

Executive Summary¹
Annual Report on the 2015 Human Rights Situation in Chile

Democratic institutions and human rights

Corruption and human rights

Very few observers could claim with confidence that corruption is not a problem in present-day Chile. The Penta, Caval, Soquimich (SQM) and Corpesca cases² have reignited the debate about corruption in the country, obliging an urgent re-evaluation of the relationship between money and politics, as well as the efficacy of current regulations, institutions and policies. In turn, this situation has given rise to the challenge of strengthening the principles of ethics within the public sector. As such, in this chapter the National Human Rights Institute (INDH) addresses domestic legislation relating to international standards of transparency and the fight against corruption, in addition to the assessment and proposals made by the Presidential Advisory Council on Conflicts of Interest, Influence Peddling and Corruption (henceforth, “the Engel Council” or “the Council”).

Regarding the prevention of corruption, the INDH is concerned about the imbalance of current regulations between the branches of the State: at present, no observable conformity or consistency exists between the branches in relation to such regulations. In the knowledge that corrupt acts might involve any of the public authorities, a suitable approach must be fostered to regulate the entire public arena in a comprehensive manner.

Regarding conflicts of interest, the INDH acknowledges that this area was one of the first aspects subject to regulation in Chile, in which the State has established the duty to enhance transparency relating to such conflicts. Nevertheless, the INDH has observed only limited regulation in certain areas. This is the case regarding the Chilean Congress, where the disqualification of members from voting on bills specifically in which conflicts of interest may have arisen only applies in relation to suppositions of family ties.

Regarding political financing, the chapter addresses a number of issues. For example, in relation to funding for political campaigning, the INDH believes that financial support provided by juridical persons to electoral campaigns should be prohibited. If legislators were, in fact, to regulate in favour of this type of funding, the INDH contends that all such financial contributions must be entirely transparent, i.e., whereby the identity of donors or contributors must be made public, without the possibility of anonymity. Regarding the registration of members of political parties, the INDH emphasizes that any final decision taken by legislators must correspond to that which favours, to the greatest possible extent, the transparency of political parties. Likewise, the INDH believes that registration should be free, considering the importance of the public interest in relation to this measure.

¹This Executive Summary provides an overview of the content of each of the Report’s chapters, and therefore excludes certain parts thereof. For a comprehensive breakdown of each particular area, please refer to the complete 2015 Annual Report. Moreover, this Executive Summary should not be used for reference purposes; rather, all such references should be made from the main Annual Report.

²These cases relate to ongoing and separate allegations of corruption and political scandal involving the Chilean companies Penta, Caval, SQM and Corpesca and a number of Chilean politicians, both former and incumbent.

The INDH also expresses concern for the slowness or complete lack of implementation of the recommendations made by the Engel Council, as well as for the adverse reaction of certain political parties in response to the publication of the Council's findings.

Democratic institutions and human rights

This chapter addresses the different reforms approved in 2015, bills currently under discussion in Congress, and related political actions. Despite differing in character and purpose, these procedures form part of the network of the democratic institutions that enables the State to fulfil its human rights obligations. Accordingly, analysis is specific to the institutional nature of each legislative measure under discussion, and does not provide an in-depth evaluation of the current reality of the country in this particular field.

The constitution and human rights

In previous Annual Reports, the INDH has noted that the constitution of any given country should reflect the minimum agreements within a democratic society, providing the nation with a political reference point from which common life can be established. Accordingly, the INDH deems as highly significant the announcement made by the Chilean president in October 2015, in which she set out the stages of a constitutional process and the possible mechanisms that may be employed to modify the current constitution. Although the announcement was based on general terms, the implementation of these stages, particularly the first four (civic and constitutional education; open, transparent and unpressured public discussions; the submission of the Public Bases for the New Constitution to the president of the Republic; and constitutional reform for a new Magna Carta), should incorporate parity and equal public participation, especially of vulnerable groups. In particular, the content of the "civic and constitutional education" stage must include information relating to the human rights involved in this process. Moreover, it is crucial that its findings are made available in clear, concise and easy-to-understand speech, as well as in different languages.

Regarding the mechanisms for approving the next constitution, the new Congress will have to select between the following: a bicameral commission composed of a group of senators and deputies; a mixed constitutional convention that includes members of Congress and citizens; a constitutional assembly; or a referendum in which the public will decide between the first three options. In its 2014 Annual Report, the INDH proposed that, regardless of the mechanism used for constitutional reform, all must comply with certain minimum standards, relating to: (i) public trust; (ii) participation; (iii) participation of vulnerable groups; (iv) parity between men and women; (v) geographical representation; (vi) transparency and access to information; and (vii) equal votes. Furthermore, the process must be straightforward and easy to understand on a stage-by-stage basis.

Reform of the binomial voting system

The binomial voting system has been subject to criticism for, among other aspects, its negative effects on the political participation of women and indigenous peoples. Therefore, the reform of this voting system in favour of an inclusive proportional representation method represents progress in the exercise of political rights. The system will be used for the first time in the next congressional elections in 2017, when analysis will have to be conducted into how it works in practice.

The INDH notes that the Act which introduced this change to the voting system incorporates what has been called, “temporary affirmative action”. This is a positive step in terms of human rights as it helps to promote equality among men and women seeking public office via popular vote.

Public security

In January 2015, the executive branch introduced a bill, “which facilitates the effective application of the sentences corresponding to the crimes of robbery, burglary and receiving stolen property, and improves criminal prosecution in such cases” (Official Gazette 9885-07). The INDH has argued that this bill seeks to amend the legal framework in numerous ways; the comprehensive analysis of which implies tougher application of criminal sentencing that is in contrast to international standards of the use of criminal law as means of *ultima ratio*.

