

COMPLEMENTARY REPORT INDH

**COMMITTEE ON THE RIGHTS OF PERSONS
WITH DISABILITIES (CRPD)**

2016

ENGLISH

General Suggestions

1. In recent years the promotion and protection of human rights of special vulnerable groups has developed a new international legislation through specific treaties in the context of Human Rights international law. An example of this trend is the adoption by the nations of specific obligations about Human Rights of Persons with Disabilities¹. Specifically the compliance of international treaties (universal or regional ones) as well as organizations to supervise that these treaties are carried out. Chile has been part of this process of permanent protection of Persons with Disabilities.

2. The 2004 National Survey of Disabilities revealed a total of 2.068.072 Persons with Disabilities equivalent to a 12,9% of Chilean population. The 58,2% of them are women and 41,8% are men. The educational level of people with disabilities show a 9,8% without any kind of studies, 42,7% have incomplete primary level and 2,07% have completed studies at university. But this information may be not very functional to public policies design or to evaluate the Convention duties because the data is not uploaded. This situation urges the necessity of an integrated and global national data system. This system will consider all Convention themes and must show at least information about age, sex, geographical location, ethnical background, educational level, access to job and disability type.

3. The Human Rights National Institute has considered very positive the ratification of international tools as Inter-American Convention on the Elimination of All forms of Persons with Disabilities Discrimination and the United Nations Convention on Rights of Persons with Disabilities and their Optional Protocol. The Human Rights National Institute values as very positive the approbation and coming to action of the 20.422 law. This law establishes norms about equal opportunities and social inclusion of persons with disabilities. Also includes Human Rights international law standards and principles, specifically the application of positive actions to eradicate “fact inequalities” to people with disabilities (Human Rights National Institute, 2011, p.183)². In addition, Human Rights National Institute appreciates the coming to action of the 20.609 law

¹ On 2011 was the first time that the Human Rights National Institute has addressed this matter. At this time the term in use for that annual report was “persons with special needs” but the term adopted in the following reports was “persons with disability”. So the references of the 2011 annual report uses the term “persons with special needs” but it refer about “persons with disability”.

² The existence of affirmative measurements is very important to the extent that the Human Rights National Institute recommended: “the incorporation of temporary special measures in different policies to decrease national inequality gaps and discrimination specially to low income persons, women, persons with disabilities, [...] and so on”. (Human Rights National Institute, 2012 Annual Report, p. 334)

that establishes anti-discrimination actions in which in their second article defines disability as dubious criteria about the prohibition of exclusivity³.

4. On institutional matters, the process of institutional transformation related to disability is well appreciated. In particular the creation of a National Disability Service (Servicio Nacional de Discapacidad, SENADIS) in replacement of the former National Disability Fund (Fondo Nacional de Discapacidad, FONADIS). Also is considered a step forward the 20.405 law that creates the Human Rights National Institute. The Institute is a public right autonomous corporation with legal personality and has their own heritage. The law establishes specific duties to the Institute to promote and protect Human Rights of people who live in Chilean territory⁴. Nevertheless this report does not consider the dates in which the Social Development Ministry decreed the 86 Act, The Human Rights National Institute considers remarkable the creation of a Presidential Committee on Social Inclusion of Persons with Disabilities on December 29th 2014. This committee is mandated to “give advice to the President of the Republic on related issues about Disability, Mental Health and Care, their intersectorial relations and to propose a National Plan about Social Inclusion of Persons with Disabilities” (Article 1). In spite of suggestions of this Committee are not known yet and it will be known on March 31st 2016, it is very important that their conclusions will include propositions about the transformation from the present model of “willingness substitution” to support the legal capacity of the decisions of persons with disabilities as suggested by Human Rights international standards.

5. In their annual reports, the Human Rights National Institute has analyzed the pending progress and duties related to human rights exercise of persons with disabilities⁵. In this sense, in Chile still existing discriminatory and violent attitudes through persons with disabilities. This situation does not allow the fully exercise of their rights and harm their daily life. Furthermore, the reached legal and institutional progress is incapable to permeate both state and cultural actions. Thus is still pending the incorporation of a rights approach that recognizes persons with disabilities as persons with full legal personality who could decide about their own life.

6. Finally on the methodological approach of this report, the analysis will be focused in progresses and handicaps related to the period under review which starts when Convention began in Chile on July 29th 2008 to 31st December 2011. This review will analyze comparably both the State Report and the Civil Society Report. In this sense, the structure of this report will be organized as The State Report was presented. Their content includes former diagnosis about this matter especially those presented in the

³ The second article of the 20.609 says: “to the effects of this law, the use of arbitrary discrimination will be understood as all distinction, exclusion or restriction that lacks on reasonable justification from the State or civil persons and produces deprivation, perturbation or threat the legitimacy fundamental rights exercise. This fundamental rights could be established by the Republic Political Constitution or in the current Human Rights international treaties that Chile is subscribed.

