

**INTERNATIONAL COVENANT ON
ECONOMIC, SOCIAL AND CULTURAL
RIGHTS (ICESCR)**

March 2014

GENERAL FINDINGS

1. During the period 2004-2010, covering the State's report on the implementation of the Covenant on Economic, Social and Cultural Rights, the country introduced reforms to its health system (2005) and pension system (2008) and passed new legislation concerning the environment (2010) and access to public information (2008). Furthermore, the State sought to overcome institutional weaknesses in conjunction with regulatory and auditory deficiencies, among others, which have affected the exercise of rights in the applicable spheres. Additional aspects worthy of note include the ratification of ILO Convention 169 (September 2008) and the Constitutional Court's declaration on the self-executing nature of the duty to conduct consultation, as enshrined in the treaty (2009).

2. Given the relatively short amount of time since the adoption of the aforementioned reforms and new legislation, it is not possible to conduct an in-depth evaluation of their impact upon economic, social and cultural rights (ESCR), or the eventual gap reductions in the exercise thereof. However, it is possible to identify positive trends which require strengthening, as well as negative effects or omissions that must be rectified by the State.

3. The economic and political stability that has characterized the country in the last few years, as well as the development of State policies in areas relevant to economic, social and cultural rights have had noticeable impacts. For example, they have led to reductions in extreme poverty, a broader coverage of health care and education, and the establishment of a social policy aimed at low income sectors of society. Information gathered from the CASEN survey shows a decrease in poverty and extreme poverty¹, a trend which is confirmed by its 2011 results. A public debate has recently begun about the need to adjust the parameters used to measure these indices (which is based on a basic family basket of goods valued at 1989 prices). Such adjustments would respond more adequately to the current reality in Chile in terms of income per capita projections, as well as changes to the composition and forms of essential consumer goods.

¹ The National Socio-economic Characterization Survey (CASEN by its Spanish acronym) has been conducted by the Ministry of Social Development since 1985 on a bi-annual or tri-annual basis. According to its results, poverty in Chile affected 20.2% of the population in 2000; by 2009 this percentage had dropped to 15.1%. Extreme poverty during the same period fell from 5.6% to 3.7%. In 2011, these figures were 14.4% and 2.8% respectively.

4. Without prejudice to the generality of the foregoing, there remains a serious problem of inequality in terms of income distribution in Chile. The richest quintile reports income at 35 times the level of the poorest quintile², a point repeatedly noted by the OECD (in its 2011 Report) and documented in the UNDP Human Development Report (2010). This is one of the biggest challenges facing the Chilean State in terms of economic, social and cultural rights.

5. An equally significant challenge relates to inequality in exercising ESCR. The weakness of the State in guaranteeing basic services of decent quality, as well as in the regulation and control of certain economic sectors, has led to situations of deep social injustice and rights violations, provoking citizenry complaints in the process. This has been manifested by the forceful social demonstrations witnessed in Chile over the last few years, in which demonstrators have been calling for the right to education, the protection of the environment and the right to live in a healthy environment. Protests have also been staged at the local level against the inequality of action in securing inhabitants' employment and health needs and access to resources: conditions which would help to ensure an improved quality of life for the people living in the areas and territories affected. In addition to these are the demands made by the victims of the February 2010 earthquake and tsunami, in response to the slow implementation of reconstruction programmes, particularly in terms of housing.

6. The Chilean constitution is weak in terms of its catalogue of recognized and protected ESCR. This is due to its exclusion of some of the rights established by the Covenant (for example, the right to housing) and its reduction of them to certain areas or dimensions (for example, the right to social security is understood simply as access to basic uniform benefits, whether provided by public or private institutions), as well as the rights not being subject to guarantees of constitutional protection. Without prejudice, the courts, through actions of protection, have guaranteed and protected economic and social rights in an indirect way by invoking the right to life and other civil and political rights. The INDH's 2011 Annual Report signalled to the State that the fulfilment of ESCR requires legislative and public policy changes that exceed the programmatic declarations made up to now. Its fulfilment also requires the full assumption of their condition of actionable and enforceable rights, as established by the standards contained within the Covenant.

Article 1: self-determination

7. The INDH's 2010 Annual Report presented recommendations regarding the constitutional recognition of the rights of indigenous peoples. It also made recommendations on taking steps to ensure the effective implementation of ILO Convention 169 and the UN Declaration on the Rights of Indigenous Peoples³. To date, these actions remain pending.

8. The State has made efforts to design and implement policies for reducing inequality gaps and discrimination affecting indigenous peoples. However, the institutional non-recognition of the State's multicultural character has impeded the full exercise and enjoyment of the individual and collective rights held. This has contributed to the continuation of strained relations with the State.

² CASEN 2011.

³ INDH. 2010 Annual Report. Human Rights Situation in Chile, p. 165.

9. The duty to conduct consultation constitutes a central part of Convention 169. The INDH values the decision to focus efforts on defining, firstly, the consultation mechanism to be used, before then proceeding to consultations on other subjects relevant to the indigenous peoples of Chile. The absence of the aforementioned mechanism does not exonerate the State from its duty to conduct prior consultation on administrative or legal measures that are likely to directly impact upon indigenous peoples.

10. Since Convention 169 entered into force in Chile in December 2009, and up to July 2011, the domestic courts passed 45 sentences relating to cases of constitutional guarantees in which violations of the treaty were alleged. These included: the violation of the right to consultation and participation (22 verdicts), mainly related to the approval of environmental resolutions in favour of investment projects taking place on indigenous lands and territories; rights violated in demarcations, boundaries, deeds ownership and encumbrances imposed on lands and territories (14); and others relating to cultural rights and situations of racial discrimination. As of 2012, the courts, in a progressive manner, have begun incorporating the requirements of Convention 169 into their jurisprudence. This has resulted in, among other issues, a marked difference in terms of consultation with other processes of citizen participation and, as a consequence, the suspension of certain investment projects that have failed to comply with the relevant standards.

11. The State, by means of the National Indigenous Development Corporation (CONADI), has purchased and handed over a significant amount of land⁴ to indigenous peoples. However, the total budget assigned for this fund for 2010-2011 decreased by 15.8%⁵. This is a preoccupying situation, as State resources directed to this fund since its creation in 1993 remain insufficient in responding to State obligations regarding the restitution of land and water⁶. Furthermore, the lands acquired by means of this Fund have frequently led to the fragmentation of traditional Mapuche territory and/or the resettlement of individuals or communities to areas located far away from their traditional territories⁷. The restitution of land, territory and natural resources is one of the main sources of conflict (which is often manifested by indigenous peoples seizing and occupying land and property to which they claim ownership). As such, the INDH deems as necessary legislation to establish more effective mechanisms for dealing with the restitution of

⁴ Report by the Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous peoples, James Araya. The situation of indigenous peoples in Chile: "The Special Rapporteur notes that the Chilean Government has purchased and handed over a significant amount of land totalling more than 140,000 hectares, which in addition to the legalized government land already in the possession of indigenous peoples, now totals approximately 657,520 hectares, according to official information". A/HRC/12/34/Add.6., October 5 2009, par. 24.

⁵ CONADI Notification No. 641 to the INDH, September 29 2011.

⁶ Likewise, the Special Rapporteur James Araya reported that resources assigned to the Indigenous Land and Water Fund until 2006 accounted for 0.31% of the national budget. This is insufficient in terms of State compliance with its obligations in this area. A/HRC/12/34/Add.6., *op. cit.*, par. 31.

⁷ For example, the Special Rapporteur James Araya noted in the same report: "The Special Rapporteur expresses his concern about information received from various sources that the policy of land purchases has on many occasions resulted in the fragmentation of the traditional territories of Mapuche communities and that the Land Fund has been redirected towards a practice of resettling individuals and communities to lands located far away from their traditional territories". *Ibid*, par. 27.

traditional indigenous lands, in line with international human rights standards. This legislation must be devised through a process which ensures the consultation of indigenous peoples. The INDH has also recommended avoiding the indiscriminate use of criminal procedures (charges and lawsuits of usurpation) as the answer to demands of restitution of the disputed lands. Within this context, and prior to any criminal proceedings taking place, the existence of land claims that may alter the criminal classification of the facts should be confirmed.

12. The Chilean State, in the framework of social, cultural and political claims brought by members of the Mapuche community, has since 2005 invoked anti-terrorism legislation in preference to other less detrimental measures, in terms of their rights impact. Between 2010 and 2011, 48 people were tried under this legislation, 32 of whom are related to or members of the Mapuche community. In October 2010, following an 82 day hunger strike by 34 Mapuche community members accused of terrorist crimes⁸, the Executive branch dropped all charges against the individuals involved, which had been invoked under the Anti-terrorism Act. The Public Prosecutor's Office, on the other hand, has continued to invoke this legislation and still uses its procedural advantages as part of its investigations. The pre-emptive and selective application of anti-terrorism legislation against indigenous peoples represents a violation of the rights to access justice and due process, and constitutes a violation of the principle of equality and non-discrimination. Comments against such actions have been forthcoming from the Inter-American Commission on Human Rights⁹. In August 2011, this international body announced its decision to present the case of Segundo Aniceto Norín Catrimán and Others vs. Chile before the Inter-American Court of Human Rights. This decision was based on how, by handing down sentences of terrorist offenses against these individuals¹⁰, the State had violated human rights enshrined within the American Convention and thereby incurred international responsibility.

Article 2: measures for ensuring the realization of rights

13. Noteworthy during this period was the ratification of the following instruments: ILO Convention 169 (2008), the Convention on the Rights of Persons with Disabilities (2008) and the Convention on the Protection of the Rights of All Migrant Workers and Members of their Families (2005).

