



ANNUAL REPORT 2016

Executive Summary

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CHALLENGES TO DEMOCRATIC CONSOLIDATION



Democratic institutions and human rights

This chapter reviews certain changes in relation to human rights institutions (both existing and those in the process of being established) and examines their respective strengths and weaknesses. In particular, it includes an analysis of the constitutional reform process introduced by the government of president Michelle Bachelet, the commitment of the State to create a National Preventive Mechanism against Torture, and the correct functioning of the tools at the disposal of the National Television Council (CNTV) to receive complaints on grounds of discrimination within the media, among other aspects.

Regarding the constitutional reform process, a description is provided of the overall exercise in which 15 Regional Council Meetings were attended by a total of 8,621 participants; 71 Provincial Council Meetings were attended by 12,852 participants; and 8,092 Local Self-organized Meetings were attended by a total of 106,122 participants. Furthermore, 87,520 Individual Consultations were submitted via the government's online platform. It should be noted that there was greater participation from women than men at the local stage throughout this process, although this trend was reversed at the provincial or regional levels. Notwithstanding the foregoing, the methodology applied during this exercise has been the subject of criticism in regard to a lack of diversity of participants involved and class bias throughout.

As of 27 September 2016, the government reported that the constitutional reform process regarding indigenous peoples had included 66 registered Self-organized Meetings that were attended by 1,500 leaders and members of the nine indigenous peoples in seven regions across the country. The participation of indigenous peoples, who represent 9.1% of the overall Chilean population, was actively sought by the government during the constitutional reform process. Nevertheless, the approach used has also been the subject of criticism in relation to the time periods involved and whether or not it has involved an effective representation of the indigenous groups in question.

In terms of autonomous human rights institutions, a number of bills have been introduced to Congress, some of which have received general approval, including that which proposes the establishment of the Ombudsman for the Rights of the Child (10.584-07). Without prejudice to these bills, the National Human Rights Institute

(INDH) affirms that the debate surrounding autonomous institutions should consider every single vulnerable group that is in need of special protection by the State.

Regarding torture, according to observations compiled by the Subcommittee for the Prevention of Torture, the establishment of the National Preventive Mechanism against Torture remains pending. This subcommittee was due to receive a formal response on this matter by 26 December 2016; after the date of publication of this report. Furthermore, and without prejudice to the aforementioned, the bill to amend the Criminal Code in terms of its definition of torture (Official Gazette 9589-17) has been passed with proposed amendments.

Finally, according to reports from the CNTV, the council received 5,889 complaints between 2014 and 2015 in relation to breaches of the correct functioning of television services, of which a total of 4,288 were formally processed. In 2015, the grounds for public complaints established by the CNTV included: i) dignity of the person (38.5%); ii) violation of fundamental rights (15.9%); iii) other grounds (12.1%); and iv) democracy (9.3%). Regarding 'dignity of the person', the main grounds for complaints included degrading or humiliating treatment of social and cultural persons and/or groups (26.2%); and stigmatization of social and cultural persons and/or groups (16.8%). The primary motive for complaints related to 'democracy' concerned discrimination against persons and/or groups according to their social standing, ethnicity or sexuality, among others (42.5%).

In 2016, the INDH filed numerous complaints against the CNTV, including one in relation to the television programme 'Alerta Máxima', broadcast on the channel Chilevisión. In particular, concerns were raised in regard to one episode that aired on 25 August 2016 on the grounds of the violation of the right to a private life and the right to non-discrimination of prisoners.

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EQUALITY AND NON-DISCRIMINATION



Migration and the right to nationality

An ongoing rise in migration to Chile has obliged the State to formulate certain public policy definitions on the issue. The expectation is that such definitions conform to international standards and emphasize the significant positive impact arising from migration. This expectation, however, is not always fulfilled. This was precisely the case between 1995 and 2014, during which period, the State policy was to deny Chilean citizenship to children born in Chile to foreign parents who were in an irregular residency situation in the country. Rather, such newborns were registered as children of foreign-born temporary residents (HET). Although they should have been able to fulfil their right to Chilean nationality by the simple fact that they were born in the country, they were denied citizenship and, as a result, became stateless children.