⁴ It is necessary to point that The Human Rights National Institute has been accredited on May 2013 by the International Coordination Committee of National Institutions for the Promotion and Protection of Human Rights if United Nations (CIC) whit the highest qualification: A.

⁵ More information about this matter could be found on Chapter “Rights of persons with special needs” of 2011 Annual Report, Chapter “Rights of persons with mental disabilities” of 2012 Annual Report and Chapter “Persons with mental disabilities autonomy” in the 2014 Annual Report.

Human Rights National Institute annual reports. Above all considering the four years gap between the period under analysis and the State accountably act to the Committee, the Human Rights National Institute has integrated further information related to subsequent periods of the original analysis.

Suggestions to the Estate Report

Articles 1, 2, 3 and 4. Convention General Dispositions.

7. The Human Rights National Institute has expressed their concern about the delayed incorporation of regulations about the proper implementation of the 20.422 law. This law rules equal opportunities and social inclusion of persons with disabilities. As the Institute proved that on late 2012 only five regulations were officially published since the law publication on February 2010 while the rest of regulations were on progress. This situation was in spite of the fifth transitory article of the law that established a time of nine month to come into force all regulations of the total of articles (Human Rights National Institute, 2012, p.184-185)⁶ Is evident that this situation of delayed regulations obstructs the law accomplishment and consequently thus delay improvements in the life of persons with disabilities.

Purpose

8. In Chile still are rules with pejorative terms in use which do not allow the fully exercise of the rights and keep off equity in daily life⁷.

Article 9. Accessibility

9. The nine article of the Convention promote international duties related with accessibility on which The Human Rights National Institute has analyzed two related issues: transport and proper dwelling right.

10. As regards to transport the Human Rights National Institute remarks a 28% of buses of Santiago public transport system called "Transantiago" don't have any minimal mechanism to transport disabled and low vision people. Buses do not have unfolding ramp, wheelchair space, low bottoms, light and noise bell, braille language signs or rough surface. Spite of 100% of buses has disabled seats and sound and light cashiers, just 22% of Transantiago bus stop are accessible to disabled people. Furthermore, only six bus stops have braille information. In addition, Santiago's underground have 108stations of which 77 have disabled access. Hence a 71% of Metro stations have proper infrastructure and devices for persons with disabilities as lifts, pathway for blind people, braille signals on handrails and turnstile or train and lift noise (Human Rights National Institute, 2011, p.185).

⁶ On August 2015 the Human Rights National Institute has checked that government web site shows the coming to in force of nine regulations. So it is still pendent both the Article 32 regulations about Braille system product labeling and Article 45 about public persons selection of 20.422law.

⁷ Some cases have being analyzed in this report. Refer to point 13 and 17.

11. About dwelling, the Human Rights National Institute has realized that social buildings do not have standard for persons with disabilities. In fact people with disabilities could not transit inside their houses or around them properly. The 20.422 law establishes in their 29 article a “special benefit” to get or habilitate buildings for disabled people but the information displayed by Urbanism and Dwelling Ministry shows no special funding for this benefits. Although they has gave 79 “disabled benefits”⁸ since 2010 to June 2011 (75 on 2010). Considering that in 1 of each 5 houses are disabled people living in, the Institute estimate this coverage lacks in quantity.

12. The access to information of public found campaigns, electoral ones included, don't all have subtitles, sign language and audible translations for blind people in spite of the regulations established on Law 20.422. The same situation occurs on the alert system for risk events and human urgencies or natural disasters.

Article 12. Equal recognition before the law

13. The legal capacity of people is regulated by the Civil Code, specifically in their article 1,447. This article distinguishes between total disability and relative disability. Total disability is defined to “demented, prepuberals, deaf or deaf and dumb who cannot make themselves understood” (1447 article, first subsection). Accordingly “their actions do not produce even natural obligations and do not admit caution” (second subsection). This general regulation without specifications produces concern to the Human Rights National Institute because trough the concept of interdiction persons with disabilities has limited their Human Rights exercise. The integration by the nations of international standards must combine regulations and procedures that respect will and options of persons. Including economic issues, the measures that involved disabled people shall be proportional and adapted to the person. In addition, proper, independent and impartial authorities must evaluate this measure permanently. However, this evaluation cannot be done due the character of the actual regulation.

14. This diagnosis of the Human Rights National Institute also points out by the department of Assessment to the Law of the House of Parliament who pointed out that “The general law has the omission of the civil capacity of persons with mental disabilities. In this sense, all the variability of mental disability is considered in the same way, without taken into consideration the possibility of autonomous progressive ability in each case. This law asserts that persons with mental disabilities would be in two ways not taken into consideration in the exercise of the juridical capacity, firstly their should be a respect to the persons without disabilities and secondly a respect to the persons with other disabilities. Finally, it is necessary to point out that judicial procedures interdiction for dementia and the appointment of a curator, that operate with the only merit of a medical certificate and his corresponding registration, they do not comply with the standards of civil protection which Convention indicates” (quoted in the Human Rights National Institute, 2014, p.118).

