EXECUTIVE SUMMARY

ANNUAL REPORT 2012. HUMAN RIGHTS SITUATION IN CHILE

NATIONAL INSTITUTE OF HUMAN RIGHTS

Executive Summary 2012

SOCIAL DISPUTES IN CONTEXT OF DEMOCRATIC STRENGTHENING

Democratic security and human rights

This chapter analyzes the year's events relating to the criminal justice policy, reports of police violence, the application of Law 18,314 (which defines and penalizes terrorist activity), and the application of the State Security Law. The National Institute of Human Rights (henceforth known by its Spanish acronym INDH) questions the presence of laws, policies and practices in Chile corresponding to both an inefficient and dangerous security model in terms of safeguarding people's rights. This model does not address the complexity of elements (political, economic, social, or institutional) involved in violence or the committing of crimes in a preventive way, and which, in part, contributes to the feeling of insecurity reflected in public opinion polls.

Criminal justice policy

The State is obliged to devise and apply a criminal justice policy respectful of rights under due process, wielding its criminal punitive power reasonably, with systems of social control to ensure it is followed correctly, clear limits to avoid its arbitrary use by authorities, an information system enabling an ongoing evaluation of efficiency, and a clear strategy coupled with sustained efforts towards the social reintegration of criminals. A criminal justice policy based on increasing sentences, with wide ambiguity and definition of offenses and increased attributions of law enforcement agencies, without the presence of control mechanisms and democratic limits have created an environment of State arbitrariness. This has resulted in reports of police violence, inhumane rates of prison overcrowding, and a wide and vague definition of criminal offenses, as in the case of the Anti-terrorist Law.

Reports of police violence

Following investigations into four protests in Santiago between August 25th and October 19th 2011 (two of which were authorized and two unauthorized by the Regional Government), the INDH compiled a report which found that "police behaviour does not distinguish between those peacefully exercising their right to gather and express opinion, and groups acting violently within the same protests". Following the report's publication, Chilean police (the Carabineros) announced the creation of a Human Rights Department. This constitutes a positive step towards building a culture of human rights. In addition, the police began installing video cameras in detention vehicles, an undertaking which constitutes a measure of guarantee and transparency on behalf of the Institution. Finally, upon an inquiry submitted by the INDH, the Office of the Comptroller General ruled in September 2012 that INDH staff are permitted to enter police vehicles in which detainees are being held.

During 2012 complaints of police violence have been repeated in diverse contexts throughout the country. They have primarily concerned vulnerable groups such as women, children, adolescents and indigenous peoples.

At the beginning of the year in the Aysén Region the INDH corroborated the irregular and disproportionate use of riot control weapons which, as a result of pellets or bullets, caused

individuals a number of different injuries. Given the nature of the injuries and witness statements obtained, evidence was provided of shots being fired directly at people's bodies from extremely close range.

Police violence has also been repeated in the context of Mapuche demands. As a result, the INDH has presented numerous calls for constitutional guarantees of fundamental rights, from which superior courts of justice, including Temuco's Court of Appeal and the national Supreme Court, have advised the police to use force in line with the Constitution and existing legislation, avoiding all use of excessive force.

Acts of police violence have also been reported in the north of the country, in the Commune of Freirina in the Atacama Region. Having undertaken an observer mission to the Region, the INDH's final mission report documented irregular and disproportionate use of riot control weapons, causing extremely serious injuries to at least one protester. In addition, the report corroborated the police's indiscriminate use of tear gas and other riot control methods.

Finally, a concerning problem is the sexual assault reported by female participants of the secondary and university student protests. The INDH has received reports that could implicate law enforcement personnel from across a number of police precincts, mainly during August 2012. On August 14th, in Santiago's Third Police Precinct three students and one guardian reported having been made to undress in front of other detainees by a police officer. On August 23rd in La Florida's 36th Police Precinct a 15 year old girl and two 18 year old women reported having been forced to pull up their t-shirts and bras, lower their underwear and perform squats. On the same date in San Miguel Police Precinct, 13 young women were forced to undress.

Law 18,314 defining and penalizing acts of terrorism, and the State Security Law

Persistence in favouring criminal prosecution through Law 18,314, which penalizes acts of terrorism, as in the so-called "*bombas* (bombs)" or "*Pitronello*" cases, as well as in respect to members of the Mapuche community in the context of the intercultural conflict, plus the invoking of the State Security Law during social movements in the Aysen Region, reaffirms the importance of the discussion about the legitimacy and efficacy of a punitive derogation framework. Tension is caused between the principle of strict legality of crimes and their punishments, and the discretional nature offered by regulations based on the description of open and ambiguous punitive conduct. The INDH has maintained that the normative framework in such cases deserves to be judged reproachfully, considering that it insufficiently defines crimes damaging the principal of legality and characterization; in terms of judicial guarantees it establishes derogations which affect the right to due process. In its practical application a pattern of misinterpretation of the principle of equality and non-discrimination can be seen, which instead results in its preferred and selective application towards society's more marginalized groups. Adherence to the obligation of respect, while unverifiable**,** corresponds to State bodies abstaining from invoking and/or applying a regulation that affects human rights.

Rights of indigenous peoples

Relations with indigenous peoples require a perspective based on the respect of collective and individual rights of the communities in question. This means incorporating an approach that recognizes cultural pluralism within public policy and institutional planning, incorporating the diversity of Chilean society with the intention of establishing inter-cultural relations based on

respect and the guarantee of rights and non-discrimination. This Chapter looks at the right to self-determination from the international law perspective, as well as the process of consultation and participation, regarded as one of the fundamental mechanisms of the principle itself. Finally, it will focus on certain aspects of land and water policy during this period.

Self-determination and constitutional recognition

International human rights law upholds the principle that indigenous peoples have the right to self-determination, by virtue of which they are free to choose their political status, as well as to determine their priorities regarding economic, social and cultural development. Under international law concerning indigenous peoples' rights this principle is recognized in terms of nation states' sovereign integrity. In this area the Chilean State is obliged to constitutionally recognize indigenous peoples' rights. Political actors and the State are faced with the challenge of establishing relations based on the recognition of indigenous peoples' identity as being subject to collective rights. Despite the challenges this entails, comparative experience provides sufficient evidence of its feasibility and necessity, in order to advance fully in the respect and guarantee of other rights held by indigenous peoples.

