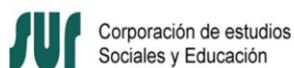


Alternative Report by Civil Society Organizations to the Fourth Periodic Report of Chile on the UN Convention on Economic, Social and Cultural Rights

Presented to the UN Committee on Economic, Social and Cultural Rights

May 2015



Observatorio Ciudadano (Coordinador)

Chile Sustentable

Corporación de Estudios Sociales y Educación SUR

Fundación CREA

Fundación Creando Salud

Fundación Sol

Presentation

The present report has been developed by a group of Chilean civil society organisations that work – from different perspectives – on the promotion and defence of economic, social and cultural rights in Chile. Coordinated by the Observatorio Ciudadano – a human rights organization – the document addresses the issues referred to in the Fourth Periodic Report of the State of Chile to the UN Committee on Economic, Social and Cultural Rights (here forward ‘the Committee’), of the 10th of October of 2013; to the List of Relevant Questions prepared by the Committee the 5th of December, 2014; and to the response to the List of Questions that the State party submitted this past 2nd of April, 2015. It has also maintained an awareness of the Final Observations of the Third Periodic Report on Chile by the Committee, from 1 December 2004. Even though the emphasis of this report is to address the current situation of ESC rights in the country, it is important to remember that Chile had not reported back to the Committee since it received the Final Observations in 2004. For this reason, this report has in its purview a consideration of the recommendations provided by the Committee in its 33rd Session.

I.- Justiciability of ESC rights

In effect, in the Observations to the Third Periodic Report of Chile, the Committee expressed that “... it is concerned that some economic, social and cultural rights are not considered justiciable by the State Party,” making particular reference to the right to housing. In this respect, the Committee observed the scarcity of jurisprudence in which the rights provided in the Covenant had been referred to before the national courts, or in which they have been complied with directly (Para. 12). It thus recommended to Chile “that it increases its efforts to give full effect to the Covenant in its national legislation, and that it continues to clarify the direct applicability of the Covenant in the national courts and communicates the pertinent jurisprudence in its next Periodic Report. In this respect, the Committee reiterates to the State Party in its General Observation No. 9 on the internal applicability of the Covenant. The State party should ensure that the enforcement of rights under the Covenant is fully taken into account in judicial training and it should adopt measures so that their invocation before the courts is better understood” (Para. 29). It also recommended that the State “guarantee the existence of an effective legal and institutional framework for the promotion and protection of all of the rights provided in the Covenant” (Para. 30).

It is important to note that in the responses of Chile to these recommendations in its Fourth Periodic Report and in the List of Questions by the Committee, even if advances in this area are described, these are very limited and do not demonstrate substantive changes in the norms that would enshrine and enable access to justice for claiming these rights. The Complementary Report of the Chilean National Human Rights Institute (NHRI) points to a series of international instruments that the State has ratified (Para. 14), and in regard to the right to work they are pending the ratification of the instruments recommended by the Committee in its 33rd Session (Para. 40).

Recommendations:

- **That legal reforms necessary for enabling the full justiciability of ESC rights are established.**

II.- Constitutional Framework and ESC rights

After 10 years since the last report of the Committee, the country has become fully aware of the limitations of the current institutional foundations to enable the full exercise of ESC rights, and for the same reason is seeking a change of the current Constitution. The principal legal-political framework of the country – designed and imposed during the dictatorship – has sustained a model of development which has generated social, economic and cultural inequalities and has discredited the institutions fundamental to democracy, such as the parliament.

Since the year 2011, during which massive mobilizations for the right to education began, there had already been an increasing level of criticism of the current political Constitution of 1980. The current Government has in fact proposed a change of that Constitution in its campaign platform, arguing that the current Constitution does not consider human rights norms or principles, since it is sustained “by a lack of confidence in popular sovereignty”¹. At the same time they recognize the “limitation of the popular will” through institutional mechanisms such as “the quorum against majorities for the approval and revision of legislation”². For this reason it has proposed a new Constitution which “should enshrine a social and democratic State of rights, which includes economic, social and cultural rights as true obligations of the conduct of the State, in order to ensure minimum standards of social equality for an effective enjoyment of all rights”³.

The institutional limitations to protect and promote ESC rights are evident in the struggle against inequality and poverty. In a report from his recent visit to Chile, Philip Alston, the Special Rapporteur on Extreme Poverty and Human Rights, stated that “worrying rates of poverty and extreme poverty persist, and the levels of inequality are extremely high,” being that [Chile has] “the highest levels of income inequality after taxes and transfers among all of the OECD countries”⁴. The Special Rapporteur reported seeing a highly segregated society in Chile, and recognizing that its institutions are not effectively addressing poverty and inequality. In his statement he recommends that “the Constitutional reform process should ensure the recognition of the full range of economic, social and cultural rights in the newly revised Constitution”⁵.

Clearly the ESC rights enshrined in the Constitution of the country and the legislation which permits access for their realization are not up to the principles and standards established by Article 2 of the Convention, and because of this the Chilean judicial system is not effective in promoting and protecting those rights.

The 1980 Constitution limits **the right to self-determination** established in Article 1 of the Covenant in multiple ways. One of the most substantive enclaves of authoritarianism in the Constitution in this respect was the **binomial electoral system**.

¹ Programa de Gobierno de Michelle Bachelet. Págs. 30 a 35. En: <http://michellebachelet.cl/programa/>

² Ibid.

³ Ibid.

⁴ <http://acnudh.org/2015/03/declaracion-del-relator-especial-de-las-naciones-unidas-sobre-extrema-pobreza-y-derechos-humanos-philip-alston/>

⁵ Ibid.

This system, which was developed during the dictatorship and has been in force for 25 years, governed the election process for both houses of Congress, thereby distorting the representation and limiting the popular will in the generation of legislation and laws. This system was recently replaced by a moderate proportional system, which will be implemented for the parliamentary elections of 2017. It is not, however, clear that this new electoral system will improve the approval ratings by the public for its political function and the role of parliamentarians. According to a recent report of the UNDP, only between 13 and 21% of the public rated the National Congress as a credible institution.⁶

Another point of critique against the State's institutions in the area of self-determination was **the political and administrative centralism of the State** and the absence of freedom of the regions and provinces of the country to define their own modes of development, as well as the absence of an educational system which foments understanding of, and participation in, democratic processes. During the year 2014 the government created a State Commission on Decentralization and Regional Development, which generated a set of proposals to improve political, fiscal, economic and cultural capacities for development and fulfilment of ESC rights⁷. Rights such as education, health, and housing are included in the territorial plans which should be pushed forward by local governments (municipalities), and in development responsibilities (for regional governments), which should improve and broaden their processes of consultation and participation.