14. Without prejudice, the State has still not ratified other international instruments protecting economic, social and cultural rights, including: ILO Conventions 81 (Labour Inspection, although there is a Labour Directorate and work inspections in Chile); 102 (Social Security); 117 (Social Policy); 118 (Equality of Treatment); 176 (Safety and Health in Mines, although domestic mining

⁸ This episode was brought to an end on October 1 2010 after an agreement was reached between the Government and the Mapuche community members participating in the hunger strike in the prisons of Concepcion, Lebu, Valdivia and Angol. The agreement consisted of the Government withdrawing the terrorist charges it had filed against the accused.

⁹ IACHR. Report No. 176/10. Cases 12.576, 12.611 and 12.612. Segundo Aniceto Norín Catrimán and Others vs. Chile. OEA/Ser.L/V/II.140. November 5 2010.

¹⁰ Relating to the sentences handed down to Segundo Aniceto Norín Catrimán, Pascual Huentequero Pichún Paillalao, Florencio Jaime Marileo Saravia, José Huenchunao Mariñán, Juan Patricio Marileo Saravia, Juan Ciriaco Millacheo Lican, Patricia Roxana Troncoso Robles and Víctor Manuel Ancalaf Llaupe, in 2003 and 2004.

regulations do exist); 189 (Domestic Workers); plus the optional protocol of the Convention on the Elimination of All Forms of Discrimination against Women; and the additional protocol on the American Convention on Human Rights in the area of Economic, Social and Cultural Rights (Protocol of San Salvador).

Article 3: gender equality

15. Progress made during this period can be exemplified by the entering into force of Law No. 20.348 safeguarding the right to equal pay and prohibiting discrimination on the grounds of sex¹¹. However, in mid-2012, the Superintendency of Pensions reported that the pay gap had grown by 17%¹². Research conducted by the Labour Directorate a year after the legislation was passed noted “a low degree of compliance with the obligations established by the law for the employer”, as well as limited promotion and training in relation to its implementation. As such, “the law is little known and the trade unions consulted do not understand how to enforce this right”¹³. This trend has not changed over the last few years¹⁴. The State is obliged to adopt additional tools, and not just normative ones, to create a culture of equality between men and women in the workplace. This is particularly relevant when the law places the responsibility of denouncing discriminatory practices in the hands of workers. For example, and within the context of findings from the National Human Rights Survey of 2011 conducted by the INDH, a total of 66.4% of Chilean society believes that if a worker were to stand up for their labour rights, they would most likely lose their job¹⁵.

16. The State reports on the ongoing programmes to increase the labour-force participation of women, with special emphasis on those mechanisms aimed at the poorest quintiles, in which the lowest indices of work ties and the highest rates of unemployment are recorded¹⁶. In fact, female labour-force participation has grown over the last few years: in 2002 its rate was 35.6% (INE) and 43% in 2009. SERNAM (the National Women’s Service) measures it at 47.8% at the end of 2011 (still 26 points below the male participation rate) and reports that 63% of the 211,000 jobs created in that year were filled by women. However, the preoccupation is that these mainly relate to

¹¹ Published in the Official Gazette on June 19 2009.

¹² Emol.cl. Figures from the Superintendency of Pensions: The pay gap between men and women grows and reaches 17%, September 3 2011. On average, women earn less than men. The gap increases with age, reaching 31.9 percentage points over the 13 years of study (Social Policy Report. MIDEPLAN 2011).

¹³ Labour Directorate (2011). The right to earn the same. Law No. 20.348, equal pay for men and women. *Temas laborales* (Labour issues) No. 27.

¹⁴ As shown by the World Economic Forum in 2013, in addition to research compiled by the Universidad de Chile and *ComunidadMujer*, among others. See: <http://www.lasegunda.com/Noticias/Economia/2013/07/866023/aumenta-brecha-salarial-entre-generos-mujeres-ganan-191-mil-menos-que-los-hombres>

¹⁵ INDH. First National Human Rights Survey, 2011. Available at www.indh.cl

¹⁶ By looking at breakdowns based on quintiles, the labour-force participation of women from the poorest sections of society is substantially lower than in the higher income sections: the rate is 25.5% for the first and 58.7% for the fifth. Regarding unemployment, inequality follows the same trend: 32.6% for the first quintile and 5.6% for the fifth (CASEN 2009).

precarious and unstable jobs, which has been the general trend throughout the decade¹⁷. Specialized bodies warn that 47% of these female jobs are carried out on a self-employed basis, while 34% relate to salaried work: “Self-employed work seen during this period is generally precarious, with high amounts of part-time labour and low-skilled workers”¹⁸.

In terms of paid salaries, 100% responded to “sub-contraction, temporary services and supply of personnel and intermediaries, which signals greater precariousness and instability in the workplace”¹⁹. Such information is preoccupying if taking into account the fact that the 2011 CASEN survey confirms the increase in the number of housewives in charge of a family (39%). This rate rises to 50% for families living in poverty and to 55% for those living in extreme poverty. The rate of incorporation into the labour-force for these two latter sections reaches only 24%²⁰.

17. In its report, the State notes the passing of legislation and public policy initiatives, such as the Plan de Promoción y Calidad del Empleo Femenino (the Plan for the Promotion and Quality of Female Employment), the Modelo Iguala (the Equality Model) and the Código de Buenas Prácticas Laborales sobre No Discriminación (the Good Work Practices on Non-discrimination)²¹. The progress reported on shows that these measures, although necessary, are insufficient in changing the cultural patterns which limit the labour-force participation of women and in overcoming the discrimination that relegates this group to precarious, unprotected and poorly paid jobs. A number of regulations are not subject to the necessary public awareness or auditory supervision to bring about effective change, as is the case with the Income Equality Act.

18. During this period, the Government published the results of the first National Survey on Employment, Work, Health and Quality of Life of Workers in Chile 2009-2010. The INDH recognizes that this instrument accounts for the link between conditions of employment, work and health. Its results show that, in the private sector, a lower number of women have access to written contracts than men: 70% to 85.9% respectively. Upon breaking down the data according to education levels, it can be seen that the lack of work contracts relates primarily to women with less schooling (49.6% of women with incomplete primary school education have work contracts, compared to 88.7% of those who have completed university studies). Conversely, it is women who are more frequently subject to verbal contracts. This practice is common in the services and commercial industries (34%), i.e. where rates of female employment are particularly high.

19. Given the high incidence of domestic work in the (low rate of) labour-force participation of women, in its report the State accounts for public policies aimed at making family and work life

¹⁷ Andrea Bentancor, an expert from ComunidadMujer, has warned that “in the last ten years, the amount of Chilean women working part-time hours has gone from almost 8% to 25%”. The danger is that a high proportion of this type of work is precarious, despite progress made in terms of its regulation. The expert adds that the notion of involuntariness must also be taken into account, given that “53% of women working part-time hours would like to work more”. Quoted by Maria de los Ángeles Fernández, Director at Chile21. *Las chilenas en su laberinto (económico)* [Chilean women and their maze (economic)]

¹⁸ Fundación Sol. Employment Bulletin No. 4, July – September 2011. Labour Statistics Unit.

¹⁹ Ibid.

²⁰ SERNAM. <http://portal.sernam.cl/?m=columna&i=58>

²¹ These latter two are mentioned in the CEDAW Report.

more compatible²². While the main policies in this area have been exclusively directed towards women, thereby strengthening and reproducing the cultural framework in which it is the woman who is primarily responsible for reproduction and childcare²³, it should be noted that reforms have been introduced designed to foment joint responsibility²⁴. It is still very early to evaluate the impact of these reforms. Nevertheless, the preliminary trend provides evidence of the cultural resistances that still exist in Chilean society regarding these issues²⁵. In addition, the legislation that grants benefits to the father in matters of raising and caring for children is generally exclusively activated only when the mother is absent²⁶.

Article 6: right to work

20. Important progress made during this period can be exemplified by the entering into force of Law No. 20.087 (2008), which enhances justice in terms of labour and, specifically, creates a protection mechanism regarding “issues raised in working relationships covered by labour regulations which affect the fundamental rights of workers”²⁷. The procedure incorporates figures which are omitted in other regulations: i) it broadens the active capacity for filing legal complaints; ii) it alleviates the burden of proof from the victims of discrimination; and iii) it enshrines the guarantee of indemnity, i.e., it provides protection to the claimant from workplace retaliation. In 2008, employment courts heard 86 cases; in 2010, this number had risen to 5,117²⁸. There has been a similar trend regarding the protection of fundamental rights: 1,603 cases heard in 2010, and 1,367 in the first half of 2011²⁹.

21. The Labour Code still contains discriminatory regulations which affect particular groups, such as self-employed domestic workers. In contrast to the general rule which establishes the

²² According to the INE’s National Employment Survey, the main reason that women have fewer links to the labour market is because they undertake domestic work and provide care for children and older persons (36.7%); followed by them continuing with their studies (19.2%). National Employment Survey, Quarterly, Jan-Mar 2011, INE.

²³ 83% of women claim to be the sole person responsible for domestic work, including the caring for and bring up of the children. UNDP: Human Development in Chile 2010. Gender: The challenges of equality.

²⁴ Law No. 20.545, which amends the rules on maternity protection and incorporates postnatal paternity leave, adopted in October 2011. In terms of detail, the new law adds an additional three months of postnatal leave to the previously authorized three months, deemed parental leave (maternity or paternity). Accordingly, if the women chooses to, and if she fulfils certain requirements and a number of previsions, she can access six months of maternity leave. The law also allows the father to access paternity leave of up to seven weeks, if the mother agrees.