First, the bill plans to amend the Criminal Code to establish a special system for determining sentences for certain property-related crimes (the appropriation of private property of other persons, violent or physically intimidating robbery, burglary using forced entry, theft, and cattle rustling). By establishing a system through which special sentencing can be determined, which is independent of the general application of legal standards, the bill fails to provide sufficient justification for determining a genuine difference between general sentencing norms and that which is outlined under the special system devised for these type of crimes. Consequently, this impacts on the principle of equality and non-discrimination.

Second, for determining preventive detention (article 140 of the Criminal Procedure Code [CPP in Spanish]), the bill also seeks to incorporate, under the hypothesis of escape, that the person has “repeated prior offences”. This violates personal freedom, as it could restrict this right on the grounds of past behaviour that does not necessarily include a criminal conviction, charges having been brought, or even actions that have been declared as illegal.

Furthermore, the bill seeks to create an identity check independent from existing measures contained under article 85 of the CPP. The INDH believes that the latter already grants the police sufficient power to undertake identity checks, including a wide margin of preventive arrest powers at the disposal of Carabineros³. Therefore, this new identity check control is both unnecessary and disproportional. In addition to contravening the presumption of innocence, the new identity check also infringes the principle of equality and non-discrimination: it seeks to grant legal and wide-ranging authority to the police to conduct identity controls, which, in turn, creates instances of arbitrariness and signifies only limited control over the police to conduct such checks.

Finally, the bill seeks to amend article 85 of the CPP, which allows existing identity checks to proceed, additionally, in cases in which police officers, “are in possession of some form of background information that enables them to deduce that a particular person has an outstanding arrest warrant”. The clause is vague in its conception and lacking in objective components that help to protect against its arbitrary application.

National Council for Children

The interministerial committee known as the National Council for Children was created on 14 March 2014, by means of Supreme Decree 2131. The mission of the Council is to advise the

³ The Carabineros de Chile is the national police force. Please note that it is a separate institution from the investigative police force, the Policía de Investigaciones de Chile.

president of the Republic on the formulation of measures to guarantee, promote and protect the rights of children and young persons in the country. Due to its interministerial characteristics, the Council acts as a coordinator between the different agencies working in the field of children's issues. It focuses on three main areas: (i) a new political, regulatory and institutional framework; (ii) more and better special protection for rights; (iii) more equality and inclusion, which includes the strengthening and expansion of the comprehensive protection subsystem, Chile Crece Contigo⁴, among other responsibilities. Within the context of these main areas, in September 2015 the president of the Republic introduced a bill to Congress seeking to establish a system of guarantees for the rights of children (Message 950-363).

The introduction of this bill to Congress is noteworthy. However, article 2 states that, "it is the duty of agencies of State administration, the family and society to respect, promote and protect the rights of children". While the family and society are indeed key actors in the promotion and protection of human rights, it should be recalled that the State in its entirety, and not simply the agencies of State administration, is responsible for complying with the country's international obligations. Therefore, the article should include reference to all the other branches of the State.

Likewise, the bill should make distinctions between, on one hand, children, and on the other hand, young persons. For instance, levels of autonomy of persons over 14 years of age need to be strengthened; at this age, young persons are already subject to criminal responsibility, and the importance signified by this age difference is recognized under current legislation concerning family courts, albeit to varying degrees. Similarly, the bill establishes an obligation to design and implement a National Children's Policy. As this field already constitutes a part of human rights, the bill should consider how the proposed policy can be best integrated into the National Human Rights Plan, due to be devised by the Undersecretariat of Human Rights.

Ministry of Women

As part of the commemorations of International Women's Day on 8 March 2015, the Chilean president signed the bill creating Law 20.820, which establishes the Ministry of Women and Gender Equality. This new ministry will be responsible for, "working with the president of the Republic in the design, coordination and evaluation of the policies, plans and programmes aimed at promoting gender equality, equal rights and ensuring the elimination of all forms of arbitrary discrimination against women" (article 1).

The existence of a Ministry of Women and Gender Equality signifies a strengthening of the current institutional framework regarding gender. First, the ministry will grant this framework greater powers and scope at the national and regional levels. Simultaneously, it will facilitate its impact on public policy, legislation and all other areas over which the ministry has direct responsibility, or those which, falling under the responsibility of other ministries or State agencies, are relevant in regard to the rights of women.

Intersectoral Committee on Trafficked Persons

The Intersectoral Committee on Trafficked Persons was created in 2008 by means of Exempt Decree 2821 as a permanent advisory committee composed of interministerial and intersectoral representatives and presided over by the Ministry of the Interior and Public Security. Distinct examples exist of progress made during the year. Among those emphasized by the INDH is the

⁴ Meaning, "Chile Grows with You".

Public Prosecutor's Office and the Ministry of the Interior and Public Security having published a Best Practices Guide in June 2015, relating to criminal investigations into human trafficking and support and protection of trafficked persons.

Technical Council on Migration Policy

The INDH has made reference to the vulnerable situation in which migrants find themselves on numerous occasions, particularly in its Annual Reports. The INDH has also participated in the Technical Council on Migration Policy, which is coordinated by the Department of Immigration and Migration, in one of the Council's seven working groups: Human Rights and International Affairs, which is coordinated, in turn, by the Ministries of Foreign Affairs and Justice. This particular working group, in conjunction with the other six, is constituted by a broad range of government actors (ministries and services), legal bodies, and international and non-governmental organizations. This group convened six times in 2015, in which observations were tabled to ensure the human rights of the migrant community are safeguarded within the institutional architecture presently under construction. The migration bill is currently awaiting its introduction to Congress, having been repeatedly postponed.