The analysis of this problem is the primary focus of this chapter. First, general data is provided in regard to the migrant community in Chile, as well as the actions taken by the executive branch in terms of immigration policy. Subsequently, an evaluation of the situation is conducted, in addition to a breakdown of international standards in the field, and the provision of information regarding the community of stateless persons in Chile, which, according to figures from the Civil Registry, could number over 2,500. Concern and the urgent need for action for this highly vulnerable group relates to the effects arising from the absence of nationality, which results in the individual not being able to fully exercise their fundamental rights regarding health, education, work, and free movement between countries, among others. Therefore, it is necessary to locate these individuals and to help them restore their rights. As a consequence, the INDH, in conjunction with civil society, is working to identify stateless persons in the Antofagasta Region and Santiago. To date, this approach has helped to locate numerous individuals who have lived in the country for more than 20 years but have never been recognized as Chileans. It should be noted that this situation, in addition to the aforementioned rights violations, adversely affects these individuals' right to identity.

Despite the State having changed its approach to granting nationality in 2014, registrations were still being made using the status of HET in 2016. This is a concerning practice since it not only contravenes international standards but also clearly breaches national regulations and, therefore, revives the urgent need for a new immigration policy. The visibility of these cases has facilitated the establishment of an interinstitutional working group that seeks to eradicate statelessness in Chile by working in conjunction

with civil society, the UNHCR and the Chilean Government.

The INDH recommends that the State: understands the urgent need to establish an immigration policy in line with international standards; ratifies the Convention relating to the Status of Stateless Persons (1960) and the Convention on the Reduction of Statelessness (1975); improves interinstitutional coordination in order to guarantee migrants the full exercise of their rights; trains and raises awareness among government officials to ensure that treatment, general disposition and quality of service provided to migrants is conducive to integration, specifically by highlighting the contribution to Chile made by persons arriving from other cultures. In turn, these recommendations are also extended to the media.

Rights of disabled persons

According to the results of the 2015 ENDISC national disability survey, disability among the adult population was 20%, equivalent to 2,606,914 people. In turn, the disability rate among children and young persons aged between 2 and 17 is 5.8%, which is equivalent to 229,904 individuals. In comparison, the global rate of disability is approximately 15%, while in Latin America and the Caribbean region it is 12.3%, which signifies that the estimated rate in Chile is particularly high.

This constitutes a challenge for the State. Rather than simply pursuing targeted actions in response, it must also conceive of social inclusion in its broadest sense, emphasising the value of diversity and of granting equal opportunities to all, including the provision of necessary support, in order for all persons to fulfil their lives free of discrimination. This has also been stressed by the Presidential Advisory Committee on the Social Inclusion of Disabled Persons and the UN Committee on the Rights of Persons with Disabilities.

For the 2016 Report, the INDH concentrates on providing analysis of the right of disabled persons to access justice. This issue is rarely addressed at the national level and constitutes an area in which the Chilean State has significant shortcomings, in particular regarding equal treatment before the law, which forms the cornerstone of the administration of justice with regard to human rights.

One challenge in this area relates to the treatment of disabled persons by the judiciary and the means by which their rights are actionable. Of particular concern is the persistence of a medical approach to disability, in addition to the use of pejorative terminology such as 'incapable' ('invalides') 'inept' ('incapaces') and 'mad' ('dementes') in existing regulation. These occurrences are not in line with international standards that advocate a model based on support to enable disabled persons to take their own decisions.

A further challenge is the use of judicial actions currently available to disable persons for the restitution of their rights: the special action contained in Law 20.422; the action of non-arbitrary discrimination available in Law 20.609; labour protection; and application for protection. While it was not possible to access specific information in regard to certain cases when compiling this report, particularly regarding the former two points, the limited use thereof has been confirmed.