⁸ Pertaining to an increase in the basic benefit when it is prove that the existence of another person with disability in the family group.

15. In the same way the Disability National Service (SENADIS) itself through an office sent to the Human Rights National Institute points out that it is necessary to transit “from a system of substitute of the willingness to a model of help in decision taking”, and in this aspect, “it must be derogated the first part of article 1,447 of the civil code that eliminates absolute disabilities”⁹. In this way according to the Human Rights National Institute, the implementation of the social model on disabilities is in accordance to an internal law contradiction, going away from international standards. In order to harmonize the rules of agreement with the standards, this must recognize an existent spectrum in the sphere of mental disabilities; the right to express opinions, with help if it is necessary; the judicial capacity of these persons in all matters; guarantee the right to all information that contains his medical record, among other aspects (Human Rights National Institute, 2014, p.118).

16. The INDH also pointed out the necessity that must modify other norms that limit the autonomy of persons with mental disabilities. For example, the article 356 and 357 of the code of civil procedures¹⁰ when these persons are disqualified as witnesses, as also the articles 456 and 457 of the civil code when they are not admitted to administer their own heritage¹¹ (Human Rights National Institute, 2014, p.114).

17. On this matters, the Human Rights National Institute has suggested to the Chilean state to revised and modified those articles of the code of criminal procedures, civil code and other laws, which are contrary to the integration of persons with disability, specially in those cases in which it is not recognized a gradation of the mental disability, his juridical capacity, his right to authorize a treatment and accessibility to his medical records in a way to fulfill the autonomy of these persons (Human Rights National Institute, 2014,p.296)¹².

Article 15. Torture

18. In the last years the Human Rights National Institute and organizations of the civil society have denounced torture on part of the state agents. If this does not imply a massive practice and systematically, as it happens during the dictatorship (1973 to 1990), it concerns hat such cases of torture continue to take place. The institute has proposed the necessity of changing article 150A of the criminal code, which established as a crime “illegitimate pressures” as the article 330 of the code of military justice which established as a crime “a necessary violence”, and singles out as a crime of torture according to international standards. As well as, concerns to the INDH that exists the possibility that these cases are also known by the military justice and not

⁹ SENADIS, office number 3,648, 29 August 2014, quoted in INDH, annual report 2014, p.119.

¹⁰ Specifically, these articles point out:

Art. 356 (345). Is able to testify in a judgment all persons to whom the law does not declare to be unable.

Art. 357 (346). Are not able to testify as witnesses: [...] 2o. All those that are in interdiction on account of dementia; [...] 5o. Depths or depths and dumb who cannot understand clearly.

¹¹ These articles point out:

Art. 456. The adult who is normally in a situation of dementia, must be prohibited to the administration of his wealth, although he is at times lucid. The curatory of the demented could be testamentary, legitimate or given.

Art. 457. When a demented child has grown up to puberty, the father of the family could follow of taken care of the person and wealth up to a higher age, reaching to this age must precisely call the judgment of interdiction.

¹² Part of this suggestion must take be taken into account as regards the analysis suggested in article 17 of the Convention in this same report.

exclusively by the ordinary justice (Human Rights National Institute, 2013, p.77 and following).

19. In the case of the persons with disabilities The Human Rights National Institute presented a lawsuit in the year 2011 about the crime of illegitimate pressures¹³ for the fact of tortures suffered by an indigenous person with mental disabilities in the neighborhood of “La Legua”, in the city of Santiago. The fact was committed by a policeman, in the police van as well as in the police station cell, being condemned for 541 days minor imprisonment in middle grade (referred sentence) and the incidental sentences¹⁴.

20. A second case is that of José Vergara, who on the 13 of September of 2015, being in his home, suffered a crisis on account of schizophrenia which he suffers. Policeman was called, who proceeding to arresting and using handcuffs, then putting him in the police vehicle. Having some hours past by the victim did not return to his home, on account of this his relatives went to the police station of Alto Hospicio (a zone located in the extreme north of the country) to enquire about his whereabouts, where there were informed that he was never in the police station. Although the INDH presented a lawsuit forced disappearance, tortures are not discarded in this case, which justify adding to illegitimate pressures¹⁵.