The duty to consult

On August 8th 2012 the State's Executive branch announced the newly proposed regulation on the consultation and participation of indigenous peoples', intended to replace the current Ministry of Planning's Decree 124. In terms of the content of this proposal, the INDH considers that it fails to meet international standards in various important aspects, and that it needs substantial improvement.

One highly controversial area between the State and indigenous peoples concerns consultation processes on investment projects on indigenous land and territory. The government's proposal contradicts Chile's international commitments in that it proposes such projects be submitted to consultation procedures as set out under Law 19,300 concerning the environment, as well as its regulations under the Environmental Impact Evaluation System (SEIA), thereby lowering standards in the field. On May 28th 2012 the Council of Ministers for Sustainability effectively declared in favour of the new Environmental Impact Evaluation System Regulation pronouncement. The SEIA Regulation should be submitted to a consultation process in line with relevant international standards, accepting the principle participant findings. This includes the consultation of indigenous peoples likely to be affected, regardless of the size of the investment project taking place on indigenous lands and territories.

The need for ongoing consultation procedures reaches as far as the Legislative branch. No progress has been made in terms of the Legislative providing a permanent mechanism to facilitate compliance with this duty. During 2012 two cases have demonstrated the need for establishing a mechanism at this level at the earliest convenience: the draft amendment to the General Fisheries Act and the approval of the constitutional reform bill amending Article 126*bis* concerning special territories of Easter Island and the Juan Fernandez Islands. The processing of these bills demonstrates the importance to which the Legislative provides a permanent and adequate mechanism complying with the duty to consult. Relating to the first bill (fisheries), the INDH has

maintained before Congress that, by virtue of international human rights law and Chilean constitutional law, the aforementioned duty to consult does indeed exist.

At the level of the Judicial branch, verdicts reached this year account for the submission to judicial process of the duty to consult, particularly relating to investment projects on indigenous peoples' lands and territories, hence the lack of uniform jurisprudence in relation to these issues.

Land, territory and natural resources

International human rights law establishes a solid legislative framework enshrining the special significance held by indigenous peoples for land, territory and natural resources. The corresponding national legislative framework includes deficits that need to be rectified. Accordingly, the INDH has maintained the importance of the Executive branch and Congress drawing up legislation that establishes mechanisms guaranteeing the restitution of traditional land in line with international human rights law. Within this context, and in the case of such land being registered in the name of private individuals, such legislation must consider, among other mechanisms, grounds for expropriation permitting the effective restitution of indigenous peoples' land in conjunction with appropriate compensation for any affected third parties. In addition, the INDH has recommended that any such legislation safeguard indigenous peoples' right to make use of land that, even if they do not exclusively occupy, they have traditionally had access to for cultural activities and means of subsistence.

The Chapter looks at the situation of the right to water for the first time, relating to indigenous peoples' rights to natural resources. Except for the case in the very northernmost part of the county, known as *El Norte Grande*, and as in the case of land rights, national legislation does not recognize rights claims without ownership deeds in conformance with the Water Code. It fails to recognize the different types of indigenous peoples' occupation and possession enshrined within international human rights law. Furthermore, indigenous communities see themselves as affected by the pressure and high demand of investment projects for this ever dwindling resource.

Right to education

Education policies in Chile and the role of the State in delivering them, along with their financing and quality control, reveal a limited treatment in terms of rights. A regulatory framework that strengthens educational segmentation and fails to provide equal access or an equal standard of learning processes for everyone means that an extra layer of obscured protection and oversight is added in terms of the State's different agents. The entry into force of Law 20,529 constitutes a first step towards modifying this situation. Under this legislation the Superintendency of Schooling ought to assist in better protecting rights in and to education. However, the standard has only been recently implemented and still maintains discretionary parts that do not ensure efficient and timely action for the protection of students' rights. This has been shown in cases in which its application has resulted in disproportionate and arbitrary punishment, or without due process, of secondary students participating in the student protests. Another area in which the State has not succeeded in fulfilling its role as the guarantor of the right to education is in its lack of oversight relating to financial profit being made by universities. This was noted in the report produced by the Chamber of Deputies' Special Commission and the legal proceedings of the Public Prosecutor's Office.

The INDH has already documented some of these shortcomings in its 2011 Annual Report. In particular, the failure to safeguard the right to education which impedes recourse to courts when educational institutions limit the exercise of this right, deny access, expel students for a variety of reasons or provide low quality teaching and learning processes. This triple combination of standards full of gaps, contradictions, or few attributive specifications for the State's safeguarding of students' rights across all educational levels, as well as a restrictive application of prosecution and the impossibility of requesting judicial protection, all end up contributing to the lack of protection of the right to education.

In this regard, the State needs to use all powers at its disposal to guarantee the right to education and to devise others that strengthen its role as guarantor. Likewise, the State must evaluate the discriminatory effects its financing policies are having across all levels, not only as a means to increase transparency but also to avoid creating a system in which the quality and duration of education depends upon the economic capacity of the family. This would constitute a discriminatory act and one which distorts the right to education.

DEMOCRATIC INSTITUTIONS

Lobbying Regulation

The 2012 Annual Report proposes the need to establish a regulatory framework for lobbying. It understands lobbying's importance in strengthening the institutionalization of democracy, in allowing for it to forge greater social control, in guaranteeing transparency and preventing corrupt acts such as influence peddling, and in ensuring the Constitutional right to equal participation in public affairs. Therefore, regulation of lobbying must oblige the State to make all interest management transparent so that citizens know to whom the State listened prior to taking a decision. Accordingly, such obligations should apply to the entire State and not simply to the Executive or Legislative branches.

Ombudsperson

The affectation of fundamental rights, such as those problems documented by the INDH in its 2010, 2011 and 2012 Annual Reports in accessing justice are based around the need for adequate tools and institutions. These would contribute to the comprehensive defense of fundamental rights across the country and allow for a technical human rights defense that would ensure all people, especially vulnerable groups, could access justice.

The Chilean State must strengthen this institutionalization by either making existing institutions more robust or by creating new ones. This should be done by means of legislation recognizing the diverse role a human rights Ombudsman must undertake, thereby requiring a wide legal mandate and equipped with sufficient legal tools to fulfill their objective.