²⁵ During the first three months that the new postnatal law was in force, only 0.6% of fathers had used their paternity leave of up to seven weeks, as per their legal entitlement.

²⁶ For example, if the child is seriously ill, article 199 of the Labour Code establishes: When the health of a child under the age of one year requires attention in the home as a result of a serious illness... the working mother has the right to paid leave...In the event that both parents are working, either of them, at the choice of the mother, may exercise their right to the relevant paid leave. Accordingly, the father is entitled to these benefits in the event of the mother having died or the father having legal custody of the child”.

²⁷ Article 485, added to the Labour Code by Law No. 20.087.

²⁸ Judiciary statistics, 2007-2010. Available at:

http://www.poderjudicial.cl/modulos/Estadisticas/EST_Competencia.php?opc_menu=6&opc_item=2

²⁹ Supreme Court, Ruling No. 0664 to the INDH, September 16 2011.

maximum hours in a working week as 45, for domestic workers (the vast majority of whom are women) legislation sets out up to 72 hours as permissible, with no more than 12 hours work per day, including a one hour lunch break. If the domestic worker resides in the same house in which they are working, the only limit established by legislation is that the worker must have 12 hours of rest per day, including nine hours of uninterrupted rest and every Sunday off. In terms of international standards, this constitutes discrimination, as it establishes an arbitrary distinction whereby certain workers (domestic workers in this case) are subject to different regulations from other workers, for no justifiable reason. This situation is even more preoccupying given that domestic workers experience additional discrimination for being women, for their socio-economic standing, and other factors such as being immigrants. This constitutes multiple discrimination, thereby placing them in an even more vulnerable situation³⁰. In July 2011, the Government presented a bill which aims primarily to bring the employment situation of domestic workers in line with standard regulations. Specifically, the bill outlines that “the duration of the working day of all domestic workers shall be subject to paragraph 1 of article 22 and article 30, without exception”³¹. The passage of this bill is an important step in terms of eradicating discrimination against domestic workers, the number of which in Chile currently stands at approximately 300,000.

22. Regarding non-discrimination, it is preoccupying that the Labour Code (art. 19) establishes that for all businesses with more than 25 employees, at least 85% of their workforce must be of Chilean nationality. While the Labour Code sets out certain exceptions³², these refer to exceptional cases that do not constitute a general rule for individuals arriving to the country in search of better opportunities. The Committee on Migrant Workers recommended that the State only apply this ruling in certain circumstances. For example, only in cases when the migrant worker has a valid work permit of less than five years, and only for certain labour categories, responsibilities, services or activities, as necessary in the interest of the State party. All such actions must, the Committee noted, be carried out in line with article 52 of the Convention on the Protection of the Rights of All Migrant Workers³³.

Article 7: conditions of work

23. In terms of occupational health and safety, figures show a rising trend in accidents at work (in both the workplace and during the commute) as well as in the average number of days lost³⁴. Regarding the former³⁵, the largest amount of accidents takes place in micro-enterprises of no

³⁰ For further information on this subject, see: <http://sintracapchile.cl>.

³¹ Bill to amend the working conditions of domestic workers (Official Gazette 7807-13), currently in the first constitutional stage of the legislative process.

³² For example, if the individual has technical knowledge that is lacking in Chile, if their spouse or child has Chilean nationality, or if they have been resident in Chile for more than five years.

³³ The Committee on the Protection of the Rights of All Migrant Workers and Members of their Families. Consideration of the reports submitted by State parties under article 74 of the Convention – Chile. CMW/C/CH/CO/1, September 23 2011.

³⁴ “Days lost” refers to the average number of working days missed by workers due to sick leave (and by presenting a doctor’s sick note).

³⁵ Except in 2009, there has been an increase in the work accident rate, particularly in commuting accidents: during the period 2006-2010 these types of accident rose by 11,439 cases, which corresponds to an average

more than 10 employees. According to the Labour Directorate, these types of businesses “are distinctly deficient in the implementation of risk prevention mechanisms, which is a situation exacerbated in micro-enterprises, of which almost 40% register having no risk prevention mechanism in place”³⁶. Total average days lost rose from 11.8 in 2004 to 14.1 in 2008; the highest average corresponds to the mining industry, in which there was a rise of 13.5 days to 25.2 during the same period³⁷.

24. The main occupational risks faced in Chile are: environmental contaminants (especially in the mining and construction industries); the physical working environment (especially in the metal fabrication industry, mining and agriculture); lighting and exposure to sunlight (in mining, agriculture and construction); safety and technology (in water, light and gas supplies), and muscular overload (in the metal and non-metallic fabrication industry, hotels and restaurants, transport, fishing, wholesale, construction, social services and healthcare)³⁸.

25. In its report from November 2010, the Presidential Advisory Committee for Occupational Safety³⁹ concluded that “a National Occupational Health and Safety Policy is, as a consequence, required to help direct efforts towards the prevention of accidents and illness in the workplace; one which defines the framework of reference for actions undertaken by government institutions, insurance firms, businesses and workers in terms of occupational health and safety”⁴⁰. This policy must be capable of safeguarding the physical and psychological integrity of persons in the workplace, as well as guaranteeing other associated rights, such as the right to health. The recommendations made by the Committee are aimed at preventing situations like the ones that occurred in the transport industry, in which a driver of one of the city-wide Transantiago buses was found to be wearing absorbent diapers⁴¹, and the practice of workers being locked into supermarkets overnight, including one case during the night of February 27 2010, when a large earthquake hit the country⁴².

Article 8: right to form and join trade unions

of 2,287 new accidents per year. This data comes from health and safety mutual societies, i.e., it refers to accidents affecting workers with employment contracts and, therefore, greater social and labour protection. Concurrently, there is a broad consensus as to the under-reporting of such statistics: many businesses prefer to pay for the medical treatment of the injured worker in health facilities different to those covered by the mutual societies, in order to avoid paying fees related to the insurance claim. It should also be noted that such statistics do not include cases of accidents at work taking place in the informal labour markets, about which there is no specific data collection.

³⁶ Labour Directorate. ENCLA 2008, p. 181.

³⁷ Ibid. p. 179.

³⁸ Ibid. p. 190.

³⁹ This Committee was convened by the Executive branch in August 2010, with the mandate to conduct a diagnosis of and present proposals for improving the system of occupational health.

⁴⁰ Presidential Advisory Committee for Occupational Safety, Final Report, November 2010, p. 71.

⁴¹ Emol.com. Operators of Transantiago were convicted following the case of one of their bus drivers using diapers due to the lack of bathroom breaks, published December 30 2010.

⁴² ElMostrador.cl. Santa Isabel supermarket workers were locked in during night shifts, March 23 2011.

26. The Constitution recognizes the right to work, hire, collective bargaining and unionization, and the right to strike, albeit in a restricted form. Collective bargaining is not subject to guarantees of constitutional protection.

27. The Chilean system of industrial relations favours the recognition and exercise of individual rights over collective rights, especially in regard to union rights, collective bargaining and the right to strike. These aspects are closely related since broad and adequate legislation, in terms of collective freedoms, allows for the existence of trade unions equipped with effective tools for the protection of workers. The practical representation of this situation sees the protection of workers being overseen by the respective regulatory authority or through court proceedings. This is done without the strengthening of trade union organizations or tools for collective action being deemed as necessary as an effective defence mechanism for legally recognized rights.

28. The rate of unionization has steadily declined, falling from 15.1% in 1991 to 11.7% in 2010⁴³. There is no union organization in 94.9% of businesses. Of those in which it is registered, almost 25% have two or more unions⁴⁴. The highest rates of unionization are found in mining (22.2%), water, gas and electricity provision (22.3%), education (23.8%) and social services and healthcare (22.6%). The lowest rates correspond to the hotel and restaurant industry (0.8%), construction (1.9%) and the retail and wholesale industry (2.6%)⁴⁵.

29. In addition to low rates of unionization are the anti-union practices observed in businesses. These act in a way that hinders the creation and normal operation of trade unions. According to information requested by the INDH, during 2010 the Labour Directorate received 2,228 complaints of this type of practice relating to 954 companies⁴⁶. Sectors with the lowest rates of unionization are the ones with the highest rates of complaints being filed.

30. The Labour Code equates unions to groups of workers and grants to them the same bargaining powers, thereby contributing to their weakening (art. 303). The ILO Committee on Freedom of Association has stated that “direct bargaining by the company and its workers, in bypassing any relevant representative organizations, may in certain cases be detrimental to the principle of encouraging and strengthening collective bargaining between employers and workers’ organizations”⁴⁷.

31. The Labour Code establishes obstacles to collective bargaining. Between 1991 and 2009, the number of people employed in the private sector grew by two million, “but the number of workers covered by collective bargaining has only grown by 43,600”⁴⁸. Furthermore, protection is prohibited for workers undertaking individual or temporary services (art.305), a group which constitutes 25% of the working population in Chile. Labour specialists have noted that successive

⁴³ The Labour Directorate. Statistical Series Compendium 1990-2010, p. 10.

⁴⁴ The Labour Directorate. ENCLA 2008, p. 133.

⁴⁵ Ibid p. 135.

⁴⁶ The Labour Directorate. Notification No. 3383 to the INDH, August 24 2011.

⁴⁷ ILO. Freedom of Association. Digest of decisions and principles of the Freedom of Association Committee of the Governing Body of the ILO, paragraph 944.