Undersecretariat of Human Rights

The INDH has previously raised the need to deepen State institutions in terms of human rights, emphasizing the importance for the executive branch to design, coordinate and implement public policy to help guide the content and legal nature of State action in this area. Accordingly, the official approval of the Undersecretariat of Human Rights (henceforth, the Undersecretariat) signifies noteworthy progress in terms of State compliance with its obligations to promote, guarantee and protect human rights.

The INDH has evaluated the responsibilities of the Undersecretariat, and concludes that, despite one of its main objectives being the protection of human rights, its primary function, in fact, relates to promotion. The Institute, therefore, contends that the new government agency lacks sufficient operational capacity. Furthermore, it fails to address the obligation of the State to incorporate the protection of human rights, which is stipulated as a legal minimum requirement regarding what should be covered under the terms of the National Human Rights Plan. Moreover, the legislation fails to establish the objectives of this Plan, as the INDH has previously proposed, and determines that these should be devised by the Undersecretariat itself (article 14 bis, paragraph a).

NGOs promoting democracy and the protection of human rights

Non-governmental organizations (NGOs) that promote democracy and the protection of human rights are a fundamental component of the institutional, although not public, framework available in the defence and preservation of democracy and human rights. The work of NGOs dedicated to the promotion of democracy and the protection of human rights is well recognized and encouraged at the international level. However, the same levels of recognition and encouragement are lacking at the national level.

The presence of regulations for governing the way in which NGOs and other social actors participate in and influence State decisions is undoubtedly a positive step. Nevertheless, many organizations are concerned that engagement opportunities promoted by the State are information-based and advisory in nature, rather than debate-led or genuinely participatory.

Current legislation regarding NGOs, contained in the Civil Code and Law 20.500 on associations and civic participation within public affairs, is extremely general and fails to acknowledge a specific statute in relation to organizations promoting democracy and human rights. Regarding their financing, the INDH believes it both positive and necessary to ensure financing is available for organizations promoting democracy and the protection of human rights, as part of a broader policy of providing assistance to civil society organizations. However, the availability of financing is nowadays largely limited to State resources by means of the implementation of policies, plans and programmes.

Civil and political rights

Public service and human rights

According to the constitution and current legislation, access to public service should be guaranteed under conditions of complete equality. However, among the serious issues relating to this concept is the situation of employees on temporary work contracts, who represent the largest segment within the sector (63.7% of the total 236,368 public sector staff, according to preliminary data from July 2015). In addition, such workers are not eligible to apply to the mandatory tendering of public service contracts, in contrast to staff on fixed-term contracts. Furthermore, the number of employees on temporary work contracts far exceeds the 20% limit of temporary workers to total workers permitted under the corresponding administrative regulations. A further problem is that posed by the large amount of these workers employed as independent contractors (41,099 people, according to preliminary data, also from July 2015), who perform regular work, but not in accordance with the aforementioned contractual arrangement.

Discrimination within access to public service particularly affects women; the proportion of whom increases in temporary public sector employment, and decreases in managerial positions. Consequently, this section raises the need for the State to address the genuine requirements of workers in order for them to conduct their duties, in line with each of the associated rights in question.

Cases of special exception

International human rights law recognizes the possibility of restrictions on the exercise of rights in the case of members of the armed forces and security forces, placing certain requirements on the application of these limitations. In Chile, the regulatory framework that governs these officials restricts their fundamental rights in areas such as due process, protection of the family, freedom of association and the exercise of political rights. These restrictions are justified according to the particular demands that military and security functions imply for their constituent members.

By reviewing the national situation, it can be seen that certain restrictions are permitted by international law, such as the prohibition of staff of the armed forces and security forces from joining political parties or trade unions. Conversely, the intervention of institutions in authorizing marriage, subsequent to background checks of future spouses, violates the right to freely enter into marriage, as well as the right to privacy. In addition, the rules on access to the armed forces and security institutions contain certain discriminatory provisions, including requiring the applicant to have a marital status of single and to be in possession of a valid declaration of

honour⁵, which in certain cases is only asked of women candidates. Restrictions are also evident in the right to due process in the context of evaluation and rating of personnel, which fail to ensure adequate channels of administrative appeal, as is the case for other public officials.

Finally, the disciplinary system of the armed forces and security forces, in both the design of the applicable procedures and regarding the related disciplinary measures themselves, have been established by the administrative authority by means of regulations lacking in legal status. This is in contravention to the requirements established by the American Convention on Human Rights and the Chilean constitution, to the extent that these disciplinary measures restrict the exercise of numerous fundamental freedoms, as is the case in the arrest of an official.

Right to family protection

There is a growing social and legal trend away from the concept of family embodied in the 19th century Civil Code, in which it was conceived of as a binding marital union, between a man and a woman, and in which the latter, as well as the family's children, were subject to the authority of the former. As part of this trend of change, recognition of rights for partnerships and parenthood not based on marriage has broadened; exemplified by the Civil Union Agreement, which recognizes the legal validity of affective unions not constituted in marriage, as well as from the ruling that established the equal rights of children born out of wedlock. The equal rights and responsibilities of men and women within the family have been recognized, and legal protection for family members has advanced, particularly for women, older persons, children and young persons. In turn, this has broadened the duty of the State to protect the family.

This chapter reviews international human rights standards on protection of the family and Chile's legal and political compliance thereof. Analysis is conducted into the protection afforded by the State regarding the structure, duration and breakdown of family ties, with pauses made to assess certain case studies. This includes the protection of the right to have children by means of initiatives such as those derived from the field of healthcare for treating problems of infertility; as well as the right of children themselves to have a family, which are addressed by the ongoing reforms on adoption. The scope of social protection is also discussed, with reference to certain situations of vulnerability during the period of pregnancy, due to poverty or adolescent mothers. The legal protection of parental and associated rights is also reviewed, in cases of marital breakdown or the lack of marital relationships.