Anti-discrimination Law

Following seven years of parliamentary debate Law 20,609 concerning measures against discrimination came into force on July 24th 2012. Its passage is relevant, firstly because it sets out a specific judicial mechanism through which people alleging subjection to discrimination can complain. Secondly, it sends out a symbolic message from the State that discrimination is

unacceptable within current Chilean society. However, the complexity and diversity of discrimination and all its forms is such that additional efforts are required to transform existing prejudices and social and institutional norms .

The new legislation presents obvious challenges and deficiencies that will have to be overcome in the future. Firstly, the conflict between rights in which the standard practice of discrimination relating to distinctions, exclusions or restrictions is deemed reasonable; i.e. the justifying of behaviour as legitimate by having exercised a separate fundamental right. In this regard during the parliamentary debate the INDH expressed that in an eventual discrimination act in which there may be alleged collisions of rights, it is the judge's task to weigh up in the particular case if there is discrimination or not.

International obligations to which the State is a signatory regarding non-discrimination establish duties of respect and safeguarding of rights, and for such obligations prevention measures are required. Standard practice is weak in this area, in regard to the formulation of obligatory steps in informing the public and transforming myths, prejudices and cultural stereotypes on which discrimination is based. The major doubt surrounding the law is the absence of special measures, such as affirmative action, which did form part of the initial draft before being eliminated as the parliamentary debate proceeded.

Undersecretary of Human Rights

The legal initiative to create an Undersecretary of Human Rights represents an effort to strengthen the political and governmental institutionalization of human rights. It is also a response to the need to establish an Executive branch body, with the force of law, which proposes, coordinates and implements public policies, given that Chile lacks coherent and organized governmental apparatus in the area of human rights. By analyzing comparative experiences and various appeals from treaty-monitoring bodies, it can be concluded that besides coordinating and designing public policies on human rights, these bodies usually promote and protect human rights in a clear manner, as well as implementing relative policies and programmes. In this case, the new institutional proposal under discussion has been granted a limited operational, executive and coordination capacity within the areas of its jurisdiction.

National Preventive Mechanism against Torture

The State continues to delay in its implementation of a National Preventative Mechanism against Torture; a step required in conformity with its obligations under the Optional Protocol to the Convention against Torture, to which Chile became a signatory in 2009. This constitutes non-compliance of commitments made in this area. The INDH has urged the State to comply with its international commitments and to strengthen its institutionalization of human rights. Within this context, the INDH has recommended the creation and/or designation of the National Preventative Mechanism against Torture in accordance with international standards.

Corporation of Legal Assistance

The removal of obstacles to guarantee access to justice represents a basic demand for safeguarding fundamental rights. One set of obstacles to the right to access justice are the economic barriers that impede or adversely affect the right to be heard by an independent,

natural, impartial and fair court of law. Among others, this issue raises the challenge of providing legal and technical assistance to allow the parties concerned access to judicial guarantees and protection when rights violations are deemed to have taken place. However, consensus around the need to progress with reform to Legal Assistance Corporations, in order to provide them with sufficient personnel and financial resources, and thereby satisfy the duty to provide legal Assistance to the most vulnerable groups, has not been forthcoming.

Bill to reform the National Service for Minors

Having celebrated 22 years since the ratification of the Convention on the Rights of the Child, the Chilean State has pending fulfillment of normative, institutional and policy adjustments in line with the Convention. This includes repealing the Juvenile Act in favour of adopting a comprehensive child protection policy framework. On August 2nd 2012 a bill was presented modifying the institutional framework regarding children and young people in Chile, abolishing the National Service for Minors (SENAME) and creating two independent Services in its place: the National Service for Child and Juvenile Protection and the National Service for Juvenile Criminal Responsibility. In this regard the INDH reminds the State that it must address the issue of child and juvenile rights in a comprehensive manner, while implementing policies to guarantee child rights. To date, these issue are not undertaken by any public institution.

Law 20,500 concerning Citizen Association and Participation in Public Administration

The right to participate in public affairs is in wide demand throughout Chilean society. Such demand is channeled through multiple actors and across various and differing areas. On February 16th 2011 Law 20,500 was published concerning Citizen Association and Participation in Public Administration. Since this date the State has been confronted with the challenge of developing diverse legal and administrative mechanisms to enable the realization and full effectiveness of the Law.

In order to further comprehend the state of the Law's compliance at national and local level official requests for information were sent to the Ministry of the General Secretariat of Government, the Chilean Association of Municipalities and the Undersecretary of Regional and Administrative Development. As of October 31st (the Annual Report's closing date) no reply had been received.

EXERCISING RIGHTS WITHOUT DISCRIMINATION

Rights of women

Structural problems relating to the discrimination of women and the violation of their rights persist in the public as well as the private sphere. In October 2012 the State presented its compliance report for the Convention for the Elimination of All Forms of Discrimination against Women (CEDAW). The CEDAW Committee laid out its concerns to the State regarding ongoing stereotypes around gender roles and responsibilities: the absence of temporary special measures to accelerate fundamental equality between men and women; the difficulties women face in accessing justice in cases of domestic and non-domestic violence; women's low participation rates in political and public spheres and the labour market; the salary gap; and the difference between men's and women's pensions, among others areas. During 2012 advances have been reported in

the human rights situation of women, notwithstanding facts revealing areas in which the State is still slow to comply with its obligations. These relate to the exercising of political rights, the right to lead a life free of violence and the right to be able to access justice.

Women's full participation in the political sphere is insufficient in Chile, as much in the Executive branch as in Parliament and local government. Even though women make up 52% of the electoral roll, they comprise an average of 13.7% of popularly elected officials, well below the figure of 26% registered by member states of the Organisation for Economic Cooperation and Development. Gender representation ranges have been slowly increasing since the 1990s but they remain far from signifying a substantial advance towards equality between men and women holding popularly elected positions. Increasing the political participation of women will be difficult without the adoption of affirmative action measures which allow the cementing of equal opportunities.

Sexual violence against girls and female adolescents is a daily occurrence across families, communities and private and institutional spheres. It is difficult to gauge its full extent, however, given the lack of both systematic studies and an integrated registration system at the public level. The institutional network serving victims of violent crimes consists of the Centres for Violent Crime Victim Response (CAVIS), which is responsible to the Legal Assistance Corporation, the Vice-Ministry of the Interior's Victim Support Unit, and the Centres for Victim Response (CAVD), the Investigative Police's Centre for Victims of Sexual Assaults Response (CAVAS), plus SENAME's specialized programmes. A Ministry of Finance evaluation into these Centres and Units in 2008 noted the importance of relying on such services. Simultaneously it identified the options available to the public in this area as few and not reflecting an organized and structured State response. The evaluation found the need for greater human and infrastructure resources, more intersectoral collaboration and networking and the development of information systems of common variables, as well as establishing service and management goals. In response to an INDH inquiry SENAME claims the main challenge facing its Serious Abuse Repair Programme is the gap between service demand and its available capacity to respond.