Article 17 Protection of personal integrity

21. Other aspect which is of concern to the Human Rights National Institute relates to the involuntary imprisonments of persons with mental disabilities and the lack of informed consent for its execution. Even if the 20,584 law which regulates the rights and obligations that persons have in relation to actions involved to their attention in health (known as “law of obligations and rights of the patients”) requires five conditions so that a person may be hospitalized involuntary¹⁶, the INDH has expressed its disagreement with the supreme degree number 570 of the ministry of health (July 2000) which approves the rules to intern persons with mental diseases and the establishments that provide them. This, on account of that it allows in context of involuntary internment to not to consider the previous and informed consent for medical treatments, with the exception of those with reversible characteristics, when i) the patient is a child or adolescent, in whose case the consent must be given by his legal representatives; ii) the patient is unconscious and requires treatment in order to save his life; iii) the patient is subject to a judicial internment; iv) the patient is more than eighteen years old and is considered by his doctor to be unable to decide, in which case the decision will be taken by a relative or the director of the health

¹³ In Chilean legislation does not exist the crime of torture as such, although the criminal code establishes the crime of illegitimate pressures (article 150a).

¹⁴ 12th Court of Guarantee of San Miguel, RIT 578-2011, RUC 1110002808-7.

¹⁵ Court of Guarantee of Iquique, RIT 11286-2015, RUC 1500956181-9.

¹⁶ Article 26 of the law requires: a. A certification of a medicine man who indicates with arguments the necessity to proceed the internment of a person to practice an evaluation of his mental health situation; b. That the situation of the person carries out a real danger and imminent harm to himself or to others; c. That the hospitalization has exclusively therapeutic finality; d. That there is no other way which is less restricted to provide the appropriate care, and according to the opinion of the person attended has been taken into consideration. If is not possible for this last point, the opinion of his legal representative should be taken in consideration or, if this is not possible, of his tutor for the reasons of the treatment and, in the lack of both of the person closest to him being a relative or in fact.

establishment. This rule allows excessive liberty to the health authorities, especially in the cases of judicial internment, when a person with mental disabilities- for only the fact that being interne- it rejects the possibility to accept the medical treatments to which he will undergo, even when he is conscious. Moreover, the INDH is concerned with the extensive rules about this sphere of the rights of these person trough regulatory degrees (Human Rights National Institute, 2014, p.116).

22. This state has been criticized for these rules, as it has been stated by INDH in his annual report 2014, where “analyzing degree number 570, SENADIS clarifies that the consent of the patient is excluded. Moreover, as regards to the possibility of reevaluation of the internment does not take into consideration the possibility of a judicial evaluation, a factor that must be considered”¹⁷. In addition to the previous, the head of the department of mental health of the ministry of health states to INDH “that the authorization and the indications that make its to take place an involuntary internment must be done by an autonomous organization, the WHO such as judicial organizations or quasi judicial and here the SEREMI of health which is not autonomous takes the decision”¹⁸.

23. Another point analyzed by the Human Rights National Institute refers to the irreversible procedures of which persons with disabilities are subject. Specifically, psychosurgeries and sterilizations. The law 20,584 “of rights and obligations of the patients” mentions in previous paragraphs, indicates in article 14 that “all person has the right to give or denied his willingness to submit to any procedure or treatment linked to his attention to health”, adding the following attachment that “this right must be exercised in a free voluntary expressed and informed way, for which it is necessary that the practicing professional gives an adequate, sufficient and comprehensible information”. Notwithstanding, article 15 indicates drastically the exception when it is not required the acceptance of the will, that is: a. In the case that these applications, procedures, treatments, or interventions indicated in article 14 implies a risk to public health, as stated and required in law, leaving stated in the medical record of the person; b. In those cases in which the health situation or clinical frame of the person implies a vital risk or a grave functional consequence in not paying medical attention immediately and without delay and the patient is not in conditions to express his willingness nor it is possible to obtain consent from his legal representative, his tutor or the person in charge of his care is available, correspondingly; and c. When the person is unable to express his willingness and it is not possible to get his legal representative, because he does not exist or is not the proper one. In these cases appropriate ways are taken in consideration in order that safety life is guaranteed. The Human Rights National Institute considers it is relevant that the effects of article 15 are put into practice by an interpretation and a restrictive application, in accordance to its nature of exceptions and agreements of the social model of disability.

24. It is important to state that according to article 24 of the 20,584 law, “if the person is not in conditions to express his willingness, the indications and applications of invasive and irreversible treatments, such as sterilization with contraceptives aims,

¹⁷ Human Rights National Institute, annual report 2014, p.120.

¹⁸ Human Rights National Institute, annual report 2014, p.120.

psychosurgery and others of irreversible characteristics, must always have the favorable approval of the ethics committee of the establishment [of health]”. Notwithstanding this law does not prohibit in an absolute way that persons with disabilities are exposed to procedures or treatments of health against their will. This, on account of the article 27 allows the indicated possibility as far as the requirement stated there is complied¹⁹.