⁴⁸ Fundación Sol (2001). Por una reforma laboral verdadera (For a genuine labour reform), p. 14.

legislative reforms by governments “have focused on individual legal protection, aiming to keep the labour costs of the relevant amendments low. In the field of collective industrial relations, especially collective bargaining, the changes introduced have been minimal in terms of not affecting the parent company in question”⁴⁹.

32. The Constitution does not explicitly recognize the right to strike. Rather, it is referred to implicitly in reference to situations in which the right to strike is not allowed. On one hand, the Labour Code (art. 381) allows the employer to replace striking workers, thereby weakening the bargaining tool’s element of pressure. The INDH has noted that striking is a collective expression, the strength of which lies precisely in the possibility of affecting production; if the company is able to continue operating in spite of the strike, the demands made against it lose their bargaining strength (INDH, 2011). On the other hand, striking of all public officials is punishable under the law (art. 254 of the Criminal Code). The ILO Committee of Experts on the Application of Conventions and Recommendations (CEACR)⁵⁰ has recommended the State repeal this provision and only keep restrictions in place for public safety officials with authoritative responsibilities.

Article 9: social security

33. Until 1980, the Chilean pension system was governed by distribution criteria based on the principles of solidarity and universality. That year saw the introduction of an amendment which established a system based on individual capitalization, managed by pension fund administrators (AFPs), which are profit-making public limited companies⁵¹. The compulsory nature of contributions under the AFP system violates the right to freedom as stipulated in the international human rights treaties ratified by Chile. This is a preoccupying situation for the INDH. Given the responsibility the International Covenant on Economic, Social and Cultural Rights conveys to the State in terms of recognizing the right to social security, this dimension is weakened by the fact that pensions are managed exclusively by private organizations. Similarly, the INDH believes that this regulation should be amended to ensure compliance with the standards enshrined within the aforementioned International Covenant.

⁴⁹ Infante, Ricardo and Feres, María Ester (2007). *La Negociación Colectiva del Futuro en Chile* (Future collective bargaining in Chile), p.28.

⁵⁰ ILO- CEACR (2008). *Individual Observation on the Freedom of Association and Protection of the Right to Organise Convention, 1948. Number 87.*

⁵¹ Decree Law 3.500, November 13 1980. All workers with an employment contract must pay compulsory pension contributions into the AFPs, with the exception of the following: workers that, prior to the creation of the AFPs, had been making payments into one of the previous pension institutions; and self-employed workers who signed up for the first time before December 31 1982 and who had the right to choose between the old system and the one established in 1980. Since the amendment established by Law No. 20.255, enacted in 2008, self-employed workers issuing receipts for professional services are obliged to pay compulsory pension contributions gradually over a period of time. These contributions must be made into the AFPs, except in the aforementioned cases, which correspond to a minority of workers who signed up to the previous system.

Decades after its implementation, the system can be seen to produce serious inequality gaps⁵², in addition to its limits in terms of profitability and final income replacement rates. In general terms this amendment transformed pensions, at least in so far as old age is concerned, in to a private insurance system with minimal solidarity. Discussions began in 2006 regarding its reform, which were finally adopted in 2008.

34. These reforms incorporated changes to the way the pension system works. Special emphasis was placed on the coordination between the contribution and non-contribution components, to substantially improve equality of access to social protection: it established a Solidarity Pillar in the form of a non-contributory pension (the Basic Solidarity Pension, or PBS in Spanish), as well as a supplement to the contributory pension (Solidarity Pension Contribution, or APS). The reform maintained the compulsory contribution element which is based on the financial capitalization in individual accounts administered by the AFPs. The reform also incorporated specific measures to ensure responsibility for gender inequalities (PBS and child-related pension bonus) and age groups (employability subsidies for young people), and a greater coverage for self-employed workers and conditions for voluntary memberships.

35. The reform has altered the institutionalism of the pension systems and created a number of new bodies. For example, the Committee of Pension System Users, which strengthens the participation of pensioners in monitoring and evaluating the implementation of the reform. This Committee reports to the Undersecretary of Pensions and other public sector bodies on evaluations made by its representatives on the workings of the system and proposes strategies of education and dissemination. Such progress relating to participatory mechanisms is, however, insufficient, given that the Committee of Users has only a consultative role; analysis of its reports reveals that many of its observations have been reiterated for two years, without having been acted on by authorities.

36. The reform has managed to increase pension coverage in Chile⁵³. However, the system of individual capitalization maintains and reproduces inequality. This is because, given its nature, it omits intra- and inter-generational solidarity mechanisms. Therefore, these mechanisms must necessarily redistribute from the contributory pillar in order to effectively comply with the principle of solidarity. Nevertheless, in the current system, the solidarity shortcomings of the individual capitalization scheme are the responsibility of State taxation and administration.

⁵² Two of the main functions of the pension system are not fulfilled by the current privatized system: the generation of a sufficient or minimum quantity of income for people who leave the active labour-force; and providing protection against contingencies, especially poverty in old age. In addition, the system has not succeeded in providing widespread coverage for older persons, or managing to ensure a significant income replacement rate during a worker's active employment.

⁵³ In the AFP system, the effective pension coverage (the percentage of individuals making contributions divided by the economically active population) has remained at around 60% in 2010. Regarding the Solidarity Pillar, in July 2010 coverage widened from 50% to 55% among the lowest income groups in the country; in December 2010, almost 421,000 PBSs were paid out to older persons and 221,000 to disabled persons; this represents an increase of more than 30,000 payments compared to the same month in 2009. In 2010, 413,000 old age pensions with APS were paid out, along with 20,000 disability pensions. This represents more than 180,000 additional payments compared to December 2009. (ILO, 2012. Global Extension of Social Security, GESS).

Accordingly, the redistributive and gender solidarity functions, for example, are situated beyond the contributory system and relegated to public assistance. The ILO has signalled that the Chilean scheme is organized without due consideration to the principles of solidarity, shared risks and collective financing, which constitute the essence of social security systems in general⁵⁴.

37. Access to the Basic Solidarity Pension is not universal. Rather, it constitutes a benefit based on exclusion (i.e. non-beneficiaries of the social security system pension), which is applicable to the poorest 60% of the population. On the other hand, in its contributory pillar, the reform rewards saving and personal effort, i.e. individuals making more contributions enjoy better pensions. A significant number of workers in Chile have not managed to make their contributions as regularly as required under the new system. As a consequence, the majority of these individuals will receive significantly lower pensions than their salaries. It therefore remains uncertain as to whether this situation is reparable through intra-family assistance or State subsidiaries⁵⁵.

38. Regarding gender inequalities, women in Chile retire at the age of 60 and men at 65. Considering that male life expectancy is around 75 years, men's pension funds have to cover a period of approximately 10 years. Female life expectancy, however, is around 80 years, meaning that their pension funds have to cover a period of approximately 20 years. If both sexes retire at their respective legal ages, having accumulated the same total amount in their pension funds, women's pensions will be almost half that of men. This particular example of inequality faced by women can be added to the pension gaps they face and the lower rates pay for the same work carried out. Efforts have been made to bridge this sizeable pension gap by means of a credit bonus per child scheme and by separating applications for the Disability and Survivor Insurance according to gender⁵⁶; however, in 2010 the excess reached just 0.2%, which has an extremely reduced impact on the growth of women's pensions. In its 2011 report, the Committee of Users noted that, since a prudent amount of time had passed since its implementation, it was the right time to analyse the adequacy of these measures in overcoming or decreasing the gender inequality prevalent in the pension system.

39. The reform succeeds in making progress in terms of its provisions favouring the exercise of the right to pensions of insufficiently protected workers (whether part-time, occasional, self-employed or homeworkers). However, there are still omissions in regard to seasonal forestry and agriculture workers and homeworkers. The majority of temporary workers (57.6%) come from households from the two lowest income quintiles, approximately 50% claim to have no work contract, around 40% are unemployment insurance claimants and 25% make no pension contribution payments whatsoever (CASEN 2009). Furthermore, 57% of homeworkers have no formal labour or pension relationship, and a significant percentage of these individuals who do make contributions are known to make them at lower proportion in respect to their overall income (CASEN 2006). The Committee of Users (2011 Report) warns about the high levels of labour and pension vulnerability

⁵⁴ Resolution from the 98th Session ILO Conference (June 19 2009), relating to Convention No. 35.

⁵⁵ Legal brief, Labour Economics Programme, 2007, submitted to Presidential Advisory Committee on Pension Reform.

⁵⁶ Given women's lower accident rate and higher life expectancy, the reform noted that in applications for the Disability and Survivor Insurance (SIS) and for the separation between men and women paying into the scheme, excesses stemming from different rates should go to benefiting women.

among these groups of workers and has called for authorities to devise an action plan to mitigate this situation.

40. Some of the main responsibilities of the Ministry of Work and Pensions' Undersecretary of Pensions are as follows: to design and coordinate the implementation of strategies for informing the public about the pensions system; to make it easier for people to exercise their related rights; and to run the Pension Education Fund (FEP). Although the pension reform established spaces and instruments to guarantee the dispersal of information and citizen participation, there are still 25 regulations governing the pension system and approximately 15 institutions empowered to fulfil this job. A framework such as this is therefore difficult to understand for the users, in terms of both their benefits as well as access to the system and how the complaints procedure operates. As such, the FEP is a powerful instrument of public policy. However, since it has been operational for a period of four years, an evaluation into how it functions and what impact it has would at this juncture be beneficial. Among other aspects, in its 2011 report the Committee of Users noted the advantage of gauging the opinion of users in terms of the steps taken when an individual retires, as the prevailing public perception is that this constitutes a particularly difficult process.