The INDH has been able to confirm the implementation of compensation agreements in cases of domestic violence against indigenous women reaching court level, particularly in the Araucania Region. The Public Prosecutor has reported at least 15 cases in which such agreements have been invoked. The Courts have received request from the defense to apply (ILO) Convention 169 concerning the respect for "the methods customarily practised by the peoples concerned for dealing with offences committed by their members" (Art. 9), to the extent to which these are compatible with internationally recognized human rights and the national legal system. However, cultural practices of ethnic or religious groups cannot deviate from pre-established norms enshrined in international human rights treaties, and thus Convention 169 cannot be interpreted in such a way as to leave it to sanction violence against women.

Rights of migrants and victims of trafficking

The migrant population in Chile is estimated at 370,000, the majority of which is located in urban areas in the Metropolitan, Tarapaca, Valparaiso and Antofagasta Regions. The prevailing age of this community is active: 70% are between 20 and 60 years old, of which a majority (55%) is women. The main reason for coming to Chile is for work purposes, while other reasons include armed conflict, insecurity and natural disasters. Types of discrimination affecting migrant communities include precarious living conditions, work-related rights abuses, unequal education

opportunities for children and adolescents and obstacles to accessing healthcare, among others. In terms of housing, 21% of the immigrant community rents without contract, as a result of the difficulties in meeting credit ratings, requiring a month's deposit and a work contract, among others.

The adoption of a new regulation and immigration policy has been shown to be necessary given the gap between present standards and the characteristics of immigration in Chile today. Current immigration legislation (Decree-Law 1,094 from 1975) corresponds to the national security conditions of the time in which it was adopted, and it must therefore be replaced with a more human rights-centric approach. From this perspective, the new policy must address, among other issues, the challenges faced by migrants relating to discrimination, access to justice and the exercise of political rights.

In terms of regulatory policy and access to justice it is necessary to revise procedural standards pertaining to the expulsion of foreigners from the country, particularly the discretion held by the Minister of the Interior and law enforcement agencies. Guarantees must be given stipulating access to timely and effective legal assistance for parties affected. Violation of due process and discrimination (characterizations of current immigration standards) have been inapplicable before the Constitutional Court, especially in regard to the Foreign Nationals Act Articles 13, 64 (2) and 67.

A further issue to address relates to the citizenship status of immigrants in Chile and their political rights. Immigrants with permanent residence have the right to vote but not to be elected, except in cases of nationalization. The Inter-American Court of Human Rights has stated that the application "of requirements for exercising rights does not include, per se, an undue restriction on political rights. However, the ability of States to regulate or restrict rights is not discretionary, rather it is limited by international law which compels it to comply with certain demands (…)". The same Court has determined that such grounds for restriction are established by law under the American Human Rights Convention, and are deemed a necessary part of all democratic societies.

In terms of trafficked persons, during 2012 the country has experienced various cases of people trafficking, mainly for purposes of sexual and labour exploitation. Chiefly among these are high degrees of economic neglect and vulnerability of the victim, and the low awareness they have regarding their rights. According to information obtained by the Ministry of the Interior, between 2007 and 2011 there were 113 complaints concerning trafficked persons, involving 220 victims (38% underage and 64% women). However, it is known that these figures underreport the problem.

During this Annual Report's period of scope there were two positive aspects worthy of note in terms of efforts to eradicate the trafficking of persons. The first aspect relates to the reactivation of the Intersectoral Committee on human trafficking, created in 2008, and its development of a breakdown of the State's response capacity against this crime. The second aspect relates to the first trial and conviction for trafficking in persons, in which legislation adopted in April 2011 was applied.

In its breakdown the Committee notes the absence of homogenous and uniform responses of public bodies, low levels of intersectoral coordination, the non-existence of a unified information system of gathering, registering and analyzing data and statistics, a lack of work protocols and

weaknesses in the training of specialized work personnel. The country does not have a national awareness-raising strategy or campaign, nor specialized victim support centres. In legal terms, the INDH has noted the need for expert personnel in this criminal area, capable of clarifying to the courts the processes to which victims whom retract their statements are subjected. Furthermore, financial resources are required to guarantee adequate protection and victim support.

The past and present contribution of immigration to Chile's development is barely recognized. Generally such recognition hails from human rights and church organizations working in the area of migrants rights in the country. Of concern to the INDH is the way in which social communications media present a distorted image of migrant communities. The INDH therefore calls for responsibility to be taken in the building of a culture of integration.

Rights of detained persons

This Chapter looks at the situation facing detained adults and adolescents. Regarding the former, the Chapter analyzes: the right of detained persons to vote; ongoing progress and challenges in terms of prison conditions; the exercise of rights to health and work; the State obligation to protect detained members of the GLBTTI (Gay, Lesbian, Bisexual, Transgender, Transsexual and Intersexual) community; the human rights situation of Chilean Gendarmerie personnel; and the application of Law 20,084 concerning juvenile criminal responsibility and the operating conditions of SENAME centres.

The issue of losing the right to vote deserves to be debated publicly as a means of investigating to what extent any additional penalty constitutes a proportional response to the crime committed. Such debate should bear in mind that the person in question is already serving a sentence which deprives them of their liberty. Also, the suspension of the right to vote, as established by Article 16 (2) of the Constitution for individuals accused of crimes deemed serious or terrorist in nature is contrary to the presumption of innocence.

As for ongoing progress and challenges regarding prison conditions, the Chapter highlights Law 20,603, which amends Law 18,216, setting out alternative measures to custodial prison sentences and which grants judges additional powers to impose certain sentences according to their case by case appropriateness.

However, for the full application of the Law, the amendment of the regulations of Law 18,216 is urged, without which Law 20,603 cannot enter into force. Also highlighted in the Chapter is Law 20,588 concerning general reprieve, from which, up to August 2012, some 2,271 detained persons have benefited, according to the Gendarmerie.