Finally, in addition to the compilation of suitable data, which can be used to gauge the territorial distribution and the ways in which such lawsuits conclude, it is necessary to understand whether or not they were determined in the favour of the victim and how compensation, as provided by law, was applied.

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CIVIL AND POLITICAL RIGHTS



NGOs that promote democracy and protect human rights

Non-governmental organizations (NGOs) have become increasingly important actors on the global stage over the past three decades. During the period of democratic transitions and processes of State reform, NGOs began to play a significant role in the fields of development, democratic consolidation and human rights. Their actions included not only those related to social control, but also strong proactivity and collaboration in terms of public management. In this regard, given the current crisis of confidence in traditional political institutions and hierarchies, NGOs are able to build metaphorical bridges of communication between the general public and the State.

In 1998, the UN adopted the Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms (also known as the Declaration on Human Rights Defenders). This declaration represented a positive step towards clearly establishing the link between the role of organized civil society in the promotion of human rights and the control of State actions. It also represents significant progress in terms of clarifying the obligation of the State to provide an environment conducive to strengthening organizations that seek to defend human rights.

Accordingly, it should be noted that NGOs fulfilled a noteworthy role during the military dictatorship in Chile in the reporting of human rights violations, at the national and international level, as well as by means of the provision of support to victims of abuse. In the findings of a survey conducted by the INDH, the general perception of NGOs was one of organizations that work towards the promotion of democracy and defence of human rights. These findings indicate that the work of NGOs has contributed to the implementation, awareness raising and consolidation of a human rights agenda in the public debate. As a consequence, it has been possible to foster the participation and empowerment of the general public in efforts to demand its rights.

Conversely, organizations working in the fields of historical memory, public participation and immigration, among others, stress the need to be able to access a source of financing that ensures they can enjoy a certain degree of institutional stability over the medium and long term.

In regard to the role of the State in the sustainability of NGOs that promote democracy and protect human rights, it is important to highlight that the former must provide financial support to the latter to ensure their ability to operate on a sustainable basis. This requires a national policy which, under certain clear and objective criteria, and independent of government, should facilitate their work. However, it is important that such an approach strikes a delicate balance so as not to represent a disincentive to independent fundraising activities by NGOs that help to guarantee their independence from the State.

The INDH contends that the existence of capable NGOs that are able to participate in the day-to-day functioning of a democracy in an autonomous and sustainable manner contributes towards the holding to account of State actions, the channelling of complaints and the fostering of dialogue between different sections of society and the State. This is an essential role that must not be diminished due to its importance in helping to guarantee the effective fulfilment of human rights across the country.

Democratic security and human rights

This chapter focuses on three areas of public democratic security: crime policy and the 'anti-delinquency agenda' approved in 2016; reports of human rights abuses committed by officers of the Carabineros de Chile, the national police force; and the situation of violence related to the intercultural conflict in the Biobío and Araucanía Regions.

According to the most recent National Urban Survey on Public Security (2015), crime committed against private homes rose by 86.8% in 2015, although statistics related to the reporting of crime fail to support this perception. Rather, data from the Undersecretariat of Crime Prevention, released in the first quarter of 2016, show that more socially motivated crimes fell by 4.4% over the same period (5,323 offences). During the second quarter of 2016, the rate dropped 7.2% (9,600 offences), and 7.0% (9,560 offences) in the third quarter. The cumulative reduction for the period of January to September 2016 was 6.2% (24,506 offences). Significantly, a drop of 6.6% was recorded in the rate of domestic violence (5,312 offences).

Regarding institutional violence, according to information provided by the Public Prosecutor's Office, there were 202 cases of unlawful duress recorded in 2015.

It should be noted that the number of such cases reported from 2012 onwards has increased year-on-year (123 in 2012; 147 in 2013; 191 in 2014; and 202 in 2015). It is noteworthy that just over 30% of all these cases at the national level pertain to the Coquimbo Region.

