

HUMAN RIGHTS SITUATION IN CHILE 2011

ACCIÓN (ASOCIACIÓN CHILENA DE ORGANISMOS NO GUBERNAMENTALES) / AGRUPACIÓN NACIONAL DE FAMILIARES DE EJECUTADOS POLITICOS / AMNISTÍA INTERNACIONAL CHILE / ASESORÍA CIUDADANA / ASOCIACIÓN AYUN MAPU / CINPRODH (CENTRO DE INVESTIGACION Y PROMOCIÓN DE LOS DERECHOS HUMANOS) TEMUCO / CINTRAS (CENTRO DE SALUD MENTAL Y DERECHOS HUMANOS)/ CODEPU (CORPORACIÓN PROMOCION Y DEFENSA DE LOS DERECHOS DEL PUEBLO) / COORDINADORA AYMARA POR LA DEFENSA DE LOS RECURSOS NATURALES DE ARICA PARINACOTA / COORDINADORA MEMORIA Y DERECHOS HUMANOS DE VALDIVIA / CORPORACION HUMANAS (CENTRO REGIONAL DE DERECHOS HUMANOS Y JUSTICIA DE GÉNERO) / CORPORACIÓN DE DESARROLLO Y COMUNICACIONES MAPUCHE XEG XEG / CORPORACIÓN DE DESARROLLO DE LA MUJER LA MORADA / RADIO TIERRA / FUNDACIÓN TERRAM / GRUPO DE TRABAJO MAPUCHE POR LOS DERECHOS COLECTIVOS / LIBERAR (AGRUPACIÓN POR LA LIBERTAD Y DEFENSA DE LOS DERECHOS HUMANOS) / OBSERVATORIO CIUDADANO / PARLAMENTO DE KOZ KOZ / WALLMAPUWEN

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For the second consecutive year, a group of civil society and indigenous people's organizations, on the 63rd anniversary of the 1948 United Nation's Universal Declaration of Human Rights, are making our views public on the state of human rights in Chile in 2011.

As in 2010, we have observed with concern that this year there have been no significant steps taken to progress in the acknowledgement and effective exercise of the rights of individuals and peoples in the country. We have also noted that the Chilean government has not adopted the necessary measures for implementing the recommendations made by the international community in human rights matters, nor has it ratified the international human rights treaties that are still pending.

It is no coincidence then that 2011 has been marked by popular discontent regarding this situation, which has led important sectors of the population, including regional communities, environmental organizations, indigenous peoples, workers, secondary school and university students, and the citizens in general, to mobilize in demanding recognition, respect, and effective enforcement of both individual and collective human rights.

Among the aspects that we deem most relevant to highlight in human rights matters in Chile during 2011, both due to their severity as to the challenges they pose to the State and society as a whole, we have identified the following:

1.- Human rights violations committed during the military dictatorship

In relation to these serious human rights violations, the repeal of the Amnesty Law that grants impunity is still pending, as well as the ratification of the UN's Convention on the Non-applicability of statutory limitations to war crimes and crimes against humanity. We value the report released this year by the Presidential Advisory Commission for the Qualification of Disappeared Detainees, Political Executions and Victims of Political Imprisonment and Torture (Valech Commission), which qualified 30 new cases of disappeared and executed and 9,797 cases of political imprisonment and torture. However, we note with concern that these represent only 30% out of the total number of new cases filed, so we consider that the challenge to complete the process of truth and justice that the human rights movements have demanded is still pending.

2.- Right to justice

In justice matters, we can highlight the situation of the Military Justice, verifying the fact that, despite the reforms introduced into the Military Justice Code by Law N° 20.477, approved in late 2010, the jurisdiction of this special justice system remains to hear cases involving military personnel who commit crimes against civilians, which is contrary to international human rights standards. For this reason, crimes committed by State police officers against civilians, go unpunished, such as the murders of Mapuche people committed by the police.

3.- Political and Civil Rights

In terms of political and civil rights, we find that there are still serious limitations to their exercise by large sectors of the population, notwithstanding the diverse legal reform initiatives that have been submitted to Congress for this purpose, by both parliamentary and executive initiatives. This demonstrates the incapacity of the current institutional framework to satisfy the demand for democratic participation of the population, as well as the decisions on major national issues. The limitations and incapacity of the political parties represented in Parliament to process the demands for greater participation also persist.