The Report pays particular attention to the situation of pregnant prisoners and the reality facing new mothers during the breastfeeding period (117 women as of June 2015). Such women have access to certain benefits within the prison system (including the permanent presence of the child with the mother until the age of two), in addition to prisoners who report having minor children at the moment in which they enter prison. As of 30 June 2015, 63.6% of the 3,202 female inmates and 40.5% of the 41,337 male inmates corresponded to this latter group.

The INDH expresses its concern that in this prolonged situation, prison rules and practices fail to offer the conditions required for a mother, father or guardian prisoner to maintain a steady relationship with the children under their care. Rather, such prisoners must comply with visitation rules, which sometimes subject them to undignified searches and treatment, or possible transfers

⁵ Certificado de honorabilidad: a document in which a third person attests in favour of the applicant that he or she is both upstanding and trustworthy.

of the mothers or fathers to remotely located detention centres. These occurrences prevent visits from taking place and complicate matters in relation to reconciling visits with the school attendance commitments of the child. Therefore, this violates the right to family protection of both the prisoners and the children and young persons with mothers, fathers or guardians in the penitentiary system.

Economic, social and cultural rights

Poverty and human rights

International human rights recognize the right of all persons to a life of dignity (or to an adequate standard of living) in numerous treaties, and call for the improvement of living conditions as the focus of State actions for the guarantee thereof. Accordingly, the international community has long recognized poverty as an unacceptable condition that constitutes a matter of human rights. The United Nations Summit on Sustainable Development 2015, held in New York, adopted the goal to, “end poverty in all its forms everywhere” by 2030.

In Chile, the results of the 2013 National Socio-Economic (CASEN) survey show that income poverty fell from 29.1% in 2006 to 14.4% in 2013 under the new methodology used, and from 38.6% to 7.8% according to traditional measurements for the same period. While these results are encouraging and show the combined effect of economic growth and public policy development in recent decades, there is a segment of society that continues to live in extreme poverty (2.5% of all persons, according to traditional methodology, and 4.5% using the new methodology, as reported by 2013 statistics), as well as subject to different forms of insecurity. Currently, Chile is faced with the challenge of confronting poverty from a complex and multifactorial perspective, in line with international discussions and in adherence to its human rights commitments. This concern has been revealed in the National Human Rights Survey conducted by the INDH in 2015. Results of this study show that 60.8% of the population believe that persons living in poverty are subject to human rights violations, viewing them as one of the most violated groups in the country. Furthermore, 57.1% of respondents said that poverty was the main manifestation of discrimination in Chile, and this particular answer represented the second most common response regarding perception of all forms of discrimination.

During his visit to Chile in March 2015, the United Nations Special Rapporteur on Extreme Poverty and Human Rights, Philip Alston, declared, “(i)n relation to poverty, Chile is a paradox. It has made extraordinary progress in terms of economic growth, overall development, and poverty reduction. But at the same time, troubling rates of poverty and extreme poverty persist, and inequality levels are extremely high. They are neither sustainable nor acceptable in a society that prides itself upon a strong and deep commitment to respecting human rights for all of its peoples”.

From a human rights perspective, social policy should place emphasis on the human person, their dignity, and on how to eliminate factors that entrench their vulnerability within Chilean society. This implies a critique of the policies that favour a handout approach, in which the State is the decision-maker and performs the role of self-determination that corresponds to each individual person. State action enshrined in regulations and public policy focuses on certain elements of a life of dignity. However, it does so without incorporating a comprehensive view of the wide range of civil, political, economic, social and cultural rights to which people should have access, in line with

the international commitments adopted by the State. It should be noted that State actions taken in relation to persons living in poverty are largely characterized by social benefits, bonuses and conditional cash transfers, rather than overcoming poverty or ensuring an adequate standard of living. This approach tends to temporarily alleviate or improve the circumstances in which they live, but leaves space for those who remain in a vulnerable situation to subsequently return to a condition in which they experience the violence of poverty. This is exacerbated further when interventions fail to address the multi-dimensional nature of poverty or ignore all the dimensions of human rights, which extend far beyond access to a service.

To date, two nationwide registers have been compiled into homeless persons, in 2005 and 2012. The second of these found there to be 12,255 homeless persons in Chile; this represents 5,001 more than the first register. Of this total, 84% were men, and the greatest presence of homelessness was recorded in the Maule, Los Lagos and Atacama Regions. On average, homeless persons are 44 years old and have spent a total of 5.8 years living in this context. Regarding the national response to this situation, one of the fundamental problems is the State's conceptualization of homeless persons. The concept emphasizes the lack of a roof over homeless persons' heads as the main problem being experienced. This approach is adopted in order to synchronize efforts that are used at the international level, in an attempt to avoid the use of labels that incite discrimination. However, references to "homeless persons" hide the complexity and simplify the reality of each individual involved, who is experiencing their own specific actuality and has their own needs and complications. As a result, the combatting of this situation requires a series of special and diversified actions.

Another urgent reality in Chile regarding poverty and extreme poverty is that which faces indigenous peoples, the population of which, according to the 2013 CASEN survey, stood at 1,565,915. While the 2013 CASEN survey registered a reduction in poverty among indigenous peoples compared to previous measurements, it provides evidence of a persistent gap in terms of poverty levels in relation to the non-indigenous population. The aforementioned statistics show that public policy directed towards indigenous peoples has helped to partially reduce levels of poverty and extreme poverty among this segment of society. Nevertheless, public policy has been unable to put a stop to the inequality experienced by indigenous peoples in relation to the rest of the Chilean population.