During this reporting period, the INDH filed ten complaints against Carabineros police officers, related to different types of actions, such as violence towards and mistreatment of detainees in police stations, including the stripping naked of young persons, or firing tear gas directly into the face of members of the public, causing facial trauma, among other incidents.

In terms of violence related to the intercultural conflict in the Biobio and Araucanía Regions, this has followed a similar trend to reports of crime. A situation of particular concern is that of the machi (a traditional Mapuche healer and religious leader) Francisca Linconao, who, at the date of publication of this report, was being held in preventive detention. It should be noted that in prosecution cases of members of the Mapuche indigenous peoples on charges of terrorism, their lengthy confinement under preventive detention followed by subsequent release without formal charge has been a common practice for a number of years. This situation has been documented by the INDH in previous reports.

According to information provided by the Regional Intendancy (Intendencia Regional), the rate of certain crimes, including attempted murder of police officers and the misappropriation of private land, has fallen.

Finally, the Undersecretariat of Crime Prevention has informed the INDH that, during 2016, its Victims' Support Programme provided assistance to 61,503 victims of crime, which represents an increase of 0.4% compared to 2014. As a consequence, the Programme is the largest specialist service in the country dealing with victims of crime.

Rights of children and young persons

In 2016, the rights of children and young persons was a topic of widespread discussion and analysis in Chile, similar to previous years. However, no major progress has been made on which to report. Nevertheless, the INDH is conscious of the urgent need to

establish an effective system of comprehensive protection that guarantees the full exercise of the rights of all children and young persons in the country. Significantly, this must go beyond a narrow focus on just the most vulnerable children, as is the case at present. As such, this chapter relates to the rights of children and young persons and will serve as a tool to understand the current systems in place. It also provides an analysis and preliminary diagnosis of the shortcomings of the State in this field.

First, the chapter introduces the major milestones achieved in this area in 2016, including an analysis of the related international standards to which the State has adhered. Subsequently, focus turns to the provision of statistical data on the number of children and young persons who receive assistance from SENAME, the National Children's Service. This is in addition to a broad overview of the existing systems of service and assistance available to children and young persons in Chile (protection, youth justice and adoption). These are primarily concentrated on vulnerable children and young persons facing problems in the context of criminal law. Particular emphasis in this chapter is placed on the obligations of each of the three main branches of the State in regard to the fulfilment of effective guarantees of the rights of children and young persons. For example, the legislative branch is responsible for the urgent processing of bills, among other facets; the judicial branch is responsible for issuing detention orders consistent with the overriding interests of the child, utilising imprisonment only as a last resort, and supervising all detentions, among other aspects; and the executive branch is responsible for improving existing institutions, sanctioning mistreatment and malpractice on behalf of public officials, intersectoral coordination, and ensuring that government ministries provide the required assistance, among other areas.

Furthermore, the chapter includes visual assets containing analytical syntheses of the results of two major official publications: the report by the Inter-institutional Commission for the Supervision of Detention Centres (CISC Commission), in relation to the youth justice system; and the judicial branch report on supervision in youth residences that form part of the public protection system. Both reports have highlighted significant shortcomings in terms of the respectful and dignified treatment and personal integrity of children and young persons present in the centres and residences under the supervision and/or administration of SENAME.

A special section analyses figures provided by SENAME relating to deaths in care. It should be noted that in the youth justice system, which has approximately just 9% of

the total revenue of SENAME, which abides by a regulatory framework more in line with existing standards, and in which youth justice centres are the only facilities that are 100% administered by the State, the percentage of deaths reaches 35%. Accordingly, and in order to comprehend the deaths occurring in the residential protection system, it is imperative to understand the progress of criminal and/or administrative investigations in order to ensure that justice is served and the required changes are implemented. Undoubtedly, there is a higher death rate in ambulatory programmes due to the large numbers of individuals receiving support (this totalled 144,000 at the date of publication of this report), in addition to the fact that such programmes do not fall under the absolute control of the State. Therefore, the cause of death is frequently related to the risks associated with such conditions, as well as other natural causes.