Nevertheless, prison overcrowding remains critical and its eradication requires permanent measures from the State. This is in spite of falling overcrowding rates, due in part to an increase of prison places. In 2011, for example, overcrowding measured 62% (53,383 inmates for 34,000 places). This figure fell to 25% in 2012 (51,651 inmates for 41,034 places). The Chapter criticizes the abuse in solitary confinement cells which, during 2011, were used for a total of 164,812 days, with 16,173 people being subjected to this type of punishment. To August 2012 the situation continued to be concerning, with solitary confinement cells already having been used for a total of 141,254 days.

Regarding health, the Chapter outlines the need to ensure a service which provides adequate care. To August 2012, 41 doctors and 25 nurses were operational across the whole of Chile. In other words, there was 1 doctor per 1,259 detainees and 1 nurse per 2,066 detainees. In terms of work and education, 709 have taken part in the Education and Work Centres (CET), corresponding to 1.37% of detainees in the prison system, 0.1% up on 2011 figures. In regard to Gendarmerie staff, the State must respect their labour rights, maintain an adequate infrastructure in which they are able to carry out their duties in decent working conditions and to continue to provide them with training, among other aspects.

Concerning juvenile criminal responsibility, the Chapter analyzes Law 20,084 and ways it can be adapted in favour of the reintegration of juvenile offenders, rather than its use as a means towards custodial sentences. To September 2012, 12,464 adolescents received convictions while 10,079 agreed to alternative punishment.

Regarding SENAME youth Centres, reports from the Inter-agency Commissions on Centre Supervision (CISC) from the first half of 2012 note that some Centres do not have operational authorization from the Metropolitan Region's Health Department (SEREMI), and that they are lacking in the infrastructure necessary for family visitations, meetings with lawyers, and for implementing youth workshops, among other areas.

Rights of elderly persons

Elderly persons constitute a vulnerable group in terms of human rights, above all to discrimination and violence. The situation is heightened for those with greater levels of dependency and living in institutionalized residences.

In June 2012 Chile's Comprehensive Positive Ageing Policy was released, promoting the recognition of ageing and social integration of the elderly. In general terms this policy poses various positive aspects: it shows willingness to seek comprehensive and dynamic responses to problems affecting the elderly; and it recognizes the elderly as rights-subjects, obliging the State to act as guarantor. It also picks up on relevant principles like wellbeing and healthy ageing, as laid out in the Madrid Declaration and its International Plan of Action on Ageing, the Brasilia Declaration and the San Jose Charter.

However, only announcements regarding financial support have been forthcoming to date. While subsidies are necessary, State action must not only follow this path. Respecting and guaranteeing rights of elderly persons also requires intersectoral programmes and initiatives attending to their particular needs and promoting rights equality and non-discrimination.

Within the elderly population the situation of persons institutionalized and/or those presenting some form of dependency are of particular concern to the INDH. Their reduced autonomy represents additional limitations in their exercise of their rights and leads to likely situations in which these rights may be violated. In this context the INDH developed an Observation Guideline of ELEAM (Updated Survey of Long Stay Residential Units) in 2012. The first of its kind in the country, its objective was to detect incidents of torture or cruel, inhumane or degrading treatment taking place within long stay residential units, in line with international standards. The register took place in 14 for- and not-for-profit residential units in the Coquimbo, Valparaiso, O'Higgins, Maule, Biobio, Los Rios and Metropolitan Regions.

This survey has given rise to certain issues, some of which concern the INDH:

- Resistance and delay in confirming visiting dates in some units.
- The quantity of care providers as stipulated in health regulations is insufficient in meeting the diverse and complex care required for certain illnesses.
- The lack of clear procedures for persons with their own belongings, such as clothes and furniture in their residential spaces.
- The presence of elderly persons tied up in seven of the units visited, of which only two were justifiable (on medical grounds).

Rights of persons with disabilities

Despite advances established in international instruments in relation to the rights of persons with disabilities, their recognition remains an major challenge, not only for the heterogeneity of their realities and needs, but also for the discrimination to which they are exposed. It is therefore necessary to note that lack of recognition and discrimination against persons with disabilities as constituting barriers blocking the fulfillment of their rights. It is charities which usually address the needs of persons with disabilities, which has led to a minimal recognition of members of this community as rights subjects, as well as little investment and policy development on behalf of the State.

The year 2012 was marked by the drawing up of public policy guidelines that should result in international-level disability standards. Although Chile has progressed to the legal level in this area, the results of the guideline have not yet been made public.

In this context the delay in implementing the National Disability Study is problematic in that there is insufficient up to date information available which can be used in public sector policy design. Current sector statistics in use are from the 2004 National Disability Survey (ENDISC). As these are now eight years old they probably do not fully reflect the present reality of persons with disabilities.

Regarding legislation, two positive steps have taken place during 2012. The first of these relates to the recognition of disability as a category in Law 20.609, which sets out anti-discrimination measures, prohibiting its invocation as justification, validation or exoneration in situations relating to arbitrary distinction or exclusion. The other positive step relates to the official recognition of Chilean sign language (LSCh) as a form of deaf communication in the country, enshrined within Law 20,602 (the result of a provisional article of Law 20,422 which had been subjected to review).

ECONOMIC, SOCIAL AND CULTURAL RIGHTS (ESCR)

Right to health

The presentation of the National Health Plan for Compliance with the Health Objectives 2011-2020 constitutes a positive step in terms of making a State-level health policy. It establishes nine strategic objectives and 50 health goals based around five keys principles: equality, quality, participation, efficiency and inter-departmental collaboration. The National Plan's presentation took place within a context of public complaints about health. Such complaints point to the

deficiencies in public healthcare provision, including a lack of hospital infrastructure, insufficient specialty and training in primary healthcare response, and difficulties in accessing quality healthcare.

In this Annual Report the INDH examines the law regulating patients' rights and responsibilities that came into force in October 2012, initiatives in increasing access to medicine and the situation of mental health in Chile.

The adoption of the law concerning people's rights and responsibilities regarding healthcare (Law 20,584) constitutes an important step in the exercise of the right to health, as it recognizes patients as people with the right to make decisions about their healthcare, with autonomy and adequate information. At the same time, the law does not resolve complex situations affecting the terminally ill in terms of their right to refuse treatment, leaving the Law open to the interpretation of the attending doctors. Similar difficulties arise in the provisions relating to informed consent.