Right to work

In December 2014, the executive branch introduced a bill, "that modernizes the system of labour relations, introducing changes to the Labour Code" (Message 1055-362). This proposed legislation constitutes an opportunity for Chile to improve compliance with its international obligations relating to collective labour rights. Accordingly, this chapter reviews the main aspects regarding unionization, collective bargaining and strikes.

In terms of unionization, the INDH is concerned by the fact that the bill seeks to increase the number of workers needed to implement a union. This raises the requirements for exercising the right by establishing the need for a larger quorum in order to officially form a union, without providing an objective and reasonable justification for doing so. From the human rights perspective, and to the extent that such a step has not been explicitly justified, this requirement could be considered as regressive. Likewise, the bill modifies the current system by limiting the extent of the benefits granted to unionized workers during collective bargaining. This may

constitute discrimination against anyone not unionized, and might also be considered as a regressive step in relation to current regulations.

Regarding collective bargaining, the bill proposes a complete repeal of Chapter IV of the Labour Code on this negotiation process, ending the prohibition relating to the type of worker ineligible to engage in collective bargaining. Accordingly, it broadens its jurisdiction to cover not only workers affiliated to the union at the beginning of collective bargaining, but also to those joining the organization during the process itself, as well as establishing a duty on companies to provide unions with specific information relating to the business. The aim of this latter point is to ensure that the union has access to all relevant information prior to entering into the process of collective bargaining.

One notable point that arises is the bill's proposed elimination of the jurisdiction granted to negotiating groups. Under current legislation, regulated collective bargaining can be pursued by unions, as well as negotiating groups; both of which are granted jurisdiction by the law under article 309 of the Labour Code. Any failure to maintain this jurisdiction for negotiating groups would be a regressive step in contravention of international standards. Furthermore, it would not be proportional, considering that the bill includes measures less detrimental to encourage unionization (such as the favoured status granted to unions over negotiating groups in collective bargaining procedures⁶).

Regarding strikes, which the INDH considers a human right, this issue must be understood in relation to unionization and collective bargaining, as it represents one of the principal means by which workers can enter into negotiations with their employers. Nevertheless, current legislation restricts the right to strike in a number of ways. For example, it only permits a strike to take place when collective bargaining has broken down, or by means of article 381 of the Labour Code that allows striking workers to be replaced. As such, the INDH has recommended that the State preserves the original wording of the bill in which the replacement of workers was prohibited.

Related to this issue is the time period in which a strike can begin. The INDH raised concerns at the time regarding the period of three days, as stipulated by the current article 374 of the Labour Code, noting that the real objective of this provision remains unclear. Accordingly, the aforementioned concern remains given the bill's proposal to extend this time period.

Finally, regarding the collective rights of public sector workers, the INDH considers that the State should regulate the right to strike of this particular group, guaranteeing the provision of minimum services in certain sectors, in accordance with their functions.

Right to education

Prior to the announcement of a programme of educational reforms, the INDH emphasized the importance of confronting the current problems from a human rights perspective in its 2014 Annual Report. This requires addressing the issues relating to equality and non-discrimination regarding access to and continued attendance in the system, as well as the quality of education and the incorporation of Education in Human Rights (EDH, by its Spanish acronym) within education itself. It also involves reviewing the institutional framework of the State necessary in order to guarantee the aforementioned rights.

⁶ This favoured status granted to unions is known as "titularidad sindical" in Spanish.

The reform process has, until now, taken place through a number of legal initiatives. Of these, some have been passed, some remain under discussion, and others have not yet been drafted into a bill.

Undersecretariat of Preschool Education

As part of the different bills announced under the educational reform framework, Law 20.835 was officially published on 5 May 2015, establishing the Undersecretariat of Preschool Education. This body, under the Ministry of Education, will be responsible for the promotion, development, general administration and coordination of all preschool affairs. The passage of this law represents progress regarding the institutional framework of the State in the field of early education. For instance, it separates the responsibilities of educational service provision at this particular level of schooling, which are under the control of the National Preschool Board (JUNJI), from the auditing powers of the system, which are under the control of the Superintendency of Education and the Quality in Education Agency.

Law 20.845

Legislative debate continued in 2015 in relation to the passage of the Inclusion Act, which regulates the student admission process, eliminates shared financing, and prohibits profit in educational institutions which receive State funding. The official publication of this law represents progress in terms of guaranteeing equality regarding the quality of education, by establishing that the State has the duty to, “take steps to ensure an inclusive and quality education for everyone”, and that, “State funding by means of the grant regulated by the present Act aims to ensure all persons are able to exercise the right to a quality education”. However, the INDH is concerned about the lack of special protection measures within the system. Such measures are intended to improve the inclusion of the more disadvantaged groups, whether defined by geographic isolation, such as persons living in rural communities, or due to difficulties relating to effective integration within the educational process, such as prisoners, adults with incomplete schooling, immigrants, indigenous peoples, and/or persons with special education needs.

Act that eliminates the prohibition of students and officials from participating in the governance of higher education institutions

On 18 June 2015, Law 20.843 was officially published, eliminating the prohibition of students and officials from participating in the governance of higher education institutions. This restriction was specifically eliminated in the new law and instructions were issued in favour of preventing the situation in which internal regulations of higher education institutions, “contain provisions which prohibit, restrict or impede the free organization thereof”. The articles define neither the type of student, academic and official participation allowed in terms of the decision-making within these organizations, nor the scope thereof. Rather, definitions regarding participation in governance are subject to the independent autonomy of each establishment. Therefore, the measures introduced by Law 20.843 are highly praised by the INDH for advancing the promotion of human rights in higher education.