The INDH recommends that the State: duly considers the urgent need to establish a regulatory framework in line with existing standards; restructures responsibilities between government ministries and agencies; enhances systems for recording information; sanctions any party responsible for the death and/or maltreatment of children and young persons, with court judgements passed in accordance with international standards; and promptly implements the National Preventive Mechanism against Torture.

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LAND ISSUES AND HUMAN RIGHTS



Right to a pollution-free environment

This chapter describes the main trends of the socio-environmental conflict map, including the increase in cases registered, from 98 (in 2012) to 102 (in 2015). Furthermore, it analyses the relevant underlying factors behind the emergence of socio-environmental disputes in the first place.

In geographic terms, while these types of conflicts are recorded nationwide, the primary focal points are as follows: in the northern zone, particularly between the regions of Antofagasta, Atacama and Coquimbo (36.5%), mainly in relation to the industries of mining (in the mountains) and thermoelectric power (on the coast); in the central zone, due to the strong concentration of high-impact economic activities (foundries, power stations, mines, waste disposal), especially in the Valparaíso Region (9.4%); and in the Biobío and Araucanía Regions (18.8%), as a result of hydroelectric dams and their transmission lines, in addition to forestry plantations.

Causes of these conflicts include the specific location of a particular project (53.9%); the generation of waste and emissions from certain activities (36.3%); and the use and/or contamination of natural resources (9.8%). Among the most frequently invoked rights in this regard are those to a pollution-free environment, to health, to water, to participation and to prior consultation, as established by Convention 169 of the International Labour Organization.

In terms of duration, a trend has been identified in which these conflicts are either latent or can be characterized as 'chronic'. It should be noted that none of the six cases that commenced prior to 1990 have, to date, been concluded; on the contrary, they continue to persist over time. These particular cases relate to the contamination registered in Tocopilla, Chañaral and Ventanas, which, moreover, find themselves located in so-called 'sacrifice zones'.

Underlying factors in socio-environmental disputes include: i) a weak environmental regulatory framework and inconsistency in legislation that oversees the different production sectors; ii) greater empowerment of the general public in demanding their rights when they consider them under threat; iii) the centralization of the economic benefits and the prevalence of environmental burdens at the local level; iv) the lack of State-level capacity in this field to conduct auditing, in terms of staff and physical

presence in the regions affected; and v) the absence of the State in areas affected and the coverage of basic needs by companies, which facilitates the emergence of poor practices including clientelism, the co-option of leadership roles, and a fragmentation of the social fabric.

Right to health in the regions

In 2016, the right to health continued to form a key part of the public debate. Chile has significant deficits in terms of numbers of health professionals (specialists and nurses, in particular), as well as shortcomings in regard to infrastructure. These deficits are particularly relevant in the most remote regions and smallest localities of the country.

At present, there are approximately 36,000 doctors nationwide, which results in a doctor-to-inhabitant ratio of 1:500 in certain localities. In the most isolated parts of Chile, this ratio reaches 1:850. According to the Chilean Ministry of Health (MINSAL), in order to adequately treat patients, a further 3,795 specialists and sub-specialists are required.

Despite the fact that Chile has a solid tradition of healthcare planning and programme execution, the development of health professionals has been below the level required, thus impeding the implementation of health reforms proposed by the Universal Access to Explicit Guarantees (AUGE) public health plan. In turn, this has resulted in a lengthening waiting list of diseases not covered by AUGE, since these pathologies do not constitute a treatment priority. Consequently, 1,552,205 people are waiting for a doctor's appointment and 240,536 are awaiting surgery for a non-Explicit Health Guarantees (GES) condition. The waiting list for GES conditions rose to 8,005 people as of 31 August 2016.

According to the World Health Organization (WHO, 2014), the Chilean figure of 2.18 hospital beds per 1,000 inhabitants is below the global average of 2.7. Moreover, the number of public hospital beds decreased by 18% between 1999 and 2015, which translates into a loss of 5,604 beds over this period.