Also worrying for the exercise of ESC rights is the increasingly **close relationship between money and politics** in Chile. The Internal Tax Service, under the Ministry of Finance and the Public Ministry, are currently investigating various companies that are alleged to have provided money for political campaigns in an illegal manner. The cases best known by the public are those which involve the Penta Group Holding Company and the Sociedad Química y Minera (SQM). Both companies were established as a result of privatizations of public companies during the dictatorship. Another case which is being investigated by the justice system and which implicates various parliamentarians and ex-ministers of State is the approval, in 2012, of the new Fishing Regulation (Ley de Pesca), in which various direct payments to influence the legislative discussions are being investigated and denounced. This co-optation of the political class on the part of business enterprises has provoked a structural crisis in the country and an increased sense shared by the general population that corruption is rife in the political process in Chile. This has forced the Government to create an Advisory Council against Conflicts of Interest, Trafficking in Interests, and Corruption, which provided its recommendations and proposals for new standards and regulations in various areas, including some to address "the reciprocal relations between the public and private sector."⁸

The society's demands, in particular for the right to education, as well as the right to water, have highlighted the theme of the marketization of ESC rights prevalent to the present. A new draft law for the educational reform initiated by the current Government

⁶ Programa de las Naciones Unidas para el Desarrollo Auditoría a la Democracia. Más y mejor democracia para un Chile Inclusivo. Lom, Santiago, 2014. La confianza del 21 % fue constatada por encuesta Latinobarómetro (p. 363) y 13% por el Centro de Estudios Públicos (p.329).

⁷ Informe de la Comisión de Descentralización y Desarrollo Regional. En: www.chiledescentralizado.cl

⁸ Informe de la Comisión. En: www.consejoanticorruptcion.cl

and approved by the Congress ended profiting, co-payments and selection in education – all mechanisms of social segregation generated by the educational model of the dictatorship. With respect to the right to water, the legal and institutional framework is regulated by the 1981 Water Code, which enables the provision of water rights to private individuals in perpetuity. The current Constitution enables these rights to be transformed into property, enabling those who hold them to sell or rent them. In this way, water in Chile is just another market good whose rights are owned by large companies, generating serious problems for access to this resource in rural areas. Other examples of the marketization of ESC rights in the current institutional framework are the health system and the social security system, which are analysed later in this report.

The debate about the **change of the Constitution** is fundamentally one about human rights. In its 2014 Report, the NHRI suggests that “this debate is relevant from the point of view of human rights to the extent that it is the text of the Constitution which defines the type of recognition which the State gives to fundamental rights, and which fixes the form in which they will be organized in order to give them an adequate level of protection.” Further it notes that the questioning of the current Constitution “is not unique in terms of the legitimacy of its origin, but is also related to its core content, particularly to the design and form of organization of the State, in the type of democracy established and the role and rights of citizens covered in it”⁹. Current President Michelle Bachelet announced the beginning of a ‘constituent process’ for the month of September 2015, without any further precision on the actual mechanism that will enable this. The elaboration of a new Constitution opens the possibility to incorporate an adequate recognition and protection of ESC rights in accordance with the Optional Protocol on the International Covenant on Economic, Social and Cultural Rights (OP-ICESCR). From the point of view of the exercise of the right to self-determination recognized in the Covenant, the greatest challenge is the popular participation by the citizenry in the process of elaboration of this fundamental document. Human Rights and other civil society organisations have promoted and requested the use of a Constituent Assembly as the most appropriate and democratic mechanism for assuring the legitimacy of this process. We hope that this request, consistent with the standards of the OP-ICESCR and the right to self-determination recognized in it, will be accepted and used by the Government.

Recommendations:

- **To urge the State of Chile, during institutional reforms and policies that the government is promoting, in particular with regard to the drafting of a new Constitution, to operate in accordance with the standards of the ICESCR and other international commitments held by the country in terms human rights.**
- **That the process of drafting a new constitution announced by President Bachelet consider using transparent and participatory mechanisms to facilitate the exercise of the right to self-determination of the Chilean people.**
- **That pro decentralization reforms that enable an effective exercise of ESCR by the population throughout the country are encouraged.**

III.- The Right to Work

⁹ Informe 2014. Situación de los Derechos Humanos en Chile. En: www.indh.cl

1.- Quality of Work

Data from a new survey on employment for the first trimester of 2015 indicate that in Chile women have an employment rate of 46.3% and men of 67.8%. In regard to unemployment, it has fallen in recent years, with a rate of 6.1% during the same period¹⁰. Even if the traditional market indicators for labour have improved, this has been to the detriment in the effective concern for the quality of employment and other structural factors in the labour market.

Since 2010 the country has a new statistical tool for measuring employment, with which it is possible to analyse phenomena such as the discouraged unemployed (those who have stopped actively seeking work due to growing tired of the search) or under-employment (people who work part-time but would be interested in working more hours), concluding that the holistic unemployment rate would be 10.4%, with 12.5% among women¹¹ and 8.9% among men. Also, among those new jobs created between January 2010 and February 2015, 62% can be categorized as external workers, independent contractors, or unremunerated family workers, all highly precarious work situations. Almost 40% of all employees work remains unregulated by any kind of labour legislation¹².

2.- Salaries

In terms of salaries, according to the data provided by the New Supplementary Survey of Incomes for 2013, 53.5% of all employees earns less than 300,000 Chilean Pesos (CLP) net, and 84.1% earn less than 652,000 CLP net (Annex: box 1). It is relevant to note that that this year the minimum salary was 210,000 CLP gross, which, after withholding social supports (health and insurance requirements), leaves a 168,000 CLP net, which only enables one to rent one room in a house and buy one kilo of bread per day (Annex: box 2). In this context, 27.8% of employed Chileans do not earn enough to purchase food¹³.

This wage regression affects the majority of Chileans and is evidence of the enormous inequality in Chile, where the richest 1% takes 30.5% of the wealth produced in the country, one of the highest values worldwide (Annex: Table 3). This situation, far from disappearing, continues to widen. Between 2003 and 2011, GDP increased in real terms by 21%, and so also did inequality, by 13.9% over the same period (Annex: Table 4). One factor behind these figures is the weakness of the workers enabled by an absence of collective rights, which leads to an unequal distribution of wealth.

3.- Rights related to the Freedom to form Workers Associations

Unionization in Chile is a limited phenomenon: in 91.2% of Chilean companies there are no workers unions¹⁴. In 2013, 14.2% of the workforce was affiliated with an organization and only 8% collectively negotiated through the regulated procedure, which

¹⁰ Brega C., Durán G., Páez A. y Sáez B. Informe Mensual de Calidad del Empleo, trimestre DEF 2015. Fundación SOL, 2015.

¹¹ Íbid.

¹² Íbid.

¹³ OCDE. Society at a Glance, 2014.

¹⁴ Dirección del Trabajo. Encuesta Nacional de Condiciones Laborales, 2011.

also provides for the right to strike (Annex: Table 5). Also, the typical union worker is confronted with a choice of more than 10,000 organizations, of which 50% do not boast any more than 37 members (Annex: Table 6). Parallelism to this regards is also common: in 29.1% of large companies there are 3 or more unions operating in the ambit of the company¹⁵.