Bill on the professional teaching development system

In April 2015, the executive branch introduced the Teaching Career Bill to Congress. Regarding the scope of its application, the bill relates to all teacher-training programmes and all teachers working in State-funded school establishments (municipal, private subsidized and delegated administration). Nevertheless, since the bill fails to address the situation of preschool education

professionals, it has been the subject of criticism by sector representatives. The bill also fails to address the situation of teaching assistants, who represent 38% of all personnel working in educational establishments. It would be desirable if the bill addressed their situation in order to ensure the generation of educational spaces that are respectful of rights and consistent with the quality of education throughout the entire school environment.

Moreover, and regarding the standard of education, the bill lacks a definition as to what constitutes a quality education. It would be desirable if the bill outlined such a definition, and incorporated proposals for the diagnostic evaluation and accreditation of courses and programmes that aimed to ensure teacher training in line with these criteria. This should be complemented by initiatives from the teacher-training institutions themselves.

Finally, the bill fails to ensure an adequate distribution of qualified teachers across different schools. As such, it would be desirable if the proposed legislation accounted for mechanisms by which all primary and secondary schools included a proportion of teachers who had received a high standard of training.

Despite the aforementioned concerns about the proposal, the INDH believes the bill, as a whole, represents progress regarding the establishment of progressive improvement in the material condition of teachers, in line with the provisions of the International Covenant on Economic, Social and Cultural Rights.

Public education plan for educational establishments recognized by the State

The Chilean national curriculum has been strengthened by the inclusion of EDH. The addition of this type of education has become increasingly explicit during the curriculum reform process that began in 2010. However, limited teacher training in this area is impeding the implementation of the curriculum in the classroom and during extracurricular activities organized by educational establishments. Therefore, the INDH is concerned by the fact that the bill only superficially covers this component and assigns most of the training responsibility to the establishments themselves, which generally exceeds the capabilities of such educational institutions. The Ministry of Education should establish the fine details within the design of the Plan and ensure these are complied with via auditing. It should also assign human and financial resources to assist the schools in implementing the Plan and to ensure they are able to meet their respective obligations.

Land issues and human rights

Right to a pollution-free environment

The right to live in a pollution-free environment has been an ongoing concern for the INDH, and there are several instances which exemplify the importance of this right within the current national agenda. These include an increase in territorial conflicts (requiring the deployment of INDH observer missions in certain cases), and State commitments, as a signatory to the United Nations Framework Convention on Climate Change and the Kyoto Protocol, to confront the adverse effects of climate change on ecosystems and the wellbeing of the public. This has been

preceded by 18 years of important changes in the area. Furthermore, results from the 2015 National Human Rights Survey show the increasing importance of these issues: of all responses provided to the question on the most perceptible rights abuses in Chile over the last year, 20.3% answered in relation to the right to live in a pollution-free environment, making it the second most common reply overall.

This section of the Annual Report reviews three bills currently under discussion in Congress, from the perspective of international human rights standards. These bills are particularly sensitive due to their link to the exercise of fundamental rights and the environmental disputes that have arisen in Chile in recent years. Accordingly, they are: i) the Water Code Reform Bill; ii) the Glacier Protection and Preservation Bill, and; iii) the bill proposing the creation of the Biodiversity and Protected Areas Service and the National System of Protected Areas.

The impact of businesses on the environment, as well as the possible effects of their operations on human rights, has also gained international relevance from the rights perspective. The adoption of the Guiding Principles on Business and Human Rights by the United Nations (2011) exemplifies this, regardless of whether this document has a binding status. These Principles provide a framework for action in three main areas: “a) States’ existing obligations to respect, protect and fulfil human rights and fundamental freedoms; b) [t]he role of business enterprises as specialized organs of society performing specialized functions, required to comply with all applicable laws and to respect human rights; c) [t]he need for rights and obligations to be matched to appropriate and effective remedies when breached”.

Water Code Reform Bill

The urgency identified in Chile between the need to obtain water for human consumption on one hand and productive activities on the other has led to significant complications regarding the regulation stemming from the 1981 Water Code. In recent years, a number of reforms to the Water Code have been proposed. However, the most advanced of these, thanks to impetus from the executive branch, is the bill contained in Bulletin 7543-12.

As noted by the INDH, States have certain obligations from the international human rights perspective in terms of the right to water, including: (1) guaranteeing access to the minimum amount of water that is required and suitable for personal and domestic use and for preventing diseases, and; (2) ensuring the right to access water and water facilities and services on the basis of non-discrimination, particularly in the case of vulnerable or marginalized groups (INDH, 2013, p. 209). The INDH regards the reform bill as, generally, positive, and deems that its passage would provide the population, particularly rural communities and indigenous peoples, with enhanced protection of the right to access water.

Bill to create the Biodiversity and Protected Areas Service and the National System of Protected Areas

Biodiversity is linked to two groups of human rights identified by the current Special Rapporteur on Human Rights and the Environment. Accordingly, biodiversity impacts on the right to life, nutrition, health and cultural life. Likewise, it affects the exercise of the rights of indigenous peoples to live according to their culture and traditional way of life.

On the 18 June 2014, the bill was introduced to Congress, with a foreword from the president of the Republic, proposing the creation of the Biodiversity and Protected Areas Service and the

National System of Protected Areas. This legal initiative comes in response to the obligation established under the transitory eighth article of Law 20.417, which stipulates that one or more bills must be presented to Congress within one year of its publication, setting out the means by which the aforementioned Service will be created. Furthermore, since the country is a signatory to international instruments relating to biodiversity, the appropriate institutional framework relating to protected areas is required for the correct application of the initiative. The aim of the bill is the conservation of the biological diversity of the country by means of preservation, restoration and the sustainable use of species and ecosystems. To date, the bill has undergone 1,251 amendments during the legislative process.