The infrastructure deficit of hospitals in Chile was exacerbated by the February 2010 earthquake. This natural disaster, in conjunction with the ageing and precarious nature of the existing infrastructure, highlighted the need to modernize and broaden public

healthcare coverage, particularly in terms of leading regional and highly specialized hospitals. It also became evident that improved levels of patient service were required across the country.

The reality confronting public health authorities in the regions represents a precarious situation in relation to the exercise of the right to health by local inhabitants of the most remote parts of Chile. The shortage of specialists and the deficit in public hospital infrastructure signifies that parts of society, particularly those living in the most isolated regions and communities, face certain difficulties in accessing opportune and quality medical treatment.

Therefore, the INDH contends that inequality in the regions is one of main obstacles to the full exercise of the right to health in the country. Coverage and opportunity for distinct sections of society differs depending on the region in which the affected individual lives, as well as their economic resources and gender and ethnicity, among other factors.

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ECONOMIC, SOCIAL AND CULTURAL RIGHTS



Right to social security: the pension system

In continuation of the review compiled by the INDH in 2012 on the situation of social security, this chapter provides an updated breakdown of the pensions of older persons, from a human rights perspective. As such, it describes pensions received by both civilians and members of the armed forces by evaluating the relevant proposals of the Bravo Commission.

In 2011, the ILO criticized the Chilean individual capitalization system of pensions and warned of the non-compliance of the State with the country's social security regulations. In particular, the organization stated that, "the pension plans based on the capitalization of individual savings administered by private pension funds were structured without consideration of either the principles of solidarity, joint risk and collective financing, which form the essence of social security, or the principles that advocate a transparent, responsible and democratic management of the pension system with the participation of pensioner representatives".

Thus, the chapter provides in-depth information related to the prevailing disparities in the pensions issued under this system, according to gender and region, as well as payments made to civilians and members of the armed forces.

Examples of particularly relevant data include the fact that 50% of the population currently contributes towards a pension that is equal to or less than CLP\$37,667 per month; and that 50% of retirees receive approximately one third of their previous wage as a pension. Projections to the period 2025 to 2035 demonstrate that 58% of self-financed pensions will be below the poverty line, and only 6% will surpass the minimum wage. Moreover, a breakdown of findings by gender shows that just 1% of pensions received by women will exceed the minimum wage.

In regard to pensions received by members of the armed forces, public order and security forces, and the Gendarmería de Chile, which is the Chilean prison service, payments are double and sometimes triple the average amounts of the civilian population. In 2011, it was estimated that the average pension provided by CAPREDENA, the State pension administrator for the armed forces, rose to CLP\$600,862, while that of DIPRECA, the State pension administrator for the Chilean police and prison service officials, was CLP\$584,217.

In relation to this matter, the Bravo Commission proposed that, “the armed forces, police, prison service officials and related staff should receive, in general, equal treatment, in terms of incorporation and monthly contributions, to all remaining workers, while taking consideration of the specific characteristics of their occupation. (As such) it is hoped that compliance with the ILO principle of equal treatment will be forthcoming and that the fiscal gap currently associated with the financing of this system is reduced”.

Obstetric violence and human rights

Violence against women has multiple forms. In terms of health, one of its manifestations is violence committed during gynaecological and obstetric consultations with medical professionals.

The concept of obstetric violence arose from civil society organizations in reference to a combination of questioned practices occurring within the context of care during pregnancy, childbirth and the post-partum period. In this regard, violent actions are those that cause physical and/or psychological harm, which are expressed as cruel, inhuman or degrading treatment, or abuse related to medicalization, which reduces the ability of a patient to make decisions about reproductive processes in a free and informed manner.

In the context of these practices, a wide range of human rights are open to abuse, including the right to health and, in particular, to sexual and reproductive health, to a violence-free life, to non-discrimination, and to physical and psychiatric integrity, among others. In his 2013 report, the UN Special Rapporteur on Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment explained the documentation of a variety of abuses committed against patients and individuals under medical supervision in Chile. According to the Rapporteur, medical treatment that causes serious suffering for no apparent reason can be considered cruel, inhuman or degrading.