25. Rules about psychosurgery are found in the Exempt Resolution 656 of the Ministry of Health (2002). In which it is recognized that this technique “has been considered of an invasive and irreversible characteristic in the treatment of diseases of psychiatric characteristics”, where “no sufficient scientific evidence exist and no universal consensus about the adequate relation that must exist among the eventual benefits and damages that could cost the patient” and therefore, only constitute a therapeutic option for those persons that presents open “major resistant depressive syndromes or compulsive obsessive syndromes of great severity, resistant to generally accepted treatment available in the country, which have been applied in quantities and sufficient frequency, for the time which is necessary, and according to the prescriptions of the doctor in charge”²⁰. Giving these considerations it is that psychosurgeries must be approved by the national commission to protect the rights of the persons with mental diseases (CONAPREM) to whom must be submitted all these information²¹.

26. Notwithstanding, the Human Rights National Institute confirmed that there are not centralize registers from the CONAPREM on these procedures, being that all these should be informed. Between 2010 and 2013 the mentioned organization evaluated six cases, which do not comply with the requirement to be authorized (INDH, 2014, p.121). When the INDH asked the ministry of health answered that “[e]xists concern about whether psychosurgery is realized without informing to CONAPREM, especially in the private sector”²².

27. As regards to sterilization, these are controlled by exceptional resolution number 1,110 of the ministry of health which approves the technical norm number 71 on knows of surgery sterilization in persons with mental illness, according to which the

¹⁹ Article 27 indicates: Notwithstanding the right if the person with psychic or intellectual disability to give authorization or to deny it to undergo treatments, exceptionally and only when his situation cannot take it, may be treated involuntarily always that: a) It is certified by a psychiatric doctor that the person suffers a grave disease or mental illness supposing that his situation is in real risk and imminent damage to himself or to others, and that suspending or not giving the specified treatment means damaging his own health situation. In any case this treatment must not be applied more than the period strictly necessary to such proposal; b) The treatment must be according to a program individually prescribed, that meets the necessities of the health of the person, is prescribed by a psychiatric doctor and is therapeutic alternative less restrictive among the possibilities; c) It is to be taken into consideration, always that is possible, the opinion of the person himself; the plan is revised periodically and is modified in the case that it is necessary, and is registered in the clinical record of the person.

²⁰ Ministry of health, exceptional resolution 656 of 2002, which regulates the application of the technique of psychosurgery or surgery applied to the brain tissue.

²¹ In this sense, and as will be stated by the INDH in its annual report 2014 “In order to carry out psychosurgery it is required that in the clinical record it is noted that a another psychiatric opinion must approve the treatment to be carried out and the valid and informed consent of the patient- or in case that the doctor in charge proves that the patient is not in condition to do it, his legal representative-” (Human Rights National Institute, annual report 2014, p.117).

²² Ministry of Health, office number 3,237, 21st October of 2014, in answer to the office number 340 of Human Rights National Institute.

procedure is only applicable to persons over eighteen years old with psychic disabilities that effect their capacity of reproduction, maternal/paternal and the upbringing and do not have the capacity to provide an informed consent. In this sense, it is not possible to request a procedure of this nature to girls and boys with mental disability, in the way that they have not completed their development. So in case that they need to use a anticonception method, they always are informed of the reversible methods (Human Rights National Institute, 2014, p.117).

28. As with the case of psychosurgery, the carry out of sterilization surgery in persons with mental disabilities they must comply a serious of requirements, amongst which there is a request to the committee of ethics in each asisstencial center and the revision of the information to CONAPPREM, organization that authorizes or rejects the procedure. The INDH affirmed that there is a difficulty in obtaining statistics as is similar to that of psychosurgery. At a national level also it corresponds to CONAPPREM authorize them, due to this the commission must register the totality of sterilizations (Human Rights National Institute, 2014, p.121). According with the information given by the ministry of health, “of the twenty eight cases reported to the national commission in this period (2010-2014), seventeen cases equivalent to 59% of the total, had the requirements to effect the procedure. Most of these requests had no proper profile or had no sufficient information to evaluate the case”²³. So, at least four cases regarding to minors of age have been rejected.

29. As regards the children of minor ages, INDH interviewed Irma Gomez, president of the foundation Down 21 Chile, who indicated that the involuntary sterilization in women and girls exist in Chile and “It is given indistinctly in wealthy and not wealthy persons [...] When it comes to consult a person with syndrome of Down the doctor offers sterilization without consent because there is ignorance that they are citizens with full rights and, in the case of children, that they are still growing up. In the case of those over eighteen years old, there is no conscience that even though they could be sterilized, it should be done with the consent of the person, and this consent should be done by educating asking and giving the necessary support so that it is the person that takes up the decision. Notwithstanding, women over eighteen years old just the same they sterilize forcefully because you ask the questions and they do not know what they have done to them” (Human Rights National Institute, 2014, p.121). Moreover, the interviewee added that “the families do not wait that the girls reach eighteen years old because is more easy, not to tell them anything, even they take out the uterus so that they do not undergo menstruation, so that they go on more clean” (Human Rights National Institute, 2014, p.121).