The right to strike is almost non-existent, the result of numerous institutional obstacles (replacement of workers on strike, unionization limited to one company, etc.), although this does not signify that it is not exercised on the margins. According to the official registers, during the last years an average of 0.5% of private salaried workers had participated in a strike labelled as 'legal'.¹⁶ According to the Annual Report on Labour Strikes in Chile, the *non-legal* strikes mobilized 13 times more workers than those labelled as legal.¹⁷

This is a result of a normative order designed during the dictatorship and which remains almost entirely intact up to the present. The pillars of this model, which have greatly weakened the union worker, are: collective bargaining only within the ambit of the company, strikes limited to the negotiation with the possibility to replace striking workers, and union parallelism (of negotiating groups and many unions at the same level), and the de-politicization of unions. According to this framework, the union should limit its action to the ambit of the company, restricting itself from the possibility of developing relations and actions with other social and political actors.¹⁸

On the 30 of December 2014 the government presented a draft law which, according to its text, sought to modernize labour relations¹⁹. Currently it is passing through its first legislative approval processes, after the Executive branch provided its suggestions and comments. Among the relevant areas which have remained outside of the agenda the following are notable: a) strikes continue to be exercised only within the framework of collective bargaining, prohibiting that workers be those who define their motives, and the replacement of workers has been eliminated, substituted by the figure of 'minimum services' provided by the union in order not to do damage to the property of the company; b) the process of collective bargaining is only guaranteed within the ambit of a company, and modalities which restrict the same protections or ability to undertake a strike persist; c) there remain a number of barriers and institutional interference which undermine the independence of the parties, for example the attribution of one group of ministers in order to define, based on broad criteria, which companies do not have the right to strike, as well as the capacity of legal representatives to resume tasks during a strike. In this context of union weakness, agreements for the flexibility of rights to work hours and rest are made with the risk that they will be unilaterally decided and imposed by the employer. The most relevant points which would permit the transformation of the situation of inequality and

¹⁵ Íbid.

¹⁶ Durán, Gonzalo y Marco Kremerman. Sindicatos y Negociación Colectiva. Panorama Estadístico Nacional y Evidencia Comparada. Fundación SOL, 2015.

¹⁷ COES. Informe Anual de Huelgas Laborales en Chile, 2014.

¹⁸ Narbona, Karina. Antecedentes del Modelo de Relaciones Laborales Chileno. Observatorio Social Proyecto Plataformas Territoriales. 2014.

¹⁹ Cabe señalar que por ley el Poder Ejecutivo es el que tiene la potestad para presentar cualquier modificación a la negociación colectiva.

arbitrariness in the labour force in Chile are exactly those which have been omitted: the full right to strike, to collective bargaining and negotiation at various levels outside of the company, and to union independence.²⁰

4.- The Right to Social Security

The pension system in Chile, based principally on obligatory individual payments administered by for-profit entities (the Administrators of Pension Funds – AFP), was modified recently to incorporate the contribution of the State to supplement the insufficiencies of pensions, mainly through the Solidarity Pillar: the Basic Pension of Solidarity, the Provisional Solidarity Support, and the Per-Child Bonus for Women. In this way, close to 400,000 retirees receive a Basic Pension of Solidarity of 86,000 CLP and find themselves just above the poverty line, which is defined as 83,000 CLP in 2014. However, 90% of pensioners through the option of programmed retirement in the AFP system received an average of less than 147,000 CLP (Annex: Box 7).

Even while minute adjustments have made in order to address the fence-sitting impoverished retirees, the system has generated quite an attractive profit: in 2013 the AFP earned close to 6.6 billion CLP and paid 2.5 billion in pensions (Annex: Box 8). In terms of the result of these surpluses, the vast majority brings fresh resources to large enterprises: 10 banks and 10 companies IPSA received more than US 64 billion (Annex: Table 9).

Three critical points need attention in relation to the legal guarantees of the current pension system: a) a qualified quorum (an absolute majority of senators and deputies in parliament) is required to change the regulation of this right, which creates additional resistance to reforms; b) it is provided that the State guarantees access to these services, and not the right to social security itself; c) and it is also provided that, with respect to the preceding, the services “are provided through either public or private institutions,” constitutionally maintaining the private provision of these. In sum, the Chilean model in this area does not comply with human rights standards.²¹

Another of the corners of the Chilean pension system is that despite its being a privately provided service, thanks to the insufficient level of payments, it requires that the State provides a large amount of the required resources. In this sense, for every \$5 that is spent in pensions, \$4 is provided by these stopgap funds²². A study from 2014 enables one to point out that it is possible to have, given Chile’s current economic circumstances, a pension system based on inter-generational cost sharing, with a rate of replacement near 70% sustainable in these parameters at least through the year 2065²³.

The State has not complied fully with the recommendations of the Committee in paragraphs 36 and 41 of the Final Observations of November 2004. The current indicators

²⁰ Para más detalles revisar el documento elaborado por Fundación SOL en conjunto con expertos en Derecho del Trabajo “Manifiesto Laboral”, 2013.

²¹ *Ibid.*

²² Fundamentos para Cambiar las Pensiones N°5. Observatorio Social, Proyecto Plataformas Territoriales, 2014.

²³ Marco Kremerman “De un Sistema de AFP a un Sistema de Seguridad Social”. En: <http://www.fundacionsol.cl/wp-content/uploads/2014/08/Maip%C3%BA-Pensiones.pdf>

demonstrate the subsequent and continuing increases in inequality in the labour context of Chile.

Recommendations:

- **That measures to address inequalities in the labour market are adopted and that the labour legislation extends to provide coverage for the rights of all workers.**
- **That reforms promoted by the government seek to eliminate and reduce inequalities and arbitrariness in the labour market by recognizing, without arbitrary limits, the right to strike, to collective bargaining and negotiation at all levels in as well as beyond the company, and to promoting both individual and union participation.**
- **That a new pension system that guarantees adequate social security, and which is regulated through a system of solidarity and not by incentives for profit, be adopted.**
- **That the state informs the Committee about the current pension fund companies (AFPs) and the use and destination of the profits generated by these companies during the last 10 years.**
- **That measures be adopted to address inequalities in the labour market and that labour regulations, especially collective rights, extend to all workers, especially those in micro and small companies.**

IV.- Right to an adequate level of quality of life

In relation to the right to an adequate level of quality of life, it is understood that this relates to the most fundamental themes relevant to the exercise of this right, among which are included:

1.- The Environment

Key to the regulation of this right is the implementation of the Regulatory System for the Evaluation of Environmental Impacts (SEIA), which enables the issuance of environmental permits for investment projects and land-use plans. Even though an environmental reform was undertaken in 2010 to improve standards of participation and transparency, this reform continues to be criticized as illegitimate. The reform also separated its various functions, handing regulatory control to an Environmental Superintendent and creating Environmental Tribunals for the resolution of environmental disputes. The environment and basic resources such as water are very visible and sensitive themes in the contemporary national discourse, and so the government formed – this past 15 April – an Advisory Commission for the Reform of the Regulatory System for the Evaluation of Environmental Impacts (SEIA) which should propose amendments within nine months.

2.- The Right to Water

Currently a modification to the 1981 Water Code, the primary legal instrument that enables the private ownership of water resources, is making its way through the legislature. It is important to note that Chile has approved Resolution 62/292 which “recognizes that the right to drinking water and sanitation are fundamental human rights that are essential

for the full enjoyment of life and all other human rights,” and it is hoped that this recognition is reflected in the new Constitutional text. In reference to the List of Questions asked by this Committee in Paragraph 18 of Fourth Periodic Report on Chile, we could say that:

Coverage of drinking water services in urban and rural areas. In Chile, the drinking water and sanitation services are sourced by surface and subterranean waters solicited by the State and legally constituted as consumer rights, in accordance with the rules of the 1981 Water Code, reformed in 2005. Domestic consumption constitutes 6% of the total water extracted in Chile, and it is provided to 99.8% of all urban and rural population concentrations (ENRH 2013). The coverage in semi-concentrated rural settlements²⁴ is very low, not exceeding 11%, and the services are restricted to provision of drinking water, but lacking sanitation systems. In cases of isolated rural communities there is virtually no coverage. The Cadastre of the Ministry of Public Works (MOP) includes 534 locations in the country in this condition and has recognized that 417,516 persons lack adequate drinking water, the majority of which are located in the Regions Maule, Bio-Bio, and Araucanía, where 63% of the population lacks these essential services.