In 2014, the WHO declared having received reports of maltreatment during pregnancy in various health centres. The report mentioned cases of physical and verbal abuse and humiliation; medical procedures taking place without consent or in a coercive manner (including sterilization); a lack of patient confidentiality; failure to obtain informed consent; refusal to administer pain killers; invasions of privacy; and negligence against

women during childbirth. Regarding MINSAL, the excessive medicalisation of childbirth engenders the occurrence of unnecessary interventions with high overall costs of medical services. This situation has also led to a disregard or underestimation of the importance of psychological aspects that arise during pregnancy and childbirth.

Research undertaken in nine public health maternity units across the country produced the following results: 90.8% of women were subjected to induced labour (using oxytocin); 54.6% were under constant monitoring during childbirth; 59.1% underwent the artificial rupture of membranes; 81.5% received no orally administered food (liquids or light diet); 95.7% received parenteral hydration during birth; and 79.7% were placed in the lithotomy position (lying on their back) during dilation and expulsion. The results of this research indicate that the majority of women assessed in the study received treatment that was inconsistent or contrary to the recommendations of MINSAL and the WHO.

Conversely, data from MINSAL shows that rates of caesarean sections in 2015 were 40% in the public sector and 72% in the private sector. Such figures, especially those related to the private sector, far exceed the average recommended by the WHO of between 15% and 20%.

With this context in mind, the INDH recommends that all State legislators approve healthcare regulations in line with international human rights standards. This approach will help to ensure the administration of adequate practices that respect the dignity of the woman during pregnancy, childbirth and post-partum.

Right to education and prisoners

In previous reports, the INDH has highlighted the existence of “discriminatory regulations, mechanisms and practices within the education system that give rise to inequalities in terms of the quality of teaching and learning processes and in regard to opportunities for students to continue their studies in further education” (INDH 2011, p. 53). As a result, different groups in vulnerable situations are impeded from exercising their right to education.

Based on this analysis, the INDH has taken the decision to conduct a more in-depth

assessment of the right to education of prisoners. Due to their confinement, prisoners frequently experience violations of their rights¹. This includes the right to education, since there is an insufficient provision of educational programmes, and which are unsuitable to individuals' specific requirements, within the prison context. This is a concern because, according to international human rights law, the right of prisoners to education should not be subject to restriction or suspension simply because the individuals in question are incarcerated. On the other hand, the exercise of the right of prisoners to education poses numerous challenges to the education system. For example, it requires, among other aspects, teaching personnel who are prepared to operate in penitentiary contexts and infrastructures, who are willing to undergo changing conditions of imprisonment, and who have the ability to coordinate with the general system and adapt existing content and methodologies accordingly.

It should be noted that there is a significant proportion of the prison population that has not concluded its formal schooling and is unable to do so under the current system. In fact, in 2015, "according to information stated by prisoners (although not necessarily officially certified), upon entering the Chilean prison system, 425 persons had no formal schooling, 10,201 had incomplete primary education, and 11,692 had not completed secondary education"². In total, there are 22,318 prisoners who have not completed their formal education, out of a total of 42,475. However, in the same year, educational establishments provided assistance to just 6,808 people in primary education and 8,907 in secondary education³ (Ministry of Education [MINEDUC], 2016). Therefore, there is a gap of 6,603 adult prisoners with incomplete formal schooling who are not enrolled in any form of educational programme.

In the case of the 98 prisons under the responsibility of the Chilean prison service, there are 76 in which inmates have access to regular adult education services, and 5⁴ which

¹ See complaints filed by male and female prisoners in different regions in relation to their ability to exercise the right to vote in the municipal elections of 23 October 2016.

² Chilean Prison Service, Official Document No. 14.00.00.1066/16, 22 June 2016.

³ MINEDUC, Educación para la Libertad (Education for Freedom), 2016, p. 1.