30. The Human Rights National Institute has recommended to the State of Chile to develop politics that promote in public and private institutions of health the attention of health, as well as in populations, the transfer from a model of the substitution of decisions to a model of help in taking decisions of persons with mental disabilities in order to encourage their autonomy, as well as strengthening the role of the CONAPPREM, that the way that all irreversible procedures is evaluated and authorized correspondently (Human Rights National Institute, 2014, p.296).

²³ Ministry of Health, office number 3237, 21st October of 2014, in reply to office number 340 of Human Rights National Institute.

Article 21 Freedom of expression and the opinion and information access

31. INDH has proposed the importance of the mass media should comply with the practice of Human Rights of Persons with Disabilities. Particularly INDH has proposed that the use of sign language in some television programs should employ in important way to transmit information to this person, which allows at the same way to participate in a informative way in public debates. In this sense, the State must establish a proper law on this matter to prevent that disabilities would be an obstacle that mass media information be available to them. (Human Rights National Institute, 2012, p.327)

Article 24. Education

32. In general about the relation with the practice of the economic, social, cultural and political rights by persons with disabilities, the amount of information allows to assert that social inclusion of persons with disabilities still have serious obstacles. (Human Rights National Institute, 2011, p.188). Is regards to the right of education of persons with physical or mental disabilities INDH has asserted that there are financial and normative progress, specially in the increase of benefits to special schools and projects of integration at schools. Not with standing this, the coverage and quality of education seems to be insufficient, in addition to functions of international suggestions of UNESCO to progress towards inclusive education. According to proper calculations of the Ministry of Education, some 850.000 students present special educational necessities, of whom only 18% are receiving special education, this low coverage is a matter to concern. (Human Rights National Institute, 2011, p.187)

33. In the same way and in relation to the principle of equality and no discrimination, during the period of this analysis exists evidence of students being expelled for this this reasons in about 5% in county school, 8% in subsidized schools and 17% in private schools. In spite of the efforts to strengthen the regular benefit to special educational necessities that not ensure adequate educational processes in the programs of integration nor sufficient information to the agents of educational communities: teachers, directors and education assistants (Human Rights National Institute, 2011, p.186)

34. Finally is regards to the curriculum of primary education, the Human Rights National Institute has noted a lack of references of persons with disabilities, in events which should have their inclusion and in the elimination of daily practices of discrimination which affect them. (Human Rights National Institute, 2012, p.302)

35. In the context of Chilean educational reform it was published the "Inclusion Law"²⁴ on May 2015. This law aims to forbid profit, to regulate student admission and

²⁴ 20.845law of inclusion at schools that rules students' admission cut mixed funding and forbid profit in schools that received public funds. This law was published in the Official Newspaper on May 2015. This law modifies the 20.370 General Education Law and their article 12 related to student admission refers:

"Article 12.- The admission process at subsidized schools or schools that have received permanent public benefits will never considerate the further or past scholar performance of the candidates. Likewise these processes can not

eradicate mixed founding at schools that received public benefits. In this law was clearly established that these measures do not affect those norms that regulate the system of special and different schools nor schools with educational integrative projects²⁵. In this sense there are an exception that applies unique and exclusively to children and adolescents with disabilities in all educational levels (preschool level included) that allows to those schools to have a special admission system defined by each school. Considering it is an exception, The Human Rights National Institute states very relevant that this measure have being analyzed under the approach of the principle of equality and no discrimination. That is to say that putting in balance of previous principles with the fact of there are focused teaching schools specialized on children with disabilities which aim is to give them effective education to supply their social inclusion. Thus that the law allow these schools to regulate their own admission systems do not mean that themselves will apply discrimination in their admission processes to children with disabilities. The admission process will be subject of objective criteria and legitimate restrictions according to the nature and scope of these schools. Correspondingly the State will guarantee the availability of educational offer to children with disabilities in their territory.

Article 25. Health

36. As been previously stated, The Human Rights National Institute emphasizes the coming to action of the 20580law on the duties and rights of the patient, which has direct relation to different aspects about disabled people²⁶. Above all The Human Rights National Institute is also aware that to the civil organizations “still exists in the country a very poor coverage of mental health policy. Among other this: centralized offer of attention in hospital or clinic services, giving attention principally on grown ups; few outdoor services of social support which favor and promote social inclusion of persons with mental disabilities; lack of offer to adolescents with mental disabilities; minimal offer with the aim of integrating the different public services (labor, education, housing, health, culture); and very weak formation of professionals in the area of health and education to cover a population with mental disability” (Human Rights National Institute, 2012, p.209).

37. Organizations of civil society such as the “Organizations of User, Relatives and Friends of people with mental health affections Union”, TACAL Foundation and Rostros Nuevos (New Faces) Foundation have stated comments in this matter. In this sense the

request the socioeconomic family background as educational level, civil status or heritage of parents, mother or attorney.