While the INDH welcomes this initiative, concern remains from the human rights perspective relating to the lack of consideration of the participatory means through which indigenous peoples and local communities can be engaged with respect to protected areas and biodiversity protection. Accordingly, and of particular note, is the recognition and incentives proposed by the bill that are considered exclusively for private areas of protection. While clearly important, this is in contrast to the total lack of acknowledgement of indigenous peoples and their contribution towards the conservation of biological diversity. Furthermore, the bill neglects to tackle the current superposition that exists between protected areas, when these relate to national parks, and areas under indigenous land ownership.

Glacier Protection and Preservation Bill

From a human rights perspective, the retreat of glaciers impacts the enjoyment and exercise of numerous rights, particularly due to the fact that these bodies of ice are the main permanent source of water in South America. Accordingly, in May 2014, a group of Deputies⁷ introduced a bill to Congress in an effort to secure their protection. This bill was the subject of a substitute amendment by the Chilean president in March 2015, which meant significant changes to the meaning of the original bill; on 7 October 2015, the government issued a further substitute amendment.

As stated previously, the need to protect glaciers is primarily due to securing the provision of water for human consumption, as well as protecting the environment and the livelihoods of certain vulnerable groups. By seeking to reduce the initial levels of protection by means of its substitute amendments, the position of the executive branch is concerning. This stance means no general protection of glaciers has been established, while other categories of ice, such as permafrost, which perform a similar role to glaciers, also remain unprotected.

Regarding indigenous consultation

In addition to the specific scope of each of these aforementioned bills, certain observations are necessary in relation to their possible link to the rights or interests of indigenous peoples, and particularly in terms of the question concerning the relevance of prior consultation. It should be noted that Chile is in a position of weakness regarding standards, institutions and policies relating to indigenous peoples; weaknesses that have been extensively analysed by the INDH. On the other hand, and as reflected by the aforementioned, the executive branch has not yet defined an indigenous consultation procedure for legislative approval; a situation which has been observed by the Constitutional Court.

⁷ Members of the Chamber of Deputies, the lower house of the Chilean Congress.

Accordingly, in the context of discussions about the three aforementioned bills (regarding the Water Code Reform, the creation of the Biodiversity and Protected Areas Service and the National System of Protected Areas, and on the Protection and Preservation of Glaciers), it is conceivable that, if taken in good faith, these measures may generate some form of impact, albeit indirect, on the recognized rights of indigenous peoples. This impact may arise in that the three bills will modify regulation and access to natural resources that are particularly important to the world view of indigenous cultures, the preservation and practice of which are protected under international law. As a consequence, the INDH has recommended that an indigenous consultation procedure is conducted as best practice, even when there are reasons to believe that the impact will be indirect and, as a result, such consultation will not be mandatory.

Intercultural relations and human rights

Since the INDH began operating in 2010, the lack of constitutional recognition of the pluricultural nature of the State and society has been a concern, in addition to the absence of public policies and institutions to address relations with the nation's indigenous peoples. Although the demands of the Mapuche people are usually more visible to the general public, similar complaints have been made by other groups, including the Rapa Nui, who call for recognition of their ancestral lands on Easter Island, or the indigenous communities in northern Chile, who have voiced their concern for many years about the impact of mining projects and other activities on the provision of water, which is key to their livelihoods, ways of life and protection of their cultures.

Prior consultation procedures successfully implemented

This duty of prior consultation constitutes, albeit not exclusively, one of the instruments available for advancing the area of intercultural relations within States. During 2015, two prior consultation procedures were completed nationwide, as follows: (1) the procedure relating to the creation of the Ministry of Indigenous Peoples and the Council or Councils of Indigenous Peoples, developed by the Ministry of Social Development, and; (2) the procedure regarding the substitute amendment of the bill which proposes the creation of the Ministry of Culture, Art and Patrimony, developed by the National Council of Culture and the Arts.

The INDH has conducted official observations during both processes, and has devised reports outlining the proceedings and content thereof, from the perspective of international human rights law.

Violence in the context of intercultural relations in La Araucania Region

The INDH has frequently expressed its concern for acts of violence in intercultural contexts. As of the date of publication of this Report, the Institute had conducted 14 observer missions in different locations around the country. These missions have documented intercultural conflicts of varying degrees of seriousness, including ones involving conflict. Undoubtedly, La Araucania Region is the area with the highest number of violent acts arising from intercultural conflicts, which include both violence committed against the Mapuche population, as well as violence perpetrated against the Region's non-indigenous population.

Regarding possible solutions, the INDH has identified the need for the State to adopt a series of short-, medium-, and long-term measures based on an intercultural approach relating to all facets of the conflict. Within this context, the INDH understands that the effective criminal prosecution of individuals committing acts of violence, which is a duty under the rule of law, cannot be the

only way of resolving the intercultural conflict in the Region. Rather, the underlying problem is multidimensional, with one of the fundamental elements being the conflict relating to land ownership, which, in turn, dates back to the colonial period and subsequent historical events. Accordingly, while the answer to the conflict requires a new strategy to bring about peace and public order in the region, it transcends any one particular approach and constitutes a question that, above all, must be resolved politically.

Exercise of rights without discrimination

Prostitution and human rights

Analysing the issue of prostitution implies addressing distinct areas of human rights: the rights of women; the right to health; the right to work; the need to prevent physical, psychological or institutional violence against individuals in a situation of prostitution; exploitation and the trafficking of persons; and the relationship between discrimination, poverty and prostitution, among others.

Women and transgender and transexual people experience violence, stigma and discrimination, and the State and society frequently forget the most simple and important aspect of the debate: that above all, they are people, and as such, they are subject to the human rights that the State is obliged to respect, guarantee and protect, particularly due to their more vulnerable status in terms rights protection.