To this the impact of the drought which currently affects the supply of water in rural sectors can be added. In the Araucanía region, 31 of 32 municipalities have to distribute water through tanker trucks (ONEMI 2013). The same measures have been taken in regions with better coverage; meanwhile the MOP has decreed a water scarcity emergency in 12 municipalities of the Region of Valparaíso, a measure which seeks to ensure the supply of drinking water to the inhabitants in affected areas and to implement emergency measures in order to assist the persons affected (DGA 2014).

Chile does not currently have any public information campaigns on the hygienic use of water nor any programs to educate the population to value water and the drinking water services and sanitation systems.²⁵

Protection of water resources and their sources. Chile faces significant challenges, as the regions that are most densely populated suffer from the greatest deficiencies of water resources. The average availability of water from the Metropolitan Region to the north does not exceed 800 m³ / person / year – well below the international standard for sustainable development, set at 2000 m³ / person / year (World Bank 2011).²⁶ The situation of scarcity has become critical resulting from the over-exploitation of the resource, given that the extraction surpasses the availability in the flows from the Metropolitan Region to the north (World Bank, 2011). This over-exploitation is close to 100% in some regions, and a significant worsening of the situation is forecast for the next decade (2015), where an increase of 50% in the demand is forecast for some areas²⁷ (ENRH

²⁴ Localidades concentradas son aquellas que cuentan con entre 150 y 3.000 habitantes y con 15 viviendas por Km. calle o de futura red de agua potable; localidades semi concentradas con al menos 80 habitantes y 8 viviendas por km camino o de futura red de agua potable (Dirección de Presupuesto, 2007: 112).

²⁵ Chile Sustentable 2012-“Glaciares y Minería” 12 p, noviembre 2012 / Chile Sustentable 2013- “Asociaciones Comunitarias de Agua Potable Rural en Chile: Diagnóstico y Desafíos”, 24 p., octubre 2013.

²⁶ Banco Mundial 2011-“Diagnostico de la gestión de los recursos hídricos en Chile” Departamento de Medio Ambiente y Desarrollo Sostenible, Región para América Latina y el Caribe, 31 de marzo 2011.

²⁷ ENRH 2013 –“Estrategia Nacional de Recursos Hídricos 2012-2025”, 40 p., Ministerio de Obras Públicas.

2013), or even more in mining activities²⁸. To this the impacts of the present drought and global warming should be added.

This erratic management of water resources is related closely to the regulation currently in force. A recent study of the World Bank has noted that in Chile there is an over-granting of subterranean waters in the central and southern areas of the country, reaching “very high and worrying” levels in the Regions of Maule, Bio Bio, and Los Lagos, where the over-granting of water rights surpasses 200% of capacity of watersheds like Mataquito, Coronel, Lota and Lago Llanquihue (World Bank, 2011). A total of 46% of all drinking water is derived from these subsurface waters.

The Government has systematically declined to protect essential reserves of freshwater such as glaciers, which are located in the headwaters of the Andean-origin watersheds which supply the country. Mining companies, both public and private, have since 1990 provoked the destruction of scores of hectares of these reserves, resulting in a loss of more than 35,000,000 cubic meters of freshwater reserves (Chile Sustentable, 2012, based on Benning and Azocar, 2010).

In Chile there are no **normative regulations for the efficient use of water resources**. This situation is critical in sectors such as agriculture, which consumes 73% of extracted water but has not incorporated manners of efficient use (World Bank, 2011). Official statistics reveal inefficient water irrigation. The same situation is found in the mining sector with respect to surface and subterranean waters, given that their activities take place in the most arid regions. This sector continues to focus on hydrometallurgical processes, building dams of mining waste and pipelines for transporting minerals, which are highly water intensive. In some rare cases some mines have voluntarily incorporated more efficient technologies like the implementation of thickened and plaster tailings, increased recycling, and use of seawater (Cochilco, 2013).

In the domestic sphere, there have still been no moves to implement the reuse of ‘grey water’, and neither are there any regulations in regard to this. In relation to concrete measures to prevent the continued generation of high indices of contamination by industrial activities, it is important to note that the most relevant regulation in the last years has been a norm on emissions of thermoelectric plants, passed in 2011, which limits emissions of sulphur dioxide, nitrogen oxides and particulate matter. This norm, which is gradually being implemented, should have entered into full force in December of 2014, enabling a reduction in the air contamination in many critical areas, such as Tocopilla and Puchunchavi, declared as zones that are saturated by particulate matter and sulphur dioxide. Notwithstanding this, there is a delay in the enforcement of the norm, and it does not include provisions for regular heavy metals.

A second norm to prevent air contamination is the “green tax,” established in the recent tax reform approved in 2014. This regulation penalizes emissions with an assessment of \$5 USD per ton of CO₂ emitted; and \$0.10 USD per ton of particulate material, nitrous oxides and sulphur dioxides. This assessment is increased by a certain

²⁸ Cochilco 2013 –“Minuta Informe: Consumo de agua fresca en la minería del cobre 2012-2025. En: www.cochilco.cl/descargas/estadisticas/basedatos/agua/minuta_consumoagua_2013.pdf

factor in cases where areas of high population density are concerned (Ministry of Environment, 2014).

Recommendations:

- **That the legal instruments, established in the 1981 Water Code, be modified in order to disable the privatization of water. That the institutional mechanisms, such as the General Directory of Waters, have as a principle the guaranteed protection and good use of water resources.**
- **That the new legislation on water recuperates the public control of drinking water and sanitation services.**
- **That collective property over water is guaranteed, where the state would promote democratic, rational, egalitarian and efficient management, giving priority to its use first as a source of drinking water, sanitation, production of food and maintenance of ecosystems above productive activities.**
- **That community management of water resources is promoted, with special attention to the role of local governments, rural communities and indigenous peoples.**

V.- The Right to Housing

The State has demonstrated a development model driven²⁹ by the search for solutions to housing for segments of the population which cannot afford a home in the formal market, through policies and mechanisms of financing such as the housing subsidy, designed toward the end of the 1970s and continuing into the present. The application of this subsidy, provided by the State to the construction sector, shows a preference for an “economistic” focus, reducing the concept of housing to a market product, whose location and standards depend on the price that can be paid and not on the housing necessities and capacities of the residents, or on the respect for their rights. This reproduces an inequality in access to and opportunities for housing, generating greater urban, social, and special segregation.

The result of this blinkered vision of development can be seen in the hundreds of thousands of social housing units, which are of a minimal standard, on the peripheries of cities. According to data provided by MINVU³⁰, of the total *stock* of social or ‘economic’ housing 344,402 units correspond to 1,555 *blocks* of 3 to 4 floors, with apartments of 30 to 40 square meters and differing levels of obsolescence, overcrowding, and limitations for their inhabitants to realize other rights such as those to education, health, and work.

The absence of a land policy that could lead to more equitable cities is evident in the homogeneous concentration of families in poverty in urban peripheries, in very low standard housing and underserved areas. “Ghetto”³¹ is the expression used to refer to these neighbourhoods where they have been concentrated or segregate disadvantaged.