41. The legislation only provides three justifiable benefits within the pension system reform: the credit bonus per child scheme and the subsidy for hiring young people⁵⁷. The protection of other benefits enshrined in the pension system relates to its administrative mechanisms. These are either established by general legislation or are those that specifically define the supervisory bodies. These latter bodies fulfil, simultaneously, regulatory and auditory roles, not only for the procedure of assigning benefits, but also of determining the nature of the benefits themselves.

42. To date, there are three charges or complaints of non-compliance of pension-related rights levelled against the Chilean State. In December 2005, a group of teachers from the town of Chañaral filed a complaint before the INDH Committee (Petition No. 345-05) citing the non-payment of a pension debt held by the town's Municipal government, despite the Supreme Court having order the payment to be made. The other two complaints relate to the application of ILO Conventions 35 and 37; the first was filed by the College of Teachers in November 2009 for the non-compliance of pension payments, which had been outstanding since 1980, when the responsibility of education issues were transferred to the municipalities. The second, from May 2011, concerns the National Confederation of Municipal Employees of Chile (ASEMUCH) in relation to the establishment of the remunerations assigned for the calculation of old age pensions.

Article 11: adequate standard of living

Housing

43. The human right to adequate housing is not included in the Chilean Constitution. The concept of housing used in social policy is one of a material asset acquired by means of property. This is a

⁵⁷ In addition, violations of the provisions established in the Military and Police Force retirement systems are actionable. In these sectors the pension systems are run in accordance with the principles of distribution and defined benefits for all users. This system was not subject to reform in 1980.

distant notion from the right to have a place in which to live in security, peace and dignity, as enshrined in the human rights instruments ratified by Chile.

44. Progress made during the period can be exemplified by the reduction to the housing deficit in absolute terms. However, the INDH has confirmed that housing policy has been limited by the setting of certain basic regulations and the provision of financing to individuals for them to solve the housing question themselves. Housing policy has been successful in quantitative terms, but it includes serious shortcomings in its qualitative aspects. For example, the concentration of vulnerable families in large housing areas on the peripheries of urban areas and housing which is of a low standard and poor quality. Essentially, the welfare housing model which has been in place for decades has not been changed: people needing State assistance to access housing are still the subject of “benefits” and the system of subsidization still rests with the financial market of construction companies. A model persists whereby low-cost housing is prioritized. This includes reduced standards of insulation, materials used and overall finishes, resulting in a minimal standard of quality. The concept of social housing is one of low-cost builds and, as such, does not take into account what the finished product (i.e. the house itself) represents for the inhabitants or for the urban location in which it is located.

45. A recurring criticism of the Chilean housing policy is the non-regulation by the State of the land market. This means the location of social housing is based not on policy decision-making but on offers made by the private sector. As long as the State is not actively involved in the planning of urban development and land management, affordable housing for the most vulnerable sections of society will continue to be located in sub-standard areas of cities, thereby perpetuating social exclusion and spatial segregation. The State must reassume an active role in city planning and land management, in order to control urban speculation as well as to promote social integration and reduce segregation. It must also introduce legal reforms allowing the purchase of land for social projects and devise an urban development policy that facilitates equitable and balanced growth within the country’s cities.

46. The reconstruction experience following the 2010 earthquake and tsunami has revealed how, when implementing public housing policies, a lack of active government involvement and the limited regulation of the private sector can increase already existing social segregation and strengthen real estate speculation⁵⁸. According to the National Movement for Fair Reconstruction, the real estate market supply that determines the type and form of subsidy management obliges families to leave the neighbourhoods in which they have lived for decades⁵⁹, “since real estate companies have no other proposals for them in these neighbourhoods, due to high land prices, as

⁵⁸ National Movement for Fair Reconstruction (2011). Report for the United Nations Special Rapporteur on the Right to Adequate Housing: The earthquake-tsunami of 27 February 2010 and the reconstruction process in Chile.

⁵⁹ According to the Undersecretary for Housing and Urbanism, Andrés Lacobelli, the reconstruction of housing using the subsidy scheme creates a problem: “there is no sufficiently cheap land in places like Gran Concepción or the centre of Talca for reconstructing houses with the amounts provided by the Government. With a little more than 600 UF (‘Unidad de Fomento’ or ‘Unit of Account’) per family, it is only possible to build new housing in large, previously agricultural areas on the outskirts of the cities. People choosing to accept new homes in these areas will have to say goodbye to all the benefits they had previously when living in the centre”. Ibid p. 12.

well as the ulterior motive (...) of undertaking construction projects for other sections of society that are able pay the asking price. The future for these families (...) is to leave their neighbourhoods and move to the outskirts of the city, to segregated areas”⁶⁰. This was the case for almost 50% of the families affected by the earthquake and tsunami in 2010.

47. The people affected⁶¹ live in uninhabitable conditions and face serious obstacles in securing housing located close to their established networks or places of work, mainly due to difficulties in accessing the urban area. According to research conducted by the housing NGO Un Techo Para Chile in 2009, collective living of some sort was present in more than one third of Chilean homes, representing more than 60% of the country’s housing deficit⁶². Within the context of reconstruction, people living in collective conditions have not been prioritized as part of the subsidy provision programme⁶³.

48. The difficulties arising as a result of the housing policy, and in the reconstruction process in particular, have severely impacted upon women who, as well as having lost their homes, have experienced a reduction in the educational system, in nurseries and kindergartens, and in hospital infrastructure⁶⁴. Women have played an important role in the leadership of and participation in organizing their communities following the natural disaster. Nevertheless, their efforts have been consistently confronted by “social and cultural resistance as well as opposition from traditional leaders and invalidation from the authorities”⁶⁵. In addition, there has been an increase in complaints of domestic violence since the earthquake⁶⁶, as well as procedures governing the provision of housing subsidies that encourages the return of women to their abusers⁶⁷.

49. The active participation of Chilean society in the decision-making process of what constitutes the public interest has been a challenge for a number of years. However, this deficit is particularly serious in terms of the housing trend witnessed in the reconstruction process. The Ministry of Housing has adopted the Exempted Resolution No. 2859, from 2009, which governs citizen participation on housing and urban issues, while Congress has passed the Citizen Association and Participation in Public Management Act (Law No. 20.500, passed in 2011). It remains to be seen if this legislation can help to overcome the weakness of citizen participation in terms of housing

⁶⁰ Ibid p. 17.

⁶¹ According to the CASEN Survey, “The strategy of collective living is used by households and nuclear families to resolve the shortage of housing, sharing one home between two or more households and nuclear family members”.

⁶² Bustamante, Francisca and Sagredo, María Paz (2009). People living in collective conditions in housing committees: An exploratory analysis. CIS Un Techo Para Chile.

⁶³ INDH (2011). Report on Post-earthquake Reconstruction from a Human Rights Perspective.

⁶⁴ Ibid.

⁶⁵ Pan American Health Organization (2010). The Chilean earthquake and tsunami of 27 February 2010: Stories and lessons learned in the health sector.

⁶⁶ Women’s Organization of the Maule Region. Women’s Agenda: An Equitable Reconstruction.

⁶⁷ According to Valeria Leal, Local President of the Social Organizations of Constitución, at least 30 women have had to return to their abusers in order to obtain a housing subsidy. This is because they have been unable to verify their position as head of the household under the terms of the Social Protection Index [Ficha de Protección Social] (one of the required instruments for accessing the subsidy), as their employment status was not deemed “stable”. INDH, op. cit.

policy, which tends to customize housing subsidies to the detriment of other applicant and organizational groups.

Environment

50. The Constitution includes the right to live in an environment free from pollution, within the catalogue of fundamental rights. In recent years, there has been growing public concern in Chile regarding investment projects and interventions in the environment that are harmful to the development of life and public health. Environmental legislation has existed in Chile since 1994, the year in which Law No. 19.300 on the General Environment Act was passed. This legislation was the subject of important reform in 2010 with the enactment of the Law No. 20.417, which created the Ministry of the Environment, the Environmental Assessment Service and the Superintendency of the Environment. Based on these provisions, and in conjunction with the legislation on transparency and access to public information, the INDH has reviewed compliance with the recognized right from the perspective of the standards established in international human rights law: the right to access public information, the right to public participation in environmental decision-making, and the right to environmental justice⁶⁸.

51. In its 2011 Annual Report, the INDH confirmed that the country had made progress in terms of the environment, although this progress has not been harmonious or symmetrical. Chile is better placed to guarantee all persons or public groups the right to access information on environmental matters. While problems persist, the current reality is improved as a result of the aforementioned regulations. However, the problem is that this right is closely linked to the question of participation and environmental justice, and these latter two themes have not undergone the same level of development. As long as these two issues remain underdeveloped, access to information can often be a fruitless exercise.

52. Congress recently passed Law No. 20.600, creating a series of new Environmental Courts (June 2012). These special legal bodies have been operating gradually since December 2012. In August 2013, the Environmental Impact Assessment System (SEIA) regulation was passed, which helps to provide, among other aspects, spaces for public participation in research and evaluation relating to investment projects suspected of affecting the environment.