Therefore, this section reviews the relevant international human rights standards, outlines the pertinent national legislative framework at the constitutional and statutory levels, and provides an overview of the situation in Chile. Regarding the latter, personal testimony has been collected from persons in situations of prostitution, as well as those who have been prostituted or who work in the protection of their rights.

Healthy discussions and important organizations, at the continental and international levels, commonly raise the need to define prostitution as both an act of exploitation, to encourage its prohibition and to halt the expansion of the “sex industry”, as well as to regulate it and understand it as a form of work. Nevertheless, there is a distinct absence of this broader view at the national level in Chile. Rather, civil society organizations, including feminist groups, tend to take the position which, albeit nuanced, favours regulation of the different aspects involved in prostitution, conceiving it instead as solely a form of work. Accordingly, from this perspective, the first problem relates to the lack of legal regulation addressing the issue in a comprehensive manner. This absence of regulation incentivizes clandestine behaviour, which, in turn, accentuates a situation of vulnerability and limits the ability of the State to protect human rights. Despite the need for such regulatory oversight, the current bills subject to the legislative process in Congress lack any indication of a desire to regulate this area conclusively.

In Chile, the regulation of prostitution concerns the treatment of sexually transmitted infections. This regulatory position, therefore, conceives of prostitution as a health problem, rather than looking at it in a wide-ranging manner, whereby the State is not only concerned with the risks of infection, but also in a way that relates to the person undertaking prostitution or he or she who is prostituted as a rights holder, in a broad sense.

A second aspect is the fact that the INDH has detected discriminatory practices and harassment towards prostitutes, particularly in public health centres. Testimony collected indicates discriminatory treatment in which prostitutes have been branded “drunks” while receiving treatment or assessment. Likewise, cases such as those experienced by trans women document a lack of respect shown towards them by healthcare professionals deliberately choosing not to call them by their chosen names, which could inhibit them from accessing health centres in the future. It is the duty of the State to remove all obstacles that impede the exercise of a right, which in these cases relate to health. Thus, in this field, the measures that need to be adopted must address the relevant issue, from the training of healthcare staff, to undertaking campaigns seeking to eradicate current stereotypes that are obstructing access to health services.

A third problem, according to available research in this area, and exemplified by the testimonies collected by the INDH, is that persons in situations of prostitution are usually more exposed to abuse committed by the security forces; frequently, but not exclusively, in the context of brothels being closed down or identity checks being performed while they are on the streets. In this regard, it should be noted that the State is responsible for preventing, investigating and punishing gender violence and all acts that infringe upon the physical or psychological integrity or life of women, particularly those in a vulnerable condition and exposed to greater risk.

Finally, it should be noted that since Law 20.507 came into force, the INDH has filed four complaints in terms of trafficking for the purposes of sexual exploitation, including two during 2015, which are currently ongoing. The cases filed in 2015 relate to, in one instance, a Korean woman who was deceived into agreeing to travel to Chile. Following their arrival in the country, their passports were removed and they were coerced into prostitution in a bar in the Santiago district of Recoleta. The other case relates to Venezuelan women forced to work in escort and related publicity services, who were eventually victims of sexual exploitation in different residential apartments in eastern Santiago.

Large-scale, systematic and institutionalized human rights violations (1973-1990): access to justice

As in previous years, the Annual Report recognizes that 25 years after the return of democracy, the Chilean State has made significant progress in terms of complying with its duty to establish truth, justice and reparations in relation to the large-scale, systematic and institutionalized human rights violations perpetrated during the dictatorship. At the same time, the Report reiterates the persistence of obstacles for achieving these purposes regarding victims of the aforementioned violations. The death of Manuel Contreras and Moren Brito, former head and former agent of DINA⁸, respectively, exemplify the urgency of strengthening efforts to establish truth and justice in such cases, as soon as possible.

⁸ Dirección de Inteligencia Nacional (National Intelligence Directorate) was the name of the former Chilean secret police during the dictatorship of General Augusto Pinochet.

This chapter outlines relevant international standards on the right to access justice in relation to these large-scale violations, as well as evaluating Chilean State compliance. Moreover, it reviews certain relevant occurrences of 2015, stressing that progress achieved during the year has been undertaken almost exclusively by the judicial branch of government, whereas the legislative and executive branches have unsatisfactorily fulfilled their obligations. Certain exceptions exist, including the recent Senate approval of the bill granting a reparation payment to victims of torture identified by the Valech Reports I and II. However, these are insufficient and do not constitute a comprehensive legal and reparative policy for victims of the dictatorship. This remains a pending task for the Chilean State.

In the legal field, there have been an increasing number of human rights judgements issued by the Supreme Court, which are the result of the concrete measures implemented between 2014 and 2015. The chapter also highlights the criteria established by the Supreme Court, by which the civil actions arising from acts constituting human rights violations are not subject to periods of prescription. This enables compensation to be sought for the corresponding damages caused.

Regarding the executive and legislative branches, the Report reiterates the need to end the legal secrecy imposed on the historical records of the National Commission on Political Imprisonment and Torture. This secrecy impedes the course of justice and legally invalidates the 1978 Amnesty Law Decree. It is noted that the measure of prescription in criminal human rights cases has still not been eliminated, despite a bill to that purpose being introduced to Congress in 2014. International bodies have issued warnings relating to these and other unfulfilled commitments, such as the unjustifiable delay in initiating investigations into acts of torture documented in the Valech Reports I and II, and the lack of a specialized body to provide legal and social assistance to victims of torture. Finally, the Report advises that pacts of silence could exist between former State agents, aimed at covering up related acts committed, in addition to obscuring the identity of those responsible. It also warns against the awarding of honours and commemorations to perpetrators of serious human rights violations.