²⁹ MINVU, Ministerio de Vivienda y Urbanismo (2007) Chile: Un Siglo de políticas en Vivienda y Barrio”, Santiago, Chile.

³⁰ MINVU, Ministerio de Vivienda y Urbanismo (2014) “Vivienda social en copropiedad. Catastro nacional de condominios sociales”, Santiago, Chile.

³¹ CIPER (2012). “Por qué hemos construido *guetos* y lo seguimos haciendo”. En: <http://ciperchile.cl/2012/11/14/por-que-hemos-construido-guetos-y-lo-seguimos-haciendo/>

The Chilean housing policy is part of a social policy that maintains as a priority the goal of overcoming poverty. In practice, its emphasis has been on filling gaps (reducing the housing deficit and focusing resources efficiently), which does not assist in achieving or relate necessarily with economic, social and cultural rights, nor with the human right to adequate housing, which remains without any explicit recognition in the Constitution. The human right to adequate housing is the right to have a place where one can live in security, peace, and dignity, and it should not be reduced to the minimum of being equipped with a roof or a mere marketable good. Security in tenancy is the keystone in this right, and it presupposes a guarantee for the protection against forced displacement³². The right to tenancy is not limited by a legal / formal title, or a writ of property, rather it should be accompanied by a holistic respect for the dignity of persons, which includes the right to information and participation in the taking of decisions which affect this right³³.

With the argument that they need to “solve the problem of social condominiums which are currently in critical conditions”³⁴, in late 2012 MINVU launched a program associated with the demolition and expropriation of houses, called the “*Social Recovery Program Condominiums: Second Chance*,”³⁵ which was rejected by the target population as their right to secure tenure has been violated by the eviction from their own homes. This program has a dual purpose: on the one hand, provide a new subsidy to owners of social housing so that they leave the neighbourhood and acquire a new home, supposedly better located and of better quality; and, second, gives the MINVU a tool to acquire these homes and implement (eventually) some renovation processes, whether by way of remodelling or rehabilitation of the complexes.

Although there exists an abundance of evidence and academic studies³⁶ with respect to deficiencies and the need to better these types of housing blocks, particularly those

³² Naciones Unidas (1991). Comité de Derechos Económicos Sociales y Culturales: Observación General n° 4 sobre el derecho a una vivienda adecuada (párrafo 1 del artículo 11 del Pacto), Documento: e/1991/23:“La tenencia adopta una variedad de formas, como el alquiler (público y privado), la vivienda en cooperativa, el arriendo, la ocupación por el propietario, la vivienda de emergencia y los asentamientos informales, incluida la ocupación de tierra o propiedad. Sea cual fuere el tipo de tenencia, todas las personas deben gozar de cierto grado de seguridad de tenencia que les garantice una protección legal contra el desahucio [desalojo], el hostigamiento u otras amenazas. Por consiguiente, los Estados Partes deben adoptar inmediatamente medidas destinadas a conferir seguridad legal de tenencia a las personas y los hogares que en la actualidad carezcan de esa protección consultando verdaderamente a las personas y grupos afectados”.

³³ Informe de la Relatora Especial sobre una vivienda adecuada (2014; pág. 4) “Por seguridad de la tenencia se entiende un conjunto de relaciones con respecto a la vivienda y a la tierra, establecido en el derecho codificado o consuetudinario, o mediante acuerdos no oficiales o híbridos, que permite vivir en el propio hogar en condiciones de seguridad, paz y dignidad. La seguridad de la tenencia es parte integrante del derecho a una vivienda adecuada y un componente necesario para el ejercicio de muchos otros derechos civiles, culturales, económicos, políticos y sociales. Todas las personas deberían gozar de un grado de seguridad de la tenencia que garantice una protección jurídica contra el desalojo forzoso, el hostigamiento y otras amenazas”.

³⁴ Definición que viene de la evaluación ex ante realizada por el Ministerio de Vivienda y Urbanismo para justificar el Programa de Recuperación de Condominios. El documento con la evaluación se encuentra disponible en: http://www.senado.cl/site/presupuesto/2013/cumplimiento/Glosas%202013/cuarta_subcomision/18%20Vivienda%202013/OFICIO%2058.pdf

³⁵ La misma evaluación ex ante del Programa lo define como: “una nueva herramienta para concretar una segunda oportunidad habitacional que, a su vez, se transforma en una herramienta para que el MINVU adquiera inmuebles para la regeneración urbana del sector”.

³⁶ Como por ejemplo: Ducci, M.E. (1997). Chile: el lado oscuro de una política de vivienda exitosa, en Revista EURE, vol. XXIII, N°69, Julio 1997. Santiago de Chile; Rodríguez, A. y Sugranyes, A. (2005) Los con techo. Un desafío para la política de vivienda social. Santiago de Chile, Ediciones SUR; Jiménez, F. (2008). Chilean Housing Policy: A Case of Social and Spatial Exclusion HABITAT - INTERNATIONAL: Schriften zur Internationalen Stadtentwicklung Lit Verlag

constructed during the 1990s, the government's decision to intervene by demolishing housing units in various neighbourhoods of the country, which are made without any transparency protocols or focus on economic, social and cultural rights, are highly questionable. From the beginning of this century, such demolitions are repeatedly undertaken with the same sequence of pressured decisions; an absence of a strategy for social and special compensation beyond the subsidy of the value of the change; situations of abuse or *mobbing* by the State so that the inhabitants accept solutions to move even further into the new peripheries; a lack of sufficient information and transparency in the process of dismantling the units; occupation of the units abandoned by very low income families, which accept the precariousness of the process; emergence of gangs and drug traffickers, who take advantage of these same precarious conditions; situations of violence which affect the quality of life of those who do not accept going to the new complex, resist the abuse, or organize themselves to advocate for solutions in the same part of the city.

The main documented cases are: Villa Volcano in Puente Alto (RM)³⁷, since 2003; Villa Los Cóndores in Temuco (Araucanía region)³⁸, since 2005; Future Villa in Chiguayante (Biobío Region)³⁹, from the earthquake of February 27, 2010; and Coloane Villa in Puente Alto⁴⁰, from 2013.

Recommendations:

- **That the State informs this Committee of which manner this right ensures, in its realization, abidance by the principles of non-discrimination and participation.**
- **That it informs the Committee about the modifications to the Program of Recuperation of Social Condominiums, Second Chance, and how transparency and direct and impactful consultations with the affected families are addressed.**
- **That the right to adequate housing is incorporated, in accordance with the standards of the United Nations on this right, and that mechanisms of access to justice are incorporated in the Constitution of the Country as well, in order to assure compliance.**

VI.- The Right to Health

The State protects the right, but its “preferential duty” is to ensure the benefits “through public or private institutions,” considering it a right to select which health

; Atisba (2010). Reporte final: Estudio guetos en Chile; Ministerio de Vivienda y Urbanismo (2009). Déficit urbano-habitacional: una mirada integral a la calidad de vida y el hábitat residencial en Chile. MINVU 2009.