Among the initiatives being analyzed by the Parliament, we can highlight the bills that establish automatic voter registration and voluntary vote; the project for the direct election of Regional Councilors; the constitutional reform project that proposes the programmatic vote and the accountability of the elected officials, and the recall of power in case of non-compliance; the project for the popular law initiative; and the projects for the expansion of citizen participation through plebiscites, none of which have been approved to date. We can also point out the project to regulate same sex marriages as well as the bill passed by the Senate that provides measures against discrimination. The latter, although it constitutes an advance in the fulfillment of the obligations that Chile has signed on an international level, suffers from a number of shortcomings which impede qualifying it as an adequate and efficient governmental response for eradicating and redressing discrimination.

4.- Indigenous peoples rights

On indigenous peoples' rights, we have observed that the State continues without implementing the ILO Convention 169 in matters as relevant as the right of these people to be previously consulted about all decisions that affect them. The government unilaterally summoned a consulting process on indigenous institutions. But the lack of prior consensus concerning the modality, the timing, and issues to consult, led to the rejection by numerous indigenous organizations that also demanded the repeal of the Executive Decree N° 124 of Mideplan, which unsatisfactorily regulates the consultation processes since 2009. Although the government decided to suspend the planned process and concentrate on defining the consultation mechanism, a response has not been formulated in this respect to date nor has the DS N ° 124 been repealed.

With regard to indigenous lands, the insufficiency and arbitrariness in the use of public funds, earmarked for the pending land claims formulated by indigenous peoples, have been maintained. The National Corporation for Indigenous Development (CONADI) has also been negligent in the execution of existing resources for these purposes. Thus, the accumulated implementation by this entity of its Land and Water Fund, at the end of the third quarter of 2011, reached 24%, allowing the prediction of an important sub-execution.

At the same time, during 2011 the policy of criminalization of the Mapuche social protest was maintained, while there are seven criminal cases open in

which 54 Mapuche people were indicted with participation in terrorist offenses. Out of the three cases resolved, in two of them the charges have been dismissed by the Public Prosecution Office. The third case resulted in high sentences of up to 14 years of prison for Mapuche peoples for ordinary crimes.

5.- Women's Rights

Women's rights continue without adequate legal protection in matters as relevant as equity in salaries, political participation, sexual and reproductive rights, all which continue having an impact on the factual situations of inequality affecting them. Although progress was made during the year in the legislative debate on anti-discrimination measures, the debate failed to materialize and to date we have no legal actions taken along these lines, added to the fact that during the legislative process the bill suffered important modifications that will not allow having a public policy for the prevention and defense against all forms of discrimination. Moreover, Chile maintains a common property matrimonial regime that discriminates against women, impeding them from managing their assets, and the Optional Protocol for the Convention on the Elimination of All Forms of Discrimination against Women has not been ratified.

6.- Migrant's Rights

In migrant rights issues, the current immigration Law of 1975, which is anachronistic, continues to govern. Such legislation affects the citizenship of migrants, as well as their access to social services. It also maintains the difficulty for the job integration of migrants, determined by the arduous process of achieving an employment contract. The discrimination against this population is also manifested in their access to health services and education, despite the existing instructions to extend these services to them. The lag of the Chilean Government in regard to this population was reflected by the UN Committee on the Protection of Rights of all Migrant Workers and their Families which the Chilean government recently ratified, a Committee which urged Chile to bring about changes in this matter.

7.- Environmental Rights

In terms of environmental rights, the delay in the implementation of the new environmental institutionally, passed by Law N° 20.417, is a matter of great concern: This amended the Environmental Law (N°19.300 of 1994) and created the Ministry of Environment, the Environmental Assessment Service, and the Environmental Superintendence. To date Chile does not have an institution that is in charge of supervising and penalization in regard to environmental regulations.

In turn, the reform did not introduce significant advances, especially in civil participation in environmental impact assessment processes, which became evident after the approval, with the open backing by the government, of the HidroAysén hydroelectric project in southern Patagonia. Equally worrisome are the thermal generation projects, which pollution and impact on local economies, especially in artisanal fishing villages and their harmful, effects on health of the

population, as evidence in the Bay of Quinteros, in the Valparaíso Region, are serious. In spite of this, four new plants have been approved (among them, Campiche) to be built in said Bay. Also of concern is the absence of public consultation, by the government, in the process of drafting a bill for the creation of the Biodiversity and Protected Areas Service, which the President sent to Congress in January 2011.