53. In its 2011 Annual Report, the INDH noted that the right to a pollution-free environment was being violated across all regions of the country. In at least two cases, the State was directly responsible for damaging the health of individuals. The victims in these cases have still not been

⁶⁸ In 1984, the UN Conference on Environment and Development (the Rio Summit) issued the Rio Declaration, consisting of ten principles which established parameters for dealing with environmental issues: "Environmental issues are best handled with the participation of all concerned citizens, at the relevant level. At the national level, each individual shall have appropriate access to information concerning the environment that is held by public authorities, including information on hazardous materials and activities in their communities, and the opportunity to participate in decision-making processes. States shall facilitate and encourage public awareness and participation by making information widely available. Effective access to judicial and administrative proceedings, including redress and remedy, shall be provided". Rio Declaration on Environment and Development, UN Doc.A/CONF.151/26/Rev.1.

adequately compensated. The first relates to the Plomo de Arica (Arica Lead) case, in which the State failed to meet its obligations to protect the population from pollution and to make public all necessary information that would have allowed people to have taken preventive action and limit the damage caused by lead and arsenic contamination. The second relates to the Ventanas-Puchuncavi case, which constitutes one of the most disproportionately indebted environmental cases in the country, giving rise to economic, labour and health issues. Inhabitants of the town of Ventanas have still not received compensation for the environmental problem that occurred 18 years ago, when the area was declared as being saturated with sulphur dioxide and breathable particulate matter.

Article 12: right of everyone to the enjoyment of the highest attainable standard of physical and mental health.

54. Inequality in the full enjoyment of the right to health is one of the biggest problems in Chile. This is fundamentally reflected by epidemiological profiles (i.e. how people become sick) and access to healthcare services. An equal coverage and opportunity does not exist for different social groups according to their economic conditions, ethnicity or gender, among others. As noted by the Pan American Health Organization (PAHO), “there remain large geographical, economic, ethnicity-based and educational differences, among others, in the country, which are determining factors in health inequalities”⁶⁹.

55. The legal prohibition of all types of abortion has not been the subject of legal reform. The prohibition, however, has not impeded abortions from being carried out: it is estimated that between 120,000 and 150,000 abortions take place every year⁷⁰. According to the WHO, there are now safer methods to interrupt a pregnancy (misotrol or misoprostol), which reduce the number of hospitalized women and deaths caused by abortions. However, the clandestine nature of the practice continues to affect the health and life of women: the number of hospitalizations for abortions was 34,968 in 2002 and 33,777 in 2009; it is not possible to use records to accurately ascertain exactly how many of these hospitalizations related to self-induced abortions. The abortion-related mortality rate⁷¹ has decreased from 5.2 to 2.4 per 100,000 live births between 2000 and 2010. The other side of the prohibition relates to the imprisonment of women carrying out abortions: according to information from the Public Prosecutor’s Office, between 2005 and 2011, courts had sentenced at least 96 women to prison time, of which 60% were aged between 18 and 29⁷².

56. A number of bills have been submitted to Congress proposing reforms to current legislation. They have sought the regulation of abortion in cases of risks posed to the life and health of the

⁶⁹ PAHO/WHO (2010). Health in Chile, p. 11.

⁷⁰ The first statistic comes from Shepard, Bonnie and Casas, Lidia (2007). Abortion policies and practices in Chile: ambiguities and dilemmas. Reproductive Health Matters, United States. The second statistic comes from the Ministry of Health. Health objectives for the decade 2000-2010.

⁷¹ Undersecretary of Public Health, Ruling No. 2278, June 2012 in response to a request made by the INDH on this issue. The authority clarified that the rate for 2010 was based on preliminary information.

⁷² National Auditor, Ruling No. 035/2012 in response to a request made by the INDH on this issue. The number of women sentenced is classified as “at the least”, because of all the people convicted (300) there is no information available based on sex.

mother, serious or life-threatening foetal malformation and rape⁷³. In April 2011, the Senate rejected the idea of legislating on the matter, and in the process brought to an end the possibility of debating this issue for a period of one year.

57. Progress made during the period includes: i) the enactment of Law No. 20.418 (February 2010) on the Establishment of Standards on Information, Guidance and Services Pertaining to Fertility Regulation, which resolves a lengthy debate on emergency contraception and the age limit for independent adolescents to access the contraceptive pill⁷⁴; ii) the reform of the health code, which empowers midwives to point out, use and prescribe methods of contraception including emergency contraception⁷⁵; and the Order issued by the Undersecretary of Public Health reiterating people's right to fertility regulation and emergency contraception⁷⁶.

58. Adequate attention to people's sexual health and the prevention of problems like teenage pregnancy continue to be lacking. No less difficult is the situation of ambiguous legal provisions relating to young persons' sexual and reproductive rights. Essentially, the legislation on fertility regulation respects patient confidentiality in cases where the mother is aged between 14 and 18. On the other hand, legislation on the rights and responsibilities of patients makes no specific mention of this age range, leaving the doctor to decide on whether this right is upheld or denied: "All persons have the right to be informed, in an opportune and clear manner, by the doctor or other attending health professional (...), in accordance with his/her age, personal and emotional condition. When the condition of the person, in the judgement of the attending health professional, does not allow him/her to receive the information directly or he/she suffers from difficulties in understanding or is experiencing altered states of consciousness, the information (...) shall be provided to his/her legal guardian, or in their absence, to a person under which the care of the patient falls" (art. 10)⁷⁷. Given the prevailing lack of awareness regarding the rights of young persons, it can be stated that the absence of explicit provisions protecting this group will lead to serious rights violations. In this particular case, for example, it relates to the autonomy of decision-making in terms of sexual and reproductive health of teenagers between the ages of 14 and 18.

⁷³ The rejected bills were: 1) On therapeutic abortion (Official Gazette 6522-11) submitted by the Senator Camilo Escalona in May 2009; 2) Reforming the Health Code to include circumstances under which a pregnancy can be interrupted (Official Gazette 6591-11) submitted by Senators Guido Girardi and Carlos Ominami in July 2009; 3) Decriminalizing the practice of interrupting a pregnancy on medical grounds (Official Gazette 7373-07) submitted by Senators Evelyn Matthei and Fulvio Rossi in December 2010.

⁷⁴ The law states that "*all persons have the right to receive education, information and guidance pertaining to fertility regulation, in a clear, understandable, comprehensive and, if necessary, confidential manner*" (article 1). The authorized contraceptives include the use of emergency contraception, with the exception of adolescents under 14 years of age: "*in cases in which the method of emergency contraception is requested by a person under 14 years of age, the attending health professional, whether in the public or private healthcare system, shall dispense the corresponding medication, and shall later inform the parent or legal guardian of the minor, as indicated by the minor*" (article 2, second paragraph).

⁷⁵ Official Gazette 7245-11.

⁷⁶ Undersecretary of Health, Order No. 3681, November 19 2010. "[...] The reasons relating to methods of regulating fertility have broad indications and represent an unconditional right of all people under the law".

⁷⁷ Law No. 20.584 which *governs the rights and responsibilities of persons in relation to actions linked to their healthcare treatment*. Published on April 24 2012, and enters into force on October 1 2012.

59. Another obstacle to decision-making in sexual and reproductive health stems from the lack of contraceptives, particularly emergency contraception, available in public health centres and hospitals. During 2010, there was a scarcity of the emergency contraceptive pill (PAE), which led to a 42% reduction of its distribution to patients⁷⁸. In 2011, the Ministry of Health reported on having resolved the problem. Only 35 local Districts in the country showed a reduction in PAE distribution⁷⁹. Regarding other methods of contraception, available information shows that coverage of women of a reproductive age in the public system is just under 35%.

60. Regarding teenage pregnancy, health targets for period 2000-2010 were missed. The birth rate for teenagers between 15 and 19 years old was reported as 54.3 per 1,000, and 1.61 for those aged between 10 and 14 years old⁸⁰. These pregnancies occur primarily in adolescents from the lowest socio-economic group, where their lives are affected by social inequalities⁸¹. Research conducted by the Ministry of Health reveals that obstacles exist in accessing health services for the prevention of teenage pregnancy. Among these are bureaucratic barriers in healthcare treatment (for example, requesting health insurance details), the lack of confidentiality during appointments, short time periods assigned for treating teenagers, and a lack of trust and embarrassment if treatment is provided by a health professional of the opposite sex to the patient⁸².

61. As the INDH reported in its 2011 Annual Report, in terms of sexual education, conflicting views on how to educate in this area have led to the implementation of a very general education policy. This means responsibility has primarily fallen to the family, giving “full autonomy to the educational establishments for devising their own plans and programmes according to the requirements and options available to the educational communities”. The State has non-delegable roles of promotion and regulation and may not delegate this issue on the grounds of academic freedom. In the seven programmes made available by the Ministry of Education, together with SERNAM in 2011, at least two fail to conform to human rights standards. This is because their reproductive health content is limited to one-of-a kind responses of a heteronormative character (reaffirming the idea of there being only one form of family based on heterosexual relations). This can lead to situations of discrimination relating to people with diverse sexual orientations or gender identities⁸³. This is a preoccupying situation, especially considering that the programmes

⁷⁸ La Tercera newspaper. Provision of the “morning after pill” rose by 44% in the last year compared to 2010. Edition published on Saturday July 28 2012, p. 11.

⁷⁹ Dides, Claudia, Cristina Benavente and Isabel Saez (2011). Provision of emergency contraception in Chile’s local municipal health system; situation status. Document series No. 2, Development Research Programme, Universidad Central.

⁸⁰ Ministry of Health. Targets 2011-2020. The health target for the period 2000-2010 was to reduce the birth rate of teenagers between 15 and 19 years old to 46 per 1,000 births, and to 0 for girls aged between 10 and 14 years.

⁸¹ Information from 2006 shows that 48% of teenage mothers belong to socio-economic groups living below the poverty line. Furthermore, 74% of this group come from the two lowest income quintiles. Ministry of Health, National Regulations on Fertility Regulation.