In Chile medicines represent 57% of health-related out-of-pocket expenses of the first quintile, dropping to 39% in the fifth quintile. Such figures demonstrate the inequality that exists in exercising the right to health. The Executive has proposed that at least 60% of medicines consumed in Chile be of a quality controlled general standard. This would be formalized by the National Medicines Agency (ANAMED), and included in a National Medicines Law, which: i) sets out the mandatory prescription of the medicines according to their generic name and the dispensing thereof by unitary doses, quality and bioequivalence; ii) grants health-establishment status to pharmacies and health-professional status to pharmacists; iii) promotes the sensible use of medication; and, iv) penalizes bad incentives and vertical integration.

In Chile 23% of healthy life years are lost through illness due to neuropsychiatric disorders. Even though health authorities have implemented plans to address the mental health of the population over the last decade, there are still shortcomings arising from the following: the concentration of attention available in hospitals focused on adults; few outpatient centres promoting the social inclusion of persons with mental disabilities; an absence of healthcare availability for adolescents with mental disabilities; minimal comprehensive healthcare availability involving different branches of the State (work, education, housing, health, culture); and weak training of health and education professionals to deal with community members with mental disabilities. The INDH encourages the adoption of a mental health law that protects, ensures and guarantees all rights of persons with mental health difficulties, along with sufficient funding.

Right to social security

The INDH examines the right to social provision that, as a component of the right to social security, reflects social agreements of solidarity and shared responsibilities of protection in old age and disability. The Constitution enshrines the right to social security, outlining as universal the access and enjoyment to basic uniform benefits, the obligatory nature of financial contributions (taxes), and the role of the State in supervising the right to social security (Article 19 (18)).

The reform of the pension system in 2008 (Law 20,255) assumed provisions with three objectives: i) extending pension coverage to previously excluded sectors; ii) increasing and offsetting the number of contributions to raise final pensions and lower the tax burden, as well as stimulating participation and pension savings; and, iii) reducing gender inequality within social welfare. The

reform created a system of basic pensions, linked to the existing one, but made up of three pillars: a solidarity pillar, a contributory pillar and a voluntary pillar. The creation of a solidarity pillar is a step towards ensuring universal access to social welfare. The ILO's Committee of Experts has emphasized the positive efforts made in pension reform, especially the creation of the basic universal solidarity pension. However, it noted that there are no major changes to the private pension scheme established by Decree-Law Nº 3.500 of 1980, which does not comply with solidarity principals, shared risks or collective financing, which together form the essence of social security.

In spite of measures favouring women, information from the Superintendency of Pensions shows that gender-related difference in pension amounts are still considerable. Up to December 2011, the old age pension was 6.17 UF (*Unidad de Fomento*) for men and 4.26 UF for women. The reform did not remove gender-differentiated pension mortality tables in the individual capitalization pillar, with which the difference in the retirement amount (with equal saved funds) is maintained. It appears that the private pension system will continue to detriment previously disadvantaged and less protected groups, predominantly women, who will end up receiving support provision from the national tax coffers.

The 2008 reform also produced an institutional adjustment to the pension system and created new bodies. Among these is the Commission for Pension System Users, which strengthened opportunities for pensioners to participate in the monitoring and evaluation of the reform's implementation. However, this Commission only has a consultative role. Analysis of its reports reveals many of its observations have been ongoing for two years but without having been taken into account by authorities.

Regarding pension education, it is the Ministry of Labour and Social Welfare's Undersecretary of Social Welfare whom is in charge of devising and implementing strategies to inform the general public as to the pension system, to facilitate the exercise of the their rights and the administration of the Pension Education Fund (FEP). This Fund is therefore a powerful instrument of public policy. Nevertheless, after four years of being operational there has been no evaluation of its operation and impact.

The pension reform includes just three benefits: the child bonus scheme, the subsidy for hiring young people, and the established provisions for the military and police. The protection of other enshrined benefits in the pension system is confined to administrative mechanisms, whether established in the general legislation or specifically set up by supervisory agencies. The latter have, simultaneously, legislative and regulatory roles not only relating to the allocation procedure of benefits but also to the decision making of those handing them out.

Right to work and labour rights

The Chapter analyzes employment security, the situation relating to the exercise of collective labour rights, such as forming trade unions, collective negotiation and the right to strike. The Chapter also deals with the situation of people working in State public administration.

Relating to employment security, during 2011 there were 19,766 more work accidents than in 2010, of which 18.9% were in the construction industry, 14.8% in the commercial industry and 13.6% in the financial services industry. There was also a rise in the number of days lost due to

work-related accidents. In 2010 the figure was 3,793,710 days lost, rising to 4,192,749 in 2011; an increase of 10.5%. Likewise, work-related illnesses rose by 6.5%, which in turn led to a rise in the days lost due to work-related illnesses of 27.7%

Regarding the unionization rate, the figure continued to be low given that the percentage increase in comparison with 2010 was 0.1%, reaching 11.8%. In spite of this, trade unions increased by 439 from 2010 – 2011, signifying an increase compared to the same period the previous year (2009 – 2010), in which there was a rise of 95 trade unions. Similarly, between 2010 and 2011 the number of people affiliated to trade unions rose 3.9%, equivalent to 33,794 workers. During the first half of 2012, 37 businesses were convicted for anti-union practices across the country, five more that in the first half of 2011.

The 2012 Annual Report notes the existence of "*multirut*" (meaning "multi-social security number") as an obstacle to collective negotiation, as it obliges workers to deal with each association or society within a business independently, as though they are distinct and autonomous from one another.

A final aspect covered in the Chapter relates to civil servants in the State sector. As of 2010 there were 235,794 people working in the State's public central administration. This included workers on permanent contracts, temporary contracts or as independent contractors (186,757 on permanent or temporary contracts and 49,037 as independent contractors). Within local government in 2011 there were 67,692 workers (26,744 on permanent contracts, 9,650 on temporary contracts and 31,298 as independent contractors). In both the central administration as much as local government, the exceptional nature of workers contracted as independent contractors is not uncommon in terms of State employment. This type of worker does not, however, enjoy the same legal and rights protection as civil servants on permanent or temporary contracts. This phenomenon is explained, in part, by the State not having updated to staff on permanent contracts, and resorting instead to independent contractors to fill the shortcoming.

Right to a pollution-free environment

Chile aspires to be a developed country and in order to do so it must seek sustainable ways to develop, complying with all relevant obligations and guaranteeing human rights, without compromising the wellbeing of its population.