The student admission processes to schools will be done through a system which transparency, equity and opportunities equality was guaranteed as well on keeping vigil of the preferential right of the parents, mothers or attorneys to choose schools to their children.

²⁵ 20.870law, article 2, number 6 which includes an article 7 septies in the Decree with Force of Law Number 2 on 1998 about Public Benefits to schools. Particularly the article refers:

“7th Article septies.- What provisions the articles 7th bis, 7th ter, 7th quarter, 7th quinquies and 7th sexies do not apply to regular special and differential schools with educational integration projects about integrated children quotas. Both of them shall consider in their admission processes the matter ruled by both 9th and 9th bis articles. The process of admission of these schools will have a procedure created by their own. This procedure will be developing by each school. A procedure issued by the Ministry of Education will determinate the coordination between process of admission of these schools and the general schools admission process”.

²⁶ Refer to what has been writing in relation to article 17 of the Convention of this report.

principal gaps in the right of health practice are related to the availability of specialized medical practitioners, the physical and geographical accessibility to the health services, public coordination to give different services to those who need them, community rehabilitation coverage, primary attention quality, the quantity of hours that medical doctors use to attend in public systems, no medical attention for persons with disabilities, the coverage of expensive medicine and prevention programs²⁷.

38. The Human Rights National Institute insists in a law of mental health that protects, assures and guaranties of the rights of persons with mental health disabilities. This law must provide a legal support to the Ministry of Health Plans in a way there are not subject to the whims of governments and have sufficient and permanent finance (Human Rights National Institute 2012, p. 187).

39. Edit to the previous Human Rights National Institute has approved as an important step in matter of health of persons with disabilities the updated Rehabilitation Program according to international standards of human rights. This has broad about to adopted a community bio- psycho –social approach in the public services to rehabilitation, whose motive is to make use of local resources to attend the persons with disabilities and go against the causes that originated handicaps that hinder social inclusion. In the same way is regards universal services a important step has been to carry out the Health Explicit Guaranties related to disability, which in the last three years has made it possible to attend 2105855 persons with muscular-skeletal difficulties. (Human Rights National Institute 2012, p. 187)

40. In other matters The Human Rights National Institute has published in their annual on 2014 the situation lived by Robinson García a person that suffered epilepsy and mental disability. Who was found guilty in a criminal cause and sentenced him to preventive prison in the Detention Centre Santiago 1 and not in to the proper psychiatric hospital. On January 11th 2013 he passed away inside the Detention Centre Santiago 1 because he did not receive his medicine²⁸.

Article 27. Work and Employment.

41. According to the Disability National Service information collected for the civil society organizations that watched over the rights of the persons with disabilities, the right to work have encountered different handicaps. Among which the lack of employment opportunities and the stigmatization that suffer disabled people (specially persons with mental health disabilities) in getting a job. In addition there are both inadequate selection processes and conditions that don't encourage the participation of persons with disabilities. In the second place there are unequal working conditions to which they have to under go, which is worsened due to the lack of government supervision to the enterprises and the inexistence of rules that guarantied the stability

²⁷ Refer to CORFUSAM, "The urgency of a law of Mental Health in Chile. Fundamentals which backup this request. 2012"; CORFUSAM, "Foundations to organize ourselves and elaborate our demands. First National Meeting of organizatios of users, relatives and friends of persons who suffer mental health 2012; TACAL Fundation and Rostros Nuevos Fundation 2012. "The status of Human Rights of persons with mental disabilities in the community. Santiago.2012. Refer also Human Rights National Institute. Annual Report 2012, p.188.

²⁸ INDH Annual Report 2014, p.121

of the persons with disabilities in their work position. Finally there exists the encouragement to employment of small enterprises an alternative which is not always sustainable nor creates proper working conditions²⁹.

42. The Human Rights National Institute has stated that the person has to adequate to himself to labor opportunities, without any consideration about any kind of disability in a way that there exist equal opportunities to all persons. So public employment opportunities to persons with disabilities consist principally in competitive funds. These funds are dedicated to finance courses to improve working abilities as well as to provide positions in the regular market and generate independent business. Thus “according to the government information about 10% of the persons with disabilities registered in the [labor intermediation] program is formally employed by enterprises. (Human Rights National Institute 2012, p.189).

43. As regards to programs of specific employment for persons with disabilities, it was implemented an employment benefit program (Proempleo) in 2008. Not with standing the coverage and practice of the program it was under the necessities of the needed employment for this kind of population. In the year of 2009 a new benefit was added for employing up to 300 persons with some level of disabilities but only 32 have been accorded. On 2010 another benefit was added in giving jobs to 150 persons with some level of disabilities but only 17 persons were benefited. (Human Rights National Institute 2011, p.187).

44. Servicio Nacional de Capacitación y Empleo (SENCE) belonging to the Ministry of Work also provides specifics programs for persons with disabilities as shows the following figure for the period 2009-2010:

SENCE undertaking according to kind of disability.