⁸² Ministry of Health, National Programme for the Comprehensive Health of Teenagers and Young Persons (2010). Research on the obstacles to accessing healthcare services for the prevention of teenage pregnancy in Chile.

⁸³ The programmes are: Learning to want (Alliance for the family); Adolescence: time for decisions (Centre for Reproductive Medicine and the Comprehensive Development of Young People); Sexuality, Self-esteem

must be paid for (i.e. they are not free of charge) and that schools must compete for funding to partially cover their costs.

62. Between 1991 and 2010 there have been 12 HIV/AIDS prevention programmes in the country. This represents a notable feat. However, the content and emphasis of these programmes has not been exempt from criticism. This has been due to their subject matter, which touches on the theme of sexuality, and the knowledge, perceptions, fears and myths relating to its formation, as well as on the values that should or should not govern the exercise thereof. From a public health perspective, the observations have centred on the weakness of prevention, either for the focus of the campaigns themselves or for the lack of complementary measures directed at providing people with information and guidance. Various NGOs and research centres have signalled that: i) the public health authority's policy has prioritized treatment of the sickness over prevention; ii) there has been no innovation or critical evaluation undertaken until now; and iii) the campaigns have given off unclear messages and are lacking in a united approach (Ferrer, Cianelli, & Bernaldes, 2009). In fact, the 2010 campaign was heavily criticised for "focusing on the prevention of HIV screening. This position is crucial given that HIV screening does not constitute a preventive measure, rather a tool which allows for diagnosing an already established condition, which has come too late"⁸⁴.

63. One particularly complex issue has been the enactment of Decree 45 from 2011, which regulates the HIV screening exam. It makes this exam compulsory for all pregnant women, thereby contravening provisions of Law No. 19.779 (the AIDS Act) which makes explicit the voluntary character of the ELISA test. The Decree also outlines that "in cases when a patient who has been diagnosed with HIV does not voluntarily provide information about their health condition to previously detailed sexual partners, the attending doctor may contact these persons, discreetly, to offer to them the screening exam and appropriate preventive measures and treatments, without prejudice to the information of the parties involved being kept confidential" (Art. 4). Groups belonging to the Assembly of Social Organizations and NGOs working on HIV/AIDS (ASOSIDA) and Vivo Positivo (I Live Positive) have stated that, as a result of this action, the Ministry of Health "has abandoned its responsibility of promoting health and preventing HIV using the resources allocated to it for this purpose by the national budget, and has changed the use of such resources to fund a campaign designed to promote the strategy of HIV screening, broadly recognized as ineffective in halting the spread of this epidemic"⁸⁵.

and Pregnancy Prevention in Adolescents (Aprofa); Comprehensive Sexual Education Course (Centre of Comprehensive Sexual Education); Sexuality and Affectivity Learning Programme (Faculty of Social Sciences, Universidad de Chile); Value, Affectivity and Sexuality Education Learning Programme (Universidad San Sebastián), and Teen Star (Universidad Católica de Chile). The INDH has reported that at least two of these fail to conform by international human rights standards in terms of information on different and safe methods of contraception, sexual health and reproductive rights, and respect for and non-discrimination of sexual orientation (Learning to want; Comprehensive Sexual Education Course).

⁸⁴ MUMS disagree with the HIV/AIDS prevention campaign. Available at: <http://www.asosida.cl/web/2010/12/mums-discrepa-de-la-campana-de-prevencion-en-vihsida/>

⁸⁵ <http://www.radiomitos.cl/magazin/?p=9047>

64. The reform of the ISAPRES Act⁸⁶ in 2005 granted to the institutions providing healthcare the unilateral ability to change the prices of private health insurance plans according to, principally, criteria based on the age and sex of its members. This provision has produced a considerable increase in the number of appeals for legal protection filed in response to the rising cost of health insurance plans, as well as in the amount of declarations of incompatibility regarding the relevant article emanating from the Constitutional Court. This body passed three sentences between 2008 and 2009 upholding the declarations filed⁸⁷, and in August 2010 it ruled as unconstitutional the regulations which enabled ISAPRES to discriminate in insurance premiums on the grounds of age and sex⁸⁸. In its sentence, the Court recognized the existence and full exercise of the right to health protection and the right to social security, noting that “the principal social rights that the Constitution guarantees to all persons stem from the possibility to access certain benefits. This is the case for the right to health protection, in that it must protect ‘the free and equal access to actions’ (article 19, No. 9); the same applies to the right to social security, in which State action must be directed towards ‘guaranteeing all inhabitants access to the enjoyment of benefits (article 19, No. 18)’⁸⁹. To ensure this occurs “the benefits provided in relation to the rights in question must be equal and sufficient, whether they are provided by the State or by private actors. The relevant expressions outlined in the Constitution are as follows: ‘free and equal access’ (article 19, No. 9) and ‘uniform basic benefits’ (article 19, No. 18)”⁹⁰.

65. The INDH has deemed as valuable the Constitutional Court’s decisions outlining the legal status, and not merely the expectation, of social rights. Likewise, the application of the principle of equality to ensure non-discrimination on the grounds of age and sex in the pricing of health insurance plans. As a consequence, the Court has reaffirmed the State’s obligation to protect this right against private actors who may affect the enjoyment thereof.

66. The cost of medication represents 57% of total health expenditure for patients from the first income quintile; this figure drops to 39% for the fifth quintile⁹¹. This is one of the best indicators in terms of demonstrating how the right to health is exercised. The State has adopted measures to reverse this imbalance, including the incorporation of pharmaceutical packages as part of the health guarantees under the AUGÉ (Explicit Guarantees of Universal Access) plan. However, deficiencies still exist in the implementation of these guarantees: in 2011, audits conducted by the Superintendency of Health across 293 establishments found that in 42.7% of premises, there was no remaining stock for one or more of the medicines and/or medical supplies used for the health conditions covered by the GES (Explicit Health Guarantees) and treated by means of the APS⁹².

⁸⁶ Law No. 20.015, which amends Law No. 18.933 on the private institutions providing healthcare (ISAPRES), enacted on May 3 2005.

⁸⁷ Sentence Roll No. 976, June 2008, Sentence Roll No. 1218, July 2009 and Sentence Roll No. 1287, September 2009.

⁸⁸ Sentence Roll No. 1710, August 6 2010.

⁸⁹ Ibid, referring to the 114th.

⁹⁰ Ibid.

⁹¹ PAHO/WHO and Ministry of Health (2012). How can access to medicine be improved in Chile? Health Forum, 3rd Day, Santiago March 28.

⁹² Superintendency of Health. Audit report on guaranteed medicines in the public sector, 2011. Available at: http://www.supersalud.gob.cl/portal/articles-7399_recurso_1.pdf

67. The government has set a target of at least 60% of the medicines taken in Chile to be generic and of proven quality. It says this will be achieved through the formalization of the National Medicine Agency (ANAMED) and enforced by a future National Drug Act, arising from the reform of the Health Code. These reform proposals are currently under discussion in Congress. In particular, the National Drug bill establishes the mandatory prescription of generic name medicines and dispensation per unitary dose. It also outlines assurances of the quality and bioequivalence of medicines, grants the status of health establishment to pharmacies and that of health professional to pharmacists, encourages the sensible use of medicines, and sanctions undesirable and negative incentives and vertical integration⁹³.

68. The introduction of generic medicine to the market has encountered certain difficulties, as reflected by the low percentage of progress made concerning bioequivalence in Chile. Firstly, only 35.3% of laboratories have complied with Good Manufacturing Practices (GMP⁹⁴). Secondly, provisions on bioequivalence show similar deficits in terms of application: to the end of 2011, of the 412 medicines required to be bioequivalent, only 54 in the pharmaceutical industry were in compliance with Ministry of Health requirements⁹⁵.

Article 13: education

69. The current education system of mixed provision has achieved significant progress in educational coverage. Primary education now covers 93.2% of the population, while secondary education extends to 94.7% (CASEN 2009). Both kindergarten and higher education has more than doubled in the last 20 years, and kindergarten levels I and II have increased by a similar amount to that of primary education. However, this coverage has also been simultaneously affected by discriminatory regulations, mechanisms and practices within the education system. These have generated inequalities with regards to the quality of teaching/learning processes and opportunities of continuing one's studies at university level. In Chile, some of these problems have gained more public visibility as a result of the demands made by the student movement, while others have remained less visible. This imbalance makes it more difficult for the State and society at large to perceive the latter ones as ongoing challenges⁹⁶.

70. The demands of the student movement to resolve a series of problems principally related to the cost and quality of education has meant that the right to education, through public debates, has been at loggerheads with the specific notion that conceives of education as a consumer good. Demands have been made of the State regarding the right to a free and quality education for everyone. Questions have been largely directed at the financial profit that exists across all levels of the education system, at the financial debts built up by families to fund university degrees, at the self-financing of the public sector universities, at the system of shared financing within the school

⁹³ Official Gazette No. 6.523-11, reissued notifications, 6.037-11, 6.331-11 and 6.858-11.

⁹⁴ The Good Manufacturing Practices (GMP) is a standard used to achieve GMP certification in Chile, dating back to 1999. To date, not all laboratories comply by this quality standard.

⁹⁵ CEPFAR Pharmaceutical Policies. Bioequivalence: the failure of a public policy. May 21 2012. Available at: <http://www.politicafarmacuticas.cl/2012/05/21/bioequivalencia-en-chile-el-fracaso-de-una-politica-publica>

⁹⁶ INDH, 2011 Annual Report, Human Rights Situation in Chile.

system, at the limits to student participation, and at the fact that the market system fails to ensure either quality or equity of opportunity, and that it actually generates socio-economic discrimination⁹⁷. Student movement demands are supported by the general public: 39% of the population believe the right to education in Chile is not protected and 77% think the poor quality of education is the main reason for inequality⁹⁸. In addition, 80% disapprove of the element of financial profit existing in education⁹⁹.