³⁷ Sandoval, A. (2005) “Villa Volcán San José”. Temas Sociales, Vol. 54. Santiago de Chile, Ediciones SUR. En: <http://www.sitiosur.cl/publicacionescatalogodetalle.php?PID=3504>

³⁸ Sugranyes, A. (2009) “Villa Los Cóndores, Temuco, Chile. Lucha de 122 familias contra el desalojo y por el derecho a la ciudad”. Diálogos, propuestas, historias para una Ciudadanía Mundial”. Ficha DPH. EN: <http://base.d-ph.info/es/fiches/dph/fiche-dph-8028.html>

³⁹ CIPER (2013) “Especulación inmobiliaria tras el 27/F: La erradicación forzada de los vecinos de la Villa Futuro”. En: <http://ciperchile.cl/2013/02/28/especulacion-inmobiliaria-tras-el-27f-la-erradicacion-forzada-de-los-vecinos-de-la-villa-futuro/>

⁴⁰ Terra (2013) “Organización de vecinos de Puente Alto rechaza actuar del Minvu en demolición de departamentos”. En: <http://noticias.terra.cl/chile/organizacion-de-vecinos-de-puente-alto-rechaza-actuar-del-minvu-en-demolicion-de-departamentos.1d1475434c8ae310VgnCLD2000000ec6eb0aRCRD.html>

insurance to take⁴¹. This means that the Chilean State guarantees the possibility of accessing a public insurance system with provision for public providers and private insurance arrangements with a provision to private providers. That is to say, the right to health is circumscribed to the dimension of the “liberty to choose” between the public or private system. This vision of health is enshrined in the Constitution of Chile was accompanied by a series of reforms to the health system aimed at providing insurance for healthcare. Financing in the public sector therefore assumes the character of a public insurance with the creation of the National Health Fund (FONASA), characterized by solidarity, and health insurance institutions based on the principles of private insurance (ISAPREs), based on risk selection and profit making.

In 1979 the National Health Service was fragmented into 29 different health service agencies coordinated by the relevant Ministry, as well as providing the administration of primary care to local governments or municipalities. At the same time, mechanisms for paying that replicate the model of “payment for services” was introduced, which created an internal market where the public insurance company “purchases” services from public hospitals (healthcare providers) and in this way maintains that the financing of hospitals is linked to the services carried out. In addition, subsidy mechanisms of demand are generated to encourage the transition of patients from the public system (with the capacity to subsidize co-pays) to the private system of service providers.

The organization of the health system in Chile obeys, both in its public and private dimensions, the logic of the market. This form of conceiving of health produces **inequalities and segmentation of the population**, following the probability of contracting an illness, as well as affecting their ability to pay. According to the OECD⁴² statistics on health expenditures, Chile in 2012 reached a health expenditure level of 7.6% of GDP and, if one observes its temporal development, it has accumulated a growth in expenditures of 2.4% in relation to the year 1995. This led to a per capita expenditure increase from \$396.5 (adjusted for purchasing power parity), up to \$1,711 in 2012. This can seem a major success (although Chile is still below the average of the OECD), but the inequality is hidden behind this statistic. In order to observe the inequality in the distribution of health expenditures one must know the sources of financing for health. The fiscal contribution (tax) reaches 38.25% of total health resources, to which must be added 6.6%, corresponding to revenue in health contributions by the beneficiaries of public health insurance system (FONASA). Thus the resources by which public spending is formed up of are equivalent to 44.85% of total health spending.

Moreover, as pension contributions that end in the Isapres are not governed under social security schemes, it can be concluded that this type of expenditure is private, which reaches 16.87% of total health spending. The largest source of financing in the health system is the direct expenditure of families, which reaches 38.26%, making them the largest financier of health services in Chile. This type of cost can be seen as extremely regressive, given that it is not adjusted based on the families’ incomes, and it can lead families to fall into catastrophic costs by assuming the costs for health services with scarce

⁴¹ En: http://www.senado.cl/capitulo-iii-de-los-derechos-y-deberes-constitucionales/prontus_senado/2012-01-16/093413.html

⁴² OCDE. Stat. En: http://stats.oecd.org/index.aspx?DataSetCode=HEALTH_STAT

financial protection. In Chile the private health sector's expenditure is higher than the public sector's, which results in a country that is highly privatised in relation to its method of financing health. The private health sector's costs reach 55.14% of the total of all health expenditure, surpassing countries like the U.S.A. (51%). The consequence of this type of financing is that health ends up being a consumer good and access to it is principally linked to the capacity of the families who can pay for it.

One problem with the health insurance system in Chile is that it produces a **segmentation of the population by income and risk of getting sick**. On one side is the public system Fonasa, a common risk pool and characterized by solidarity, financed by general taxation and social security resources (7% of compulsory contributions). With a configuration inherited from the dictatorship, people can "opt" out of this pool of shared risk and solidarity, to move to a private insurance, bringing with them their contribution of 7%. In private insurance there is no logical social security, so their rates are adjusted according to the individual risk of getting sick, creating an incentive among insurance companies to select people with lower risk, with the aim of reducing the cost of care and increasing their profit margin. Health plans offered by private insurers are financed by the compulsory contribution of 7%, and the average price in these entities reaches 10%.

The pricing of the private health insurance system, by functioning according to the risk of the individual, reproduces the scenario in which those with a higher capacity to pay are those with access to the service. Meanwhile, the public healthcare system (Fonasa), functioning according to a logic based in solidarity, finances all of those who cannot pay. More than 51% of the payees of Fonasa have incomes of less than 250,000 pesos per month, in contrast with the payees of the private system, where more than 53% have incomes of over 900,000 pesos per month.

The configuration of the payment system that the private insurance companies Isapres have produced produces a migration toward the public sector. Isapres seek lower-risk individuals, meaning the groups most at risk in the Isapre either compensate with higher payments or are expelled from the system and must migrate to the public Fonasa. "In the Chilean system of social security and health one can observe a difference in risk among Fonasa and Isapre systems of 33% on average across 10 years, considering sex, age and past medical diagnoses individually, in a model of risk assessment"⁴³. This means that the beneficiaries of the Fonasa system have a higher probability to contract illnesses than those in the Isapres.

In conclusion, the current system of health is very serious, from the point of view of an increasing inequality, as well as the segmentation of the populations of the country. It is necessary that the logic of one health system created for the rich and health, and another for the poor and sick, be broken. There must be a change in social security schemes so that a system with a logic of maximizing collective well being displaces a system that seeks to maximize profits.

⁴³ Cid, C. Diagnoses-based Risk Adjusted Capitation Payments for Improving Solidarity and Efficiency in the Chilean Health Care System: Evaluation and Comparison with a Demographic Model. Tesis doctoral. Department of Economics-Institute for Health Care Management, Universität Duisburg-Essen, Campus Essen, Alemania. En: <http://duepublico.uni-duisburg-essen.de/servlet/s/DocumentServlet?id=25690>

Recommendations:

- **That the state assures the full effect of the right to health enshrined in universal access, without the mediation of mechanisms of discrimination and segregation of the population according to their economic capacities.**
- **That the State ensures that the right to health and the institutions and mechanisms that sustain it are guided by principles of social solidarity and collective well being.**
- **That the State informs the Committee about how its health policies and fundamentally its public expenditures are made in accordance with recommendations and standards proposed by the WHO.**
- **To generate public health indicators, promoting and improving the mechanisms of public participation in following up on the evaluations of public policies.**

VII.- The Right to Education

Chile is currently living through a process of reforms to its current educational system. This process seeks to respond to the critiques and demands in opposition to the market logic of education, which relegates the social result of educational institutions as a second priority, while making the first its place in the market, considering teaching as a “consumer good”. In this way, quality is related directly to the families’ capacity to pay, generating a segregated system which guarantees free access only to an education of low quality, focused on families with low incomes.