This year the State's obligation to guarantee the right to a pollution-free environment was tested largely by the question of how to construct an energy matrix to satisfy the diverse needs of the country, as much in the domestic as in the industrial sphere. The social protest movements taking place within this context are expressions of the population's and civil society organization's awareness of the right to live in pollution-free environment. Such events are positive in terms of raising demands for public debates and of measures taken by the State relating to sustainable development respectful of human rights.

The lack of approval and implementation of a large number of regulations concerning the country's environmental legislative framework constitutes an obstacle to the regulation of relevant areas, as well as to the provision of adequate guarantees respecting human rights in line with international human rights obligations.

Furthermore, the implementation of the Superintendency of the Environment and Environmental Courts signifies a very important first step for Chile. They will be empowered to control the compliance of established commitments in the context of investment projects and to penalize any environmental damage caused. Such damage frequently affects populations unable to access mechanisms allowing them to defend their rights or to obtain compensation. Until this control becomes fully operational, there are inadequate institutional safeguards in place, which may in turn lead to human rights violations. This point was raised last year, in the 2011 Annual Report, and there have been no major steps forward.

Lastly, the results of an investigation undertaken by the INDH into socio-environmental conflicts show that disputes over potential affectations of human rights stem from the access and use of natural resources, as well as for the environmental and social impacts of economic activities. These are unavoidable realities in terms of the State's specific human rights obligations. Ninety seven socio-environmental conflicts across Chile, primarily concerning the energy and mining sectors, in which persistent demands for the right to a pollution-free environment, the right to health and the right to water, among others, show this to be the case.

Right to adequate housing

The right to adequate housing, understood as "the right for all men, women and children to have a secure home and community in which they are able to live in peace and dignity" is not explicitly recognized in the Constitution, in law nor through legislation. Current policy does not deem housing to be a right; rather it is defined in terms of a being a mechanism, the quality of which depends on the financial resources involved. This means that the concept of housing in Chile is limited to the provision of material goods to the people in question. In terms of implementing public policy in establishing what is deemed economic or social housing, it refers only to a house's area size in square metres and its market value.

It can therefore be claimed that the Chilean definition fails to comply with international standards, within which there are eight characteristics of what constitutes adequate housing: habitability, security of tenure, affordability, accessibility, cultural adequacy, location, availability of services, materials, facilities and infrastructure.

Regarding housing provision, current State action is limited principally to fiscal contributions (subsidies) for acquiring housing solutions offered in the real estate market and co-financed by banks, as well as to the definition of minimum standards of building works and fittings that must be adhered to by the construction companies. However, by virtue of ratifying the International Covenant on Economic, Social and Cultural Rights (among other international human rights treaties laying out standards in this area), as well as documented in Article 5 of the Constitution which obliges compliance with such international human rights commitments, the State is obliged to respect, protect and guarantee the right to adequate housing.

Lastly, regarding post-earthquake reconstruction, up until September 30th 2012 there were 121,052 completed construction projects, 32% of which related to new housing and 68% to repair work. By breaking down the progress status of reconstruction by Region, it is possible to see that the most progression has been made in Araucania and Valparaiso, whilst in O'Higgins and Biobio not even 50% has been completed as yet.

As such, the INDH deems it necessary to ensure the participation of affected communities in a way in which they are able to make decisions regarding the design and location of their new housing. Likewise, it is necessary to ensure that the mechanism of assigning subsidies and benefits is undertaken without discrimination.

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

Overcoming massive and systematic human rights violations demands coordinated State action as a way of guaranteeing truth, justice and reparations. This must be conceived of and applied not only as a legislative necessity but also as a genuine expression of social will to repudiate these crimes, without which the task is impossible. This must be done in an effective way to ensure that such violations are never repeated in the future.

The Chapter dedicated to massive and systematic human rights violations analyzes the year's situation in the area of the right to the truth and historic memory, as well as in the field of the right to justice. Finally, certain reparation policies are analyzed in their individual and collective dimensions.

Right to truth and memory

Acts in support of ex-oppressors during this Annual Report's period of scope, the National Education Council's proposal to change the name from "military dictatorship" to "military regime" in the sixth grade curriculum, and the debate around the role of the Museum of Memory and Human Rights were just some of the events that were encouraged in the public sphere in terms of denying past crimes, the limits of the freedom of expression and the role of memory and truth regarding the massive and systematic human rights violations.

In a lengthy process, not without tensions, the country managed to establish certain forms of consensus that are so important to reconstruction and democratic co-existence. One of these is that no single concept, however open to interpretation it may be, justifies State crimes and violations of human rights. In this sense the INDH maintained that the most effective instrument for confronting the actions and discourse that damage human dignity and offend victims and society at large is to strengthen a public policy which promotes a culture of respect for human rights. In any case, the State is obliged to respect and guarantee human rights, and having recognized the involvement of personnel under its service in the massive and systematic human rights violations during the dictatorship, it must consider the possibility of administrative prohibitions and convictions for any public personnel that, in the exercise of their duties, expressed or committed public goods to acts of denial or of remembrance regarding actions for which the State has already accepted its responsibility.

Right to justice

The duty to investigate and punish war crimes and/or crimes against humanity has been recognized as an imperative norm within international law (*jus cogens*), and which is enshrined in numerous international instruments. Consequently, in regard to these types of crimes, neither the passage of time nor domestic legal dispositions relinquishes criminal responsibility; in contrast to common crime, neither legislation nor amnesties apply.

This year the Supreme Court has had to reject the statute of limitations to impose effective imprisonment convictions on those convicted of massive and systematic human rights violations. However, this ongoing trend remains subject to one variable condition – the integration of the Chamber in charge of viewing these cases. The INDH values the jurisprudence tendency expressed in the rulings not giving rise to statute of limitations, as it incorporates international human rights standards at the national level, which is one of the obligations of the State regarding signed instruments.

One dimension of the guaranteeing of access to justice is that it be opportune, in the sense of offering an answer within a reasonable time period. This requires coordinated measures, not only at the level of the Judiciary but also at the specific institutions related to the law (Investigative Police, Forensic Legal Service). These institutions must be provided with all necessary measures and resources to improve response times.

Additionally, to contribute to a quicker course of justice, advances must be made towards authorizing the Human Rights Programme of the Ministry of the Interior and Public Safety to file complaints without the need for the Undersecretary's signature. This would enable the streamlining of presentations and therefore the processing of the Programme's cases.