YEAR	Auditive Disability	Physical Disability	Mental Disability	Visual Disability	Total
2009	45	106	110	309	570
2010	24	70	179	81	354

Source: INDH Annual Report 2011, p.188 (Oficio Subsecretaría del Trabajo Number 1273, June 30th 2011)

45. The protection of social security is of mayor importance in this matter of persons with disabilities, principally in those causes who are vulnerable moreover than their age. As has been stated by The Human Rights National Institute “the natural process of getting old increases the risks of disability and of chronic diseases. The persons over 60 year represent 45,2% of persons with disabilities in Chile. 39% of grown ups population have disabilities: 17,3% low disability, 11% moderate disability and 10% severe disability. This situation affects in a bigger proportion to women (43%) and to persons with low income (50,3%)” (Human Rights National Institute 2011, p.194).

²⁹ Ref. Disability National Service, First Report of First Cycle of Participated Dialogue of Disability National Plan, 2012. Refer also, Human Rights National Institute Annual Report 2012, p.189.

46. In this sense the Human Rights National Institute appreciates the getting in to action of the 20.255 law which establishes the social security reform. This law creates a Basic Solidary Pension to Invalid People (PBSI) awarded to people declared "invalid" who pertain to the 60% of the most poor of population and do not have any right to obtain a pension under any security system. Moreover the law incorporates a Solidary Pension Benefit for Invalid people (APSI) meant to complement the pension of persons declared invalid whom having contributed to security system in some way have reach up quantities inferior to a established basic pension. (Human Rights National Institute 2012, p.190).

Article 29. Public and political Participation.

47. The principal progress as regards of political participation of people with disabilities is related to the implementation of braille system vote and a rough surface system to persons with visual disability which was inaugurated on 2012 for the municipal elections.

48. According to the information provided by the Electoral Service (SERVEL) in the municipal elections of 2012 97.298 persons may use their right to vote with assistance. 9.479 persons used special tablets. (2245 using braille method and 7234 using rough surface system). In the election of 2013 SERVEL elaborated a booklet to inform a delegates of voting station on a inclusive attention to voters as well as to explain the procedures to follow in assisted vote or autonomous vote³⁰. According to the opinion of THE INDH "the characteristic of the tablet suppose two handicaps for those who used them: first the tablet must have all the information about alliances and numbers of the candidates. Secondly memorized the code assigned to the candidates and finds it because the names and surnames are not included in the tablet. (Human Rights National Institute 2013, p.50).

49. The "National Union of Institutions of Blind People" affirms difficulties related to the size and type of the electoral identification. Moreover, they express the necessity of official information about candidates shall be accessible, on time and truthfully as part of an autonomous vote. On October 2013 "National Union of Institutions of Blind People" has tested the Electoral Service web site. The test about vote of persons with disabilities shows lack of fundamental accessibility such as zoom in, high contrast, keyboard shortcuts or alternative writings to the images. Even more the application that allows digital access for blind people it was impossible to use. Specifically JAWS software that converts writing into sound and allows blind people to access to digital media.

50. Finally, INDH appreciates the presentation of two projects that try to facilitate of the right to vote to persons with disabilities, which notwithstanding that they are still in first stage of their constitutional process since their presentation. Finally, in spite of their stage of constitutional process, The Human Rights National Institute values the presentation of two bills about the facilitation of the vote of persons with disabilities.

³⁰ SERVEL, Oficio N° 5866, september 15th 2013. Refer also, INDH, Annual Report 2013, pág. 50.

31 Article. Statistics and data collection.

51. An adequate data collection and statistics allow to states to have the proper instruments to correct diagnosis relating to disability. This point is very important to the matter that INDH has suggested in its annual reports not only the generic reproduction of information but also to produce statistical information periodically on persons with disabilities, in such a way that the politics plans and programs into their actions consider the actual situation of the population.

Using proper tools in the production of proper diagnosis of disability. How important is this matter that The Human Rights National Institute has recommended in their annual reports, a permanent production of data about persons with disabilities besides the production of information in general. In this sense, the present condition of this group could be integrated in policies, plans and programs designed for them.

52. In this framework, it is of concern to the INDH the delayed implementation of the second version of the national survey of disability, in this way there is no updated information in order to project politics for this sector. The sectorial statistics use today are from 2004, which probably are not the same to the present situation to the group of persons. Up to date, at the time to finishing this report SENADIS informed to the INDH that the results of the national disability survey 2015 will be ready in March of 2016.

The Human Rights National Institute is concerned about the delay in the application of the second National Survey of Disability because outdated information hinders public policy design in this sector. Sectorial data in use today are from 2004 so it is probable that this information could not represent de present situation of this group. In the making of this complementary report, the National Disability Service informs to us that the results of the National Disability Survey 2015 will be published on March 2016.