⁴ The prisons (CCPs) of Petorca (Valparaiso Region), Biobio (Biobio Region) and Concepcion (Biobio Region), and the open centres for education and work (CETs) of Cañete (Biobio Region) and Concepcion (Biobio Region). Chilean Prison Service, Official Document No. 14.00.00.1066/16, 22 June 2016.

provide flexible education. Of the remaining 17, there are 7 in which it is only possible to certify past studies by means of free examinations, and 10 in which this possibility is non-existent due to the lack of facilities to provide adult education to inmates.

It should be noted that the educational establishments are not administered by the prison service. Of those providing services to the Gendarmería de Chile, 68 are municipal bodies and 20 are private establishments subsidized by the State⁵.

In 12 of the 17 closed centres of the youth justice system of SENAME⁶, the children and young persons receive regular adult education, despite the fact that such an approach does not conform to students of their age (15 years old for primary education and 17 years old for secondary education)⁷. Of the remaining five, there are four in which an alternative programme of Educational Reinsertion has been implemented, financed by SENAME, as well as one that provides no form of education.

The administration of these educational establishments is not the responsibility of SENAME, but rather the municipality in which the prison is located, or a private sector operator. In the case of the 12 closed centres, 6 are managed by municipalities and 6 relate to private establishments subsidized by the State⁸.

In SENAME, out of the total of 387 children and young persons detained in the youth justice system, there are 255 enrolled in educational establishments⁹. This signifies a gap of 132 children and young persons who are not enrolled in any type of educational establishment.

⁵Chilean Prison Service, Official Document No. 14.00.00.1066/16, 22 June 2016.

⁶Antofagasta (Antofagasta Region), Copiapó (Atacama Region), La Serena (Coquimbo Region), Limache (Valparaíso Region), Graneros (Libertador General Bernardo O'Higgins Region), Talca (Maule Region), Coronel (Biobio Region), Chol-Chol (Araucanía Region), Valdivia (Los Ríos Region), Santiago (Metropolitan Region), San Bernardo (Metropolitan Region), Centro Metropolitano Norte (Metropolitan Region). SENAME, Official Document No. 2315, 19 August 2016.

⁷These children and young persons receive adult education despite their age. There is no statutory regulation stipulating that this approach is required. Rather, it has simply been common practice to pursue this method in youth detention centres.

⁸SENAME, Official Document No. 2315, 19 August 2016.

⁹SENAME, Official Document No. 2315, 19 August 2016.

6

LARGE-SCALE, SYSTEMATIC AND INSTITUTIONALIZED HUMAN RIGHTS



Large-scale, systematic and institutionalized human rights violations, 1973-1990: exile

The effects of the human rights violations committed during the dictatorship endure over time and are passed down from generation to generation. Large numbers of the rights abuses were hidden or overshadowed for different reasons, including the occurrence of more serious violations.

This is the case in regard to the practice of exile and the consequences thereof. As a result, the issue of exile itself constitutes the focus of this chapter for 2016. First, a review is provided of the main milestones achieved during the year in regard to human rights violations committed during the dictatorship. This includes discussion of the right to truth and the release of secret archives from the Valech truth commission; reparations due from the State following the ruling against Chile in the case *Maldonado Vargas et al. vs. Chile* in the Inter-American Court of Human Rights; the hunger strikes staged by former political prisoners; the extradition of Michael Townley; and the death of former president Patricio Aylwin, among others. Subsequently, the chapter analyses international standards related to the violation of rights and exile in general, prior to assessing the latter in greater detail. This includes the legal mechanisms through which exile was carried out, approximate figures regarding the number of Chileans exiled, their return to the country, its effects on those who experienced it, relevant public policy implementation, and the pending need for reparations.

In this chapter, the INDH recommends that the State takes a number of actions, including: designing public policy in the area of historical memory by fostering research; developing policies to preserve, disseminate and access archives; improving institutional planning for the permanent classification of victims of the dictatorship, including those exiled and then returned; and incorporating subjects related to the large-scale and systematic human rights violations committed during the dictatorship, which includes exile, into the national school curriculum.