8.- Water Rights

Regarding water rights, a World Bank Report on the Chilean model of water rights published in 2011, highlighted the shortcomings of the country's water policies for the protection of ecosystems and of ecological flows that allow the protection of the natural environment and the traditional uses of this resource. The report indicates that the main difficulties are observed in the watersheds of northern Chile (regions I, II, and XV), where mining activity is intense, evidencing the existence of a structural deficit in the existing waters. In southern Chile the hydroelectric plants, especially the run-of-the-river type which have gained strategic importance, not only affect the sources of water but also produce serious environmental impact on communities, many of them Mapuche. It should also be noted that the regions where mining, energy and forestry sectors have extended to, which have an impact on water resources essential for the development of traditional activities, are the regions with the highest levels of poverty according to the CASEN survey (2009).

9.- Institutionalality of Human Rights

Regarding human rights institutionalality, we should stress the continued lack of political will to include in the agenda the idea of legislating in favor of a truly autonomous People's Defender (Ombudsman), with active legitimization and in full compliance with the UN Principles Relating to the Status and Functioning of National Institutions for the Promotion and Protection of Human Rights, or the "Paris Principles".

10.- Right to social protest

In 2011 limitations to the right to protest have been maintained and made more extreme, understanding this as the combination of freedom of speech and assembly of citizens. This has occurred as the consequence of the government's reaction to civil demonstrations, particularly by students, who have been severely restricted and repressed by State police officers by means of various methods.

The authorities have limited this right pursuant to the Executive Decree 1086 of 1983, an infra-legal standard that infringes the right to assemble without permission and without bearing arms recognized in article 19 N° 13 of the Political Constitution of 1980 (CP 1980). In addition there has been a heavy police crackdown against demonstrations which has been denounced not only by civil society organizations but also by the Human Rights National Institute itself, which concludes, in a report on police action during demonstrations

between March and August 2011, that: the police do not distinguish between people who pacifically exercise their right to assemble and express their opinion, from those who use violent acts in the same demonstrations; that in police procedures in manifestations, the police do not apply criteria of proportionality in the use of deterrent methods; that, in the police buses and vehicles, the detained were subjected to abuse and aggression which are not subject to control or supervision; that in police stations the procedures are slow, ineffective, and contrary to the current regulations; and that the treatment given to minors under 18 and over 14 years of age are contrary to current regulations (INDH, November 2011).

The abusive police action against demonstrators is also a consequence of the impunity with which the military justice system continues dealing with many of the crimes that police commit against civilians in the context of social protests, as well as the result of the tolerance of civil authorities.

11.- Prisoner rights

A year after the fire in December last year that affected the San Miguel prison in the Metropolitan Region, causing the death of 81 inmates, we find that the necessary measures have not been adopted to address the most critical problems of the prison system and the protection of prisoner rights. The legislative proposals announced to decongest prisons, as well as administrative measures- such as the provision of a new prison, and the plans to build another four “model” prisons for 8,500 inmates- do not seem to be enough to end overcrowding of prisons in this country.

Another critical issue is that related to the lack of an efficient system for the protection of prisoner rights, including both adults and adolescents. In Chile there is a lack of mechanisms that allow a prisoner to resort to a judge for the protection of their rights (Human Rights Center Report, Universidad Diego Portales, 2011). This is serious given the persistence of violent situations that exist inside prisons, as occurred in the Villarrica prison in 2011.

12.- Economic, social, and cultural rights.

In matters of economic, social, and cultural rights, the inequality existing in the country have worsened, as well as restrictions on labor rights. Economic inequality was once again observed in December 2011 by the OCDE, in a report that indicates that while the average difference of income between the richest 10% and the poorest 10% in countries that make up the organization is 9 times, in our country this difference is 27 times, which makes Chile the most unequal country among those that compose it.

Chile is still far from the decent standard of work to which the ILO aspires, which is a major component of equity and democratization of labor relations, which implies the existence of strong unions and regular and balanced collective negotiations. The Chilean situation shows that the unionization rate does not exceed 15% of salaried employees and only 5% of that work force negotiates collectively. This is a result of the survival of the military

dictatorship's so-called "Labor Plan", which severely restricted the exercise of workers' rights, and, in practice, prevents unionization, negotiation, and the right to strike.