The movement for education began in 2011, which sought to make education a social right in all of its levels, maintains as its central elements: the termination of the segregation of the system according to the capacity to pay; reversal of the decline of public education against subsidized and private education; prohibition of the possibility of profiting in education; an end to for-profit private universities, which, despite being prohibited, have been able to continue their work through related companies; and the creation of a free system to end the high cost of university education and high debt that families must succumb to in order to access it.

The strong social pressure and inaction of the previous Government ensured that changes to the educational system would be a central point in the presidential candidacy of the past elections. Therefore, the program of President Bachelet has as one of its fundamental pillars the educational reform. Entering into 2014 and 2015, the Government opted to not present one major reform, but instead to send legislation through the Congress in stages, without a pre-determined order. To date the Congress has approved the Law which ends Profiting, Selection, and Co-pays in Education and has dismantled DFL2, which prohibited students and functionaries of higher education institutions from participating in elections of authorities, in order to guarantee the right to freedom of association.

The Law that puts an end to Profit, Selection and Co-pays in Education, approved in January of 2015, has as its principal objective that the resources provided by the State are spent effectively in the education process and diminishes segregation in schools,

prohibiting schools from selecting their students. This requires that the owners or subsidized schools transform their entities to become Non-profit Educational Corporations. The main criticism that can be made to the legal text is that subsidized schools can continue leasing the facilities where they are based and, in some cases, the state will even buy them. This means that part of the educational funds will be lost in the purchase or rental of private infrastructure, while a series of municipal schools have had to close as a result of low enrolment rates. It is comparatively preferable that the resources are focused on public, non-subsidized education, reversing its enrolment deficits and improving its infrastructure, rather than to enable its resources to be spent on maintenance of private infrastructure. In relation to the prohibition on selection in order to reduce segregation, it is still possible for the so-called 'emblematic schools' that receive support from the State can select up to 30% of their full enrolment. This measure seems discriminatory in that there is no substantive criteria for distinguishing between an 'emblematic' school and one which is not 'emblematic' beyond not guaranteeing the full equality to go to schools of high academic prestige. For the same reason it seems to contradict the intention of generating a framework of access, which avoids segregation by prior capacities in the entrance into schools by students.

In regards to the dismantling of **DFL2**, it is important to note that this does not mean it is a legislation that is positive, that is to say, it does not oblige the higher institutions to enable the democratization of their campuses, but that it only eliminates the prohibition of it. It is recommended in this point that a deeply participatory process be opened by the Ministry of Education, which governs the democratic forms, in order to ensure a flexible framework be created that will channel the interests of students and staff within the schools, and ensure mandatory implementation. In relation to the pending legislation, one has already been sent for approvals by the Congress, the **Law on the Professional Teachers' Career**, which promotes a type of individualistic teacher, where the results are measured by individual teacher, without taking into account the entire educational process and negating the collective character of teaching. Even if it promotes an increase in the remuneration of professors, it associates it with their competency in relation to other teachers. It is recommendable that what is submitted for evaluation be the educational projects and the overall results of the establishments. At the same time, the proposal of the Teaching Career does not present structural changes in aspects which are central to the educational process, such as the number of students per class and the distribution of lecture and non-lecture hours, which remains very low in a relation of 50/50.

In regards to the proposal for a law on the **De-municipalisation** of education, the contents of which are still unknown, this must create a level of institutionalization which enables the de-linking of quality of schools and the infrastructure in the Municipality where they are located, as occurs presently. Only a centralized system which focuses investment in accordance with educational necessities will enable the differences that exist today between public education in different municipalities to be overcome.

Finally we come to the legislative project for free higher education, which also has not been submitted, resulting also in the inability to predict effectively whether the tax reform undertaken to finance free higher education would indeed be able to pay for it or not, or at least for the ability to cost it out. It is relevant to highlight that free higher

education should be provided through direct support of institutions, because if it is not it will not guarantee stability of the student. AT the same time it should take into account that today the majority enrolment in higher education is in private establishments, a reality that needs to be confronted by financing some part of these institutions only when they comply with criteria of quality, plurality, and internal democratic governance.

Recommendations:

- **To encourage the State to comply with its obligations in this right, which should require it to orient itself toward the full development of human personality and to strengthen the respect for human rights and fundamental liberties**
- **That the State ensures the full exercise of this right and the quality of the same, eradicating the discriminatory and segregational mechanisms by economic capacity.**
- **That this Committee be informed, in a reasonable period of time, about the implementation of new legislation which impedes mechanisms which segregate the world of education, as well as the Law which puts an end to Profit, Selection, and co-pays.**
- **That the State inform the Committee about the mechanisms with which the Government and the Parliament enable and ensure the full participation of the student community and those who participate in the educational function in the discussions of the reforms to the educational system.**

VIII.- Trade agreements, extraterritorial obligations and ESC rights in Chile

The opening of the Chilean economy to international markets, both through the reception of important levels of foreign direct investment facilitated by trade agreements signed by the State after the return of democracy, and through the investment of public and private companies domiciled in Chile, outside the borders of the State, is a concern for the validity of ESC rights that Chile became obligated to guarantee upon ratifying the ICCPR.

First it is important to signal that since the 1990s the Chilean State has ratified free trade agreements and bilateral investment treaties with more than 60 countries, including among them the U.S., Canada, China, the E.U. and others. Currently it is negotiating new trade agreements with 15 countries.⁴⁴ The major part of these trade agreements, in addition of not having been approved by the Congress through processes of public consultation or consultation with indigenous peoples, contain clauses of stabilization which limit the ability of the State to introduce modifications within the regulatory framework in force at the time of the agreement's ratification, including in environmental and social matters. This is done with the object of guaranteeing conditions of stability for the investments. In case of alteration of said regulatory norms, the rights to seek reparations from the Chilean State are conferred to the investors before tribunals and dispute resolution mechanisms without consideration of human rights.

This relates to a reality that is observed in the UN Guiding Principles on Business and Human Rights, which established that "States must maintain a normative national

⁴⁴ Gobierno de Chile, Ministerio de Relaciones Exteriores Chile (DIRECON). En: <http://www.direcon.gob.cl/acuerdos-comerciales/>

framework that is adequate for ensuring the compliance of its human rights obligations when they conclude political agreements on business activities with other States or business entities, for example in agreements or investment contracts”⁴⁵.