Right to reparation and compensation

Overall, the reparation programmes driven by the State are not coordinated organically. From the perspective of guaranteeing these policies' coherent and organic nature, the INDH has expressed the desirability for the future Undersecretary of Human Rights to be granted sufficient powers to coordinate these policies.

Together with public reparation policies are those the Judiciary is called upon to provide, in virtue of the principal that from each crime committed stems the duty to compensate the damage caused. At the judicial level, and relating to the right to compensation, the case-law precedent has been contradictory. The INDH reiterates in this 2012 Annual Report its call to the three branches of state to guarantee victims and their families the right to comprehensive reparation, including civil compensation.

HUMAN RIGHTS EDUCATION

Human rights education is indispensible for citizens to recognize and assert their rights and, for civil servants and other State personnel to recognize the extent of their obligations as guarantors of these rights and to develop forms to protect, respect and promote their full realization. Consistent with this obligation the United Nations has driven the World Programme for Human Rights Education, to which Chile has ascribed. Nevertheless, human rights education in Chile shows disparities.

Human rights education in schools

It is within this educational level in which the greatest steps have been taken, such as the incorporation into the curriculum of some directives on co-existence. However, the process has not been completed and the new changes to the curriculum have highlighted tensions in

understanding the entirety of human rights. As such, it was necessary to make adjustments to the curricula-bases within a month of their approval, and they maintained visions that failed to overcome declarative aspects to an effective integration valuing diversity, the recognition of the rights of indigenous peoples, persons with disabilities and other groups requiring special attention to remove barriers prejudicing the equal enjoyment of rights. The challenge remaining is to strengthen human rights education in primary and secondary schools, and in the process to develop new and relevant curricula and study programmes. It is also necessary for these processes to be made more open and participatory, in order to lend greater legitimacy to the procedure and to strengthen the legal perspective and citizen training contained within.

Human rights education in higher education

At the level of higher education there are few tools at the State's disposal for bringing about the incorporation of human rights education within formative processes and research areas. The full autonomy of the higher education institutions has meant that the State is unable to set out general objectives to guide the sector, as it has done across others. They appear only at the level of prohibitory transgression within the regulations established in each educational institution's statute. However, there is no mechanism promoting or demanding them in official acknowledgement processes, in funding for research or academic improvement, in financial policies or in quality assurance systems. In the breakdown favoured by the INDH in the accredited universities it can be noted that almost none have incorporated elements directly related to human rights within their missions, and only some have done so indirectly within their institutional visions.

In terms of key degree programmes like Teaching, Law and Journalism, cases of inclusion are scarce and the majority indirect. This causes a long term weakness in the defense of human rights, as the key professionals in their promotion and protection are unaware of the subject itself.

Human rights training for civil servants and other State personnel

Regarding the education and training received by civil servants, the situation is weak. The State invests less than 1.5% of its training budget in human rights, which reaches just 4% of civil servants. Even the education of members of the Judiciary, which includes a system of regular education, skills training and improvement, does not compensate for the deficits resulting from university education.

The military and law enforcement agencies, which since 1990 have begun integrating human rights education, maintain a vision based on humanitarian law. They have not succeeded in widening their educational perspective to incorporate the issues demanded from a context of peace and democratic order. They receive little training in terms of the prevention of torture, and some educational courses are oriented towards a viewpoint which limits the recognition of rights of their own members. This does not contribute to the integration of human rights practices within the exercise of their duties, the value structure and the policy and standards of human rights.

The lack of a National Human Rights Plan and a National Education Plan in human rights hinders contribution to more and better educational spaces across all educational levels, the working together in a consistent and sustained manner towards the fulfillment of international obligations,

and, even more importantly, responding to the citizenry with adequate respect for, and safeguarding of their rights.

SOCIAL MEDIA AND HUMAN RIGHTS

This Chapter analyzes the ownership concentration of communication media in Chile as a factor which, by reducing the number of voices circulating in the public sphere affects the diversity and pluralism so necessary in a democratic society. Furthermore, the Chapter looks into the way in which some media have covered events concerning vulnerable groups like migrants or the Mapuche community.

Regarding the printed press in Chile, there are two large newspaper conglomerates in which its ownership is concentrated. One of these is Grupo Copesa, Consorcio Periodístico de Chile S.A., which is composed of the newspapers *La Tercera*, *La Cuarta*, *La Hora*, *Pulso*, E*l Diario de Concepción* and the magazine *Qué Pasa*, as well as owning Grupo Dial which is made up of six radio stations, plus other businesses.

The second conglomerate is El Mercurio S.A.P., owner of the newspapers *El Mercurio*, *Las Últimas Noticias* and *La Segunda*. In addition, it owns 25 regional newspapers throughout the country as well as two radio stations. Here the Chapter also notes the announcement made by the Executive regarding the closing of the newspaper *La Nación*, an event resulting in the reduction of the printed press currently available on the market.

In broadcasting, the last few years have also produced a concentration of ownership, principally the result of the Spanish company Prisa entering the market to purchase Grupo radial Claxon S.A., today Ibero Americana Radio Chile. Following this takeover the company became owner of 212 frequencies and 11 radio stations (*Imagina*, *Pudahuel*, *Concierto*, *ADN*, *Futuro*, *Radioactiva*, *Rock & Pop*, *Radio Uno*, *FM Dos*, *Corazón* and *40 Principales*). In terms of local community radios, Law 20,433 poses legislative problems as it limits their transmission to a predetermined amplitude (maximum 25 Watts) and to a district or collection of districts, and it prohibits the transmission of commercial advertisements. Furthermore, there are problems in the legislation's execution because of the reservation of the FM spectrum for community radios laid out by Article 3 of the aforementioned law.

In this Chapter, regarding digital television, it is stated that beyond the specific model adopted by the State it should be made more pluralistic, by which the State will ensure equal access to the concessionary adjudication procedures, as well as the best use of the spectrum by all forms of communication, whether commercial, public or community-based.

Finally, the Chapter analyzes how commercial communication media have covered certain important human rights-related news events (the coverage of the San Miguel prison fire, social protests, complaints by the Mapuche community and migrant groups). Through its reporting, communication media is able to create stereotypes relating to vulnerable groups, constructing or reinforcing social prejudices and thereby contributing to their discrimination.