71. The right to education implies, at the very least, three dimensions to ensure its enjoyment (access to the process of education and learning) and two related forms of liberty (the freedom to choose education and academic freedom). The specific obligations generated to guarantee the right's protection, the relevant guiding standards, as well as those for ensuring its exercise, have been defined during the last decade and incorporated into national legislation in a significant way. This has been done in line with provisions established in international human rights instruments. Nevertheless, the right to education does not form part of the content catalogue of article 20 of the Constitution, which establishes basic rights protected under law. In August 2011 a motion was presented before Congress¹⁰⁰ seeking to amend the weakness in the safeguarding of the right to education. However, the motion lacks an urgent debate status.

72. Regulations within Chile's legislative framework continue to erode the right to the universal principles of education at the primary level, and to its widespread access at the secondary level. These are mainly the result of the systems of financial fees and selection that exist in education. Such elements restrict access according to the abilities or socio-economic characteristics of students and/or their families. The General Education Act (art. 12) governs student selection at primary and secondary levels. It does not, however, prohibit all suspect classifications of discrimination¹⁰¹. Moreover, legislation which determines the system of financing whereby kindergarten and school establishments receive State subsidies, violates the constitutional provisions regarding the obligation to provide free education at these levels. In higher education, there has been no progress reported in terms of the progressive implementation of free education, as indicated by international standards. Conversely, a system of shared financing has

⁹⁷ Letter sent to the President of the Republic by CONFECH on August 23 2011: <http://es.scribd.com/doc/62915395/Carta-Presidente>

⁹⁸ INDH, First National Human Rights Survey, March 2011.

⁹⁹ Support for the student movement and its demands have risen, according to monthly surveys conducted by Radio Cooperativa, Imaginación consultancy firm and the Universidad Técnica Federico Santa María, increasing from 27% support at the beginning of the conflict to more than 75% in August 2013. Furthermore, the National Public Opinion Study conducted by the Centre for Public Studies (CEP) found that 80% of those surveyed disagreed with financial profit in education (CEP, June-July 2011, published in September).

¹⁰⁰ Official Gazette 7.851-04. Constitutional reform bill on safeguarding the right to public, free and quality education. Presented on August 9 2011.

¹⁰¹ Art. 12 of Law No. 20.370, prohibits the selection of students from between kindergarten and sixth grade levels on the grounds of ability or socio-economic circumstances. This leaves open the possibility of selection being made based on other reasons or suspect classifications, such as on the grounds of religion, political allegiance, etc. There is no restriction on selection within secondary and higher education, leaving a broad range of possibilities to be selected at the discretion of educational authorities.

been implemented at the school level¹⁰², and credit systems like the financial access mechanism initiated in higher education. This reflects a backward step in terms of the right to education. It also represents a problem in terms of the State's obligations to respect and guarantee economic, social and cultural rights.

73. The State has adopted measures to mitigate the inequality generated by the educational system, regulating the scale of direct fees and subsidizing indirect expenditure for students from low income families. These measures still prove insufficient in counteracting the discriminatory effects on the access to and quality of education. The Subsidies Act¹⁰³ sets the maximum fees based on enrolment and schooling in the establishments receiving State financing. It also determines other associated payments as non-obligatory, such as regular payments made by Parent Centres (associations representing parents and guardians in schools)¹⁰⁴. In addition, the Preferential School Subsidy Act¹⁰⁵ establishes the practice of differential treatment in order to improve educational processes for the most vulnerable students. For example, it places them in one of the private subsidized schools by providing them with more substantial grants. This is done on the condition that these students are subject to no selection process and that no fees derive from the shared financing system used to pay for them. This type of benefit has recently been extended to cover the last two years of primary education as well as into secondary education¹⁰⁶. In spite of these measures, schools still experience higher levels of socio-economic segregation, while the prohibition of direct fee-charging of families is not always enforced. This can be confirmed by the more than 1,400 complaints received by the Ministry of Education in 2010 and more than 1,100 recorded in the first half of 2011 relating to pre-school, primary school and secondary school students¹⁰⁷.

74. Access to higher education is more limited than at the school-level, given that 85.4% of its financing comes from private sources¹⁰⁸. While enrolment at this level has significantly increased to cover some 40% of the population aged between 18 and 24 years old¹⁰⁹, access is still largely determined by family income. It is also dependent on the cumulative effects of access to primary and secondary education of varying degrees of quality, which is itself dependent upon the same variable. Coverage of student grants and loans, in addition to the costs of degrees, differ to the international standard, which establishes universal access to all able students. 57% of higher education students from lower income backgrounds (the first and second quintiles) lack any type of state support when undertaking their studies. This has a particularly profound effect on those

¹⁰² Law from 1993, Decree with the Force of Law No. 2 (Decreto con Fuerza de Ley [DLF] No. 2) from November 28 1998.

¹⁰³ The DLF No.2 establishes the possibility of shared financing and the maximum amounts permitted in schooling, according to the level of teaching and needs of the educational establishment. The Decree of Exemption (Decreto Exento) No. 1789/2007 regulates enrolment fees, prohibiting them in primary education where State subsidies are received, and capping their limits in secondary education.

¹⁰⁴ DLF No. 2 of the Subsidies Act and the Decree of Exemption No. 3/2011, regarding enrolment, Parent Centres and shared financing, as well as fee prohibitions for priority students (Law No. 20.248 art. 6a).

¹⁰⁵ Law No. 20.248, February 1 2008.

¹⁰⁶ Law No. 20.550, October 26 2011, which amends Law No. 20.248.

¹⁰⁷ The Ministry of Education's Public Service Office.

¹⁰⁸ OECD, Education at a Glance 2011: OECD indicators, p. 250.

¹⁰⁹ CASEN 2009.

studying technical and vocational qualifications. This form of higher education has few accredited institutions, meaning students studying at such establishments are unable to access state financing mechanisms. In addition, students enrolling at these institutions are also unable to achieve the performance levels required in order to access grants and loans. In both cases, all necessary requirements have been designed with university-centred higher education in mind. As such, they have not been adapted to meet the relevant needs and abilities of students opting to study technical and vocational education and training.

75. The closure of Universidad de Mar is an emblematic example of the institutional crisis and non-protection of students in Chile. In 2010, the National Accreditation Committee (CAN) endorsed the quality of undergraduate teaching and the institutional standing of the aforementioned university. With accreditation having been awarded, students enrolling in the Universidad de Mar were able to access the state assistance programmes to finance their degrees. In May 2012, a process of auditing and supervision culminated in legal proceedings being brought against the university for illegally accessing accreditation. Charges also included the concurrent use of state resources in the institution's operations, as well as serious noncompliance with its academic commitments. Furthermore, it was found that its academic authorities were lacking in adequate training and even operating with fake degrees. The complaints made at the beginning of 2012, as well as the difficulties faced by students following the closure of the university, demonstrate how the State had certified a series of deficient processes. The experience of the Universidad de Mar students could be repeated in other higher education institutions under investigation for fraudulent access to accreditation, or in those accessing it legally but only obtaining accreditation for one or two years. Effectively, according to figures published by CNA, in 2013 the re-accreditation of 17% of higher education institutions engaging in this latter practice was rejected.

76. There are sections of society which, given their geographic dispersion (rural areas), or for reasons of difficulty in undertaking sustained and successful training programmes (prisoners, adults with incomplete studies, immigrants, indigenous peoples and people with special educational needs), have neither the sufficient numbers nor options to exercise their right to education. This is because these groups do not constitute a strong enough demand for incentivizing private sector investment or because the municipalities in which they reside do not have access to or do not allocate sufficient resources.

77. In 2010 there were 4,806 cases of teenage pregnancy and 7,803 teenage mothers registered by the National Board of School Assistance and Scholarships' (JUNAEB) department of student health. This is in addition to 65 complaints made to the Ministry of Education regarding the failure to safeguard the education of pregnant or mother students. This demonstrates that, despite its strict prohibition since 2000¹¹⁰, the practice of auditing and containing discriminatory practices is a limited one, and it has not been possible to successfully eliminate them simply by means of legal recourse. This preoccupation has been expressed previously by the CEDAW Committee and the Committee on the Rights of the Child¹¹¹. Nevertheless, there has been no significant progress made in terms of the adoption of measures to ensure this group of young persons is able to continue with their studies.

¹¹⁰ Law No. 19.699, August 5 2000.

¹¹¹ CEDAW, CEDAW/C/CHI/CO/4, par. 17 and 18; CRC/C/CHL/CO/3 2007, par. 21

78. The process of generating a culture which is respectful of human rights, in addition to providing education aimed at encouraging coexistence and kinship between peoples and nations begins at school, inside the school establishments. Figures from the National Violence in School Survey show that between 2005 and 2009 there was a systematic reduction in aggressive and violent incidents in schools (12% in terms of physical aggression and over 22% relating to psychological violence). Nevertheless, it is preoccupying that incidents of serious violence which constitute a criminal act, such as sexual assault and the use of fire arms, has increased, from 1% and 2.2% to 3% and 4.3% respectively. Figures such as these have been confirmed by research into bullying by the not-for-profit organization Corporación Opción in 2010¹¹².

¹¹² Opción (2011), *Research on bullying in primary and secondary school students in the Metropolitan Region*. Santiago: Research Department, Corporación Opción.