13.- Right to education

The critical situation of the right to education was revealed by the student movement in 2011, which not only questioned the State's educational policy on subjects so fundamental as equity, quality, and financial structure at all levels of education, but also led to discussing the issue of national education as a basic right.

According to UNESCO, the right to education is a human right, which implies progressing towards free education. This leads to reinterpret the charitable nature with which education currently operates in the country, mainly at the university level, where 58% of the revenue is contributed by the students' families.

The budget law passed by Parliament this year did not reveal any changes in the bases that sustain the educational model in Chile today. Not only there were no significant increases in financial resources for education, but the distribution of these resources, according to their proportions, was the same as the budgets passed in the past decade.

The students also demanded the right to participation, especially in activities related to student representation organizations (such as student centers and federations) within higher education institutions. Said demands were not accepted by the authorities, an issue which is particularly troubling given the support that the student movement had from citizens throughout the country. This leads us to conclude that the students' demand for education as a human right remains unresolved.

14.- Freedom of speech and right to communication

The year 2011 has been characterized by a marked climate of intolerance and insecurity for the exercise of freedom of speech and information amid the dynamics of social protests that burst into public spaces. The lack of legal regulations that guarantee the right to communication have exacerbated the growing tendency of criminalizing public protest, with consequences, among others, of repression against the media and journalists and attempts to close down community media.

The existence of a bill that criminalizes the use of public space, the existence of state-monitoring of the use of social networks, the aggression against journalists by police forces when covering demonstrations, as well as suspension of transmissions and processing of community radio operators through the application of article 36 B letter A of the telecommunications law, which penalizes transmissions without a license, are measures that have increased restrictions to the public access to media.

CONCLUSIONS

The diverse civil society and indigenous peoples organizations undersigning this report, clearly find the human rights situation in Chile to be negative. Not only have we not identified any real progress in their effective recognition and implementation in the country, but on the contrary, we observe, with concern, how setbacks have taken place that limit the citizens already precarious levels of enforcement of these rights. This particularly occurs in economic, social, and cultural issues, in which the inequality of income between the richest and poorest sectors of the country becomes a deep wound, and constitutes a form of violence that is routinely exercised against the population, especially against those who live in impoverished conditions.

The same can be said about the restrictions to the exercise of the right to protest, as a manifestation of freedom of assembly and freedom of speech, which in the context of social movements have been intensified by the authorities.

During 2011 the incapacity of State institutions to respond to the demands of citizens regarding the recognition and exercise of their human rights has become evident. This has affected the lack of credibility in State institutions existing today in the majority of civilians and a growing social unrest that the State has failed to resolve, except by repressive methods.

We reiterate our demands to the Chilean Government, including not only the executive power, but also the legislative and judicial powers, to respect the human rights that they are bound to through ratified and in-force international treaties.

We greatly value the awareness generated this year in citizens and growing political sectors about the fact that the barriers that impede the deepening of democracy and a fuller implementation of human rights in the country are rooted in the 1980 Political Constitution, and for this reason, its urgent reform is not only required but also its replacement by another founding charter that arises from popular sovereignty, and that is a product of an open, democratic, and plural process.

We find, however, that bearing in mind the limits that the 1980 Political Constitution establishes to its deep reform- given the binominal electoral system, the exclusion of important social and political sectors from the Parliament and the supra-majority quorums required for this purpose- the effort of everyone will be required who believe that the time has come to create a new social and political agreement founded on human rights and expressed in a new truly democratic constitution.

We believe that the articulation of the social and environmental movements, organizations of civil society, women, and indigenous peoples, as well as political parties is a key and fundamental challenge at this time. This is due to the fact that the transformations of human rights to which we aspire face

barriers that may not be removed unless there is cohesion. Another challenge that arises from the current situation is to understand that our sectorial claims for human rights, although legitimate, will not find the answers we expect, if we don't achieve the deep transformation of the existing institutional political framework.

We hope that 2012 will be a year in which we lay the groundwork for the institutional changes necessary for the strengthening of democracy and for the fuller recognition of the rights of the individuals and indigenous peoples who inhabit the country.