Supreme Court ruling that, as of October, Justices in charge of cases investigating human rights abuses must dedicate their time completely and exclusively to the processing thereof⁴. This should contribute to improving the timeframe of responses without jeopardizing the quality of the legal investigation in question.

Another of the year's noteworthy events was the judgement of the Inter-American Court of Human Rights (IACHR) on the case of García Lucero. In August 2013, the Court passed sentence on this case⁵, ruling that the international responsibility falls on the Chilean State for failing to officially investigate acts of torture committed against Mr Leopoldo García Lucero. This decision signals an important challenge for Chile. The State must now take steps towards to provide effective remedy to the thousands of victims classified as survivors of torture.

The Executive branch's decision to close the Cordillera prison establishment was part of the context of the 40th anniversary of the military coup. The President founded his decision to close the prison based on three principles: "equality before the law, inmate safety, and the normal and most efficient operation of the Prison Service". The State is obliged to guarantee the safety of people under its control and restraint. As such, it must adopt measures of segregation relating to dangerous criminals or those exposed to reprisal attacks. However, this does not include establishing situations of privilege which infringe upon the principle of equality in the treatment of prisoners.

Another controversial theme was the granting of intra-prison benefits to individuals convicted of systematic violations of human rights. From the perspective of international human rights standards, the possibility of applying special recognition and benefits to those convicted of these types of crimes is accepted, on condition that the punishment imposed proves effective. The INDH reiterates the need to deepen this debate and seek the opinions of family members and the victims of systematic violations of human rights. This should be done from a perspective in which the guarantees of access to justice (investigation, determining criminal responsibility and proportional and appropriate punishment), understood as measures of comprehensive reparation and guarantees of non-repetition, are centred around the victims themselves.

⁴ Supreme Court. Plenary Session Ruling. 13 September 2013, AD-16-2013.

⁵ IACHR. Case of García Lucero et al. vs Chile. Sentence 28 August 2013. Petition filed on 20 May 2002. Background Report, 23 March 2011