We consider that Chile compromises its contractual obligations in the ICCPR – especially in the area of rights to working conditions that are equitable and satisfactory, rights to unionize and organize collectively and the right to health – upon the incorporation of these clauses into the trade agreements it has signed to date. Particularly worrying is the **Trans-Pacific Partnership Agreement** (the TPP) proposed by the U.S. and which the Chilean State today is negotiating with the U.S., Australia, Japan, and Canada among others, in order to create one large commercial trading area in the Asia-Pacific. This trade agreement, which up to this moment has been negotiated in secret, addresses issues such as intellectual property, medications, regulation of the internet, finance markets, State enterprises and mechanisms for dispute resolution.⁴⁶ In a document leaked in 2013 it became known that one of the areas addressed was the duration of medical patents, which would make difficult the production of generic medications, which in many countries are made available by law to public health institutions.⁴⁷ As has been suggested by the organization *Medicins Sans Frontiers* (MSF), this section of the TPP would have a negative impact on the access to medications, thereby adversely affecting the right to health of the general population.⁴⁸

Contrasting with this, international law recognizes that States are obliged to comply with their legal obligations outside of their own geographic territory. These obligations include the obligations to respect, protect, and comply with human rights. Consistent with this obligation, the Committee on Economic, Social and Cultural Rights has expressed its concern with States for their lack of control of business entities domiciled in their countries whose operations outside of their countries negatively impact human rights.⁴⁹ Accordingly, it has recommended that States should regulate the activities of the corporations which are domiciled in their state in order to impede these human rights violations, including through the enactment of laws⁵⁰. This concern and recommendations are consistent with those expressed to various States in recent years including by the UN Human Rights Committee, the CERD Committee, and the Committee on the Rights of the Child.

With the opening of the Chilean economy to international markets, the activities of businesses, both private and public, domiciled in Chile and outside of its borders has increased substantially in recent years. One example of a private company whose activities outside of the Chilean State have resulted in violations of human rights, including ESC rights, is the company **Forestal Arauco SA**, a Chilean company which owns 1.6 million hectares of land, including in Chile, Argentina, Brazil and Uruguay, used for forestry

⁴⁵ Naciones Unidas, *Principios Rectores sobre las Empresas y los Derechos Humanos*, HR/PUB/11/04, 2011, Principio 9.

⁴⁶ En: <http://www.elmostradormercados.cl/destacados/opinion-divide-y-venceras-la-nueva-estrategia-de-estados-unidos-para-destrabar-las-negociaciones-del-tpp/>

⁴⁷ En: <https://www.fayerwayer.com/2014/10/que-dice-la-nueva-filtracion-del-acuerdo-secreto-tpp/>

⁴⁸ En: <https://www.msfacecess.org/content/msf-responds-second-wikileaks-release-trans-pacific-partnership-text>

⁴⁹ Comité de Derechos Económicos, Sociales y Culturales de la ONU (CESCR), *Examen de Austria*, 13 de diciembre de 2013, E/C.12/AUT/CO/4, párr. 12.

⁵⁰ *Ibid.*, par. 12; Comité de Derechos Económicos, Sociales y Culturales de la ONU (CESCR), *Examen de Noruega*, 13 de diciembre de 2013, E/C.12/NOR/CO/5, párr. 6.

plantations.⁵¹ In recent years Arauco has been denounced for an impact on human rights by its affiliate in the Province of Misiones, where it has operated since the 1970s under the name of Alto Paraná, a name which it maintained until recently when it changed it to Arauco Argentina. According to information provided by the company itself, in Argentina their forest holdings include 263,394 hectares, the majority of which is used for monocultivation of pine and eucalyptus.⁵² The denunciations against the company focus on its non-compliance with labour conditions in their papermaking facilities, the affects on health resulting from fumigation, the drying up of water courses due to the clearing of native forests and plantations of exotic trees. The harassment of local populations has also been denounced, including of the indigenous Mbya peoples, through displacement, intimidation and violence.⁵³

In a case of a State-owned Enterprise, which according to the UN Guiding Principles on Business and Human Rights have a special obligation toward protection and should adopt additional protection measures against violations of human rights⁵⁴, the denunciations relating to the involvement of **CODELCO**, a Chilean State-owned Enterprise and the largest copper-producing company in the world, in a mining project recently approved in Ecuador, initiated by the National Mining Company of Ecuador (ENAMI), are of concern.

This copper mining project, known as Llurimagua, is located in the Valley of Intag, in a mountainous area of Cotacachi, with an extension of approximately 1,200 km², and where there is also a rural population of 13,000 inhabitants.⁵⁵ This project, which is being reinitiated after the 1990s when a Japanese company had tried to develop it, has always been rejected by the local communities who are defending their right to the environment and to maintain their own forms of development. The communities directly affected are opposed to the project as they see their right to adequate living standards and their right to health, enshrined in the ICCPR, threatened by it. This is considerable given that the project contemplates the construction of numerous deep exploratory wells which will affect the ecosystem and protected forrests, as well as considering the large quantities of water needed, and the construction of storage tanks for waste and residues, which will effect the water flows and may contaminate the waters.⁵⁶

In this context it may be concluded that the Chilean State has not to date established any regulation which would enable any assurances that the activities that the companies domiciled in Chile do not threaten or violate human rights, including ESC rights, through such investment projects outside of its borders. This is even more pertinent given that the

⁵¹ En: http://www.arauco.cl/informacion.asp?idq=681&parent=625&ca_submenu=631&idioma=21

⁵² En: http://www.arauco.cl/informacion.asp?idq=1224&parent=1220&ca_submenu=1220&idioma=37

⁵³ A comienzos de este año un grupo de 30 familias mbya que formaron la comunidad Guazurarí, recibieron la visita de los funcionarios de la empresa Alto Paraná (Arauco), quienes arribaron al predio acompañados por efectivos policiales uniformados. De acuerdo al relato del cacique Ramón Baez: “Aprovechando que nosotros los hombres no estábamos, amenazaron a las mujeres y los niños con prenderles fuego las casas si no salían inmediatamente del lugar. Y dispararon al aire para asustar”. Alvez, Sergio,” Alto Paraná SA y los pueblos originarios en Misiones”, *Revista Superficie*, 2015, en <http://revistasuperficie.com.ar/alto-parana-sa-y-los-pueblos-originaarios-en-misiones.html>

⁵⁴ Naciones Unidas, *Principios Rectores sobre las Empresas y los Derechos Humanos*, *op cit*. Principio 4.

⁵⁵ En: <http://www.elciudadano.cl/2015/02/05/144582/la-sed-de-cobre-de-codelco-en-ecuador-viola-ddhh-el-caso-de-javier-ramirez/>

⁵⁶ En: <http://olca.cl/articulo/nota.php?id=104852>

Chilean authorities have announced in 2014 that they will develop a National Plan of Action on Corporations and Human Rights.

Recommendations:

- **That the State inform the Committee which measures it has adopted in order to guarantee that these trade agreements do not result in the violation of ESC rights.**
- **That the State clarifies in particular the guarantees in this sense which will be adopted in the negotiation process for the Trans Pacific Partnership (TPP).**
- **That the State reports on how it intends to address this reality in the announced National Plan of Action on Corporations and Human Rights.**
- **That the State commits that, with a reasonable time frame, and in any event prior to the next periodic review of the State by this Committee, it adopts regulation and public policies destined to guarantee that ESC rights will not be violated by companies domiciled in Chile.**

Contact Information:

- **Observatorio Ciudadano**

José Aylwin (Co Director) jaylwin@observatorio.cl

José Araya ciudadania@observatorio.cl

Paulina Acevedo pacevedo@observatorio.cl

- **Chile Sustentable**

Sara Larraín (Directora) slarrain@chilesustentable.net

- **Corporación de Estudios Sociales y Educación SUR**

Ana Sugranyes. asugranyes@gmail.com

- **Fundación Crea**

Marjorie Cuello (Directora) marjoriepaz.cuello@gmail.com

- **Fundación Creando Salud**

Matías Goyonechea (Director) mgoyonechea@gmail.com

- **Fundación Sol**

Valentina Doniez. valentina.doniez@fundacionsol.cl