

Introduction

This document presents a review of the main issues that currently face the education system in Chile examined from a law perspective. It draws on the analysis from the areas proposed by the Right to Education Index¹ (RTEI, 2015).

Analyzing the indicators proposed by RTEI it is possible to observe that the structural changes that occurred during the dictatorship period in Chile (1973 – 1990) and the various educational reforms efforts of the successive post-dictatorship governments (1990 – 2015) have relegated education as a social good. Instead, education is positioned as a commodity controlled largely by the education market, with the State playing a subsidiary role. Legislation issued in the latter period has enabled the growth of privatization of the education system and, consequently, the undermining of public education.

Right to Education vs. Privatization of Education

One of the most significant problems existing in the legislated institutional structure is the lack of constitutional guarantee of the Right to Education (Constitution of the Republic, Art. 19 About the rights and Art. 20 about the rights they have constitutional guarantee). On the contrary, the right to freedom of education, which includes "the right to open, organize

¹ The Right to Education Index is an in development index designed by RESULTS that draws on the work of Katarina Tomsevski. This index is designed to track progress towards realizing the right to education in each country highlighting areas in which attention and efforts need to be emphasized by stakeholders.

and maintain educational establishments" (Art. 19, item No. 11) by the private sector, is guaranteed by the constitution, and also has supremacy over the Right to Education. This could be described as a rare "legal anomaly", situation that also takes place in one of the most neoliberal countries in the world (Sader, 2006). This situation makes impossible for citizens to demand in court education as a fundamental human right. Meanwhile, enrollment in education administered by private stakeholders has increased significantly in the past decades to the detriment of public education. This exemplifies the existing imbalance in regards what are the primary stakeholders in the education system. As an example, students have been expelled from their schools to claim among their social demands a change in the Constitution of the Republic in order to ensure the Right to Education.

During the dictatorship period significant political, legislative, and social changes took place that encouraged and promoted the privatization of the education system, while weakening the public education system and education as a right². These changes are expressed to the present both in the structure of the provision of education in Chile, and in the logic of efficiency and effectiveness existent in the education system, in which competitiveness and accountability based on incentives and sanctions are prevalent elements. An example of this is the primacy of the measuring system

² In 1990, the subsidized private sector captured 32% of total student enrollment, with a majority of enrollment in the public sector. Currently less than 37% of total enrollment is in the state/municipal education sector.

of learning outcomes of students (SIMCE), which has substantially influenced the logic of school management and relationships among schools, the contents of learning favored in schools, as well as the participation of students and their families in the educational system that have been positioned as consumers of education that is positioned as a commodity. This phenomenon of privatization of education has resulted in a market-oriented education system (Assaël et al, 2011; Parra & Gonzalez, 2015; Bellei, 2015).

Plan of Education

The State's role in ensuring the Right to Education must be understood as an ongoing process, i.e., the fulfillment of this obligation is not exhausted by the mere enactment of legislation, instead it requires a State to implement permanent actions ensuring the right throughout its territory positioning education as a national social good with the state as guarantor entity. This means that education cannot be left to the willingness of governments in turn. Therefore, the existence of a plan of education to ensure both the coherence between actions and the fulfillment of the right to education, as well as the consistency between the two is required. Chile does not have a national education plan to ensure that the various actions of the educational system contribute to positioning public education as a social right. Since the 90s the Chilean education system has experienced the creation and implementation of several reforms and actions, but these are initiatives of various governments and there are not framed in the context of a National Plan of Education, understanding that the

latter involves citizen participation in the definition and further decisions.

Chile requires a participatory designing of a National Plan of Education that could firstly encourage dialogue and social consensus regarding the purposes and principles of education as a social right. This in turn would impact the education system in many areas that are part of the right to education: availability, accessibility, acceptability, adaptability, and participation.

Teacher Training

Teacher training in Chile is under the regulation of the market. Deregulation in teacher training in higher education institutions is an issue of concern. In 2009 there were more than 908 education programs, of which only 1/3 have participated in an accreditation process. 95% of these institutions were accredited, with significant differences in the years of accreditation granted among institutions. Thus, of the 294 accredited programs, 55% of them have three or fewer years of accreditation. On the other hand, only 7% have 6 or more years of accreditation. Since the only condition for entering the teaching profession is to be trained in an institution of higher education, and these institutions have complete autonomy regarding its educational plans and curricula, teacher training are not necessarily linked with the Ministry of Education official curricular bases nor with socially shared objectives of public education. One of the attempts to regulate teacher training is through the implementation of a standardized test by the Ministry of Education (Prueba Inicia), with a voluntary participation of students at the time of graduation from higher institutions. However, this

instrument focuses on students and not on the training institutions, therefore has a bias in putting accountability over the teacher as an individual, rather than making higher institutions accountable for teacher training.

Challenges in regards Social Participation and Diversity

Chile's education system faces significant challenges in regards issues of discrimination in the education system, and recognizing and valuing socio-cultural diversity in education. On the one hand, although there are initiatives in the curriculum field to promote multiculturalism, this refers to specific initiatives without national coverage. Then, these limited actions do not allow advancing towards the recognition of multiculturalism as a social and cultural value. In addition, despite the Indigenous Law (1993) recognizes the importance of respect and protect indigenous culture and language, the legislation does not provide indigenous groups the right to establish their own educational institutions which could advance the value and recovery of indigenous language and culture.

On the other hand, despite the existence of guidelines in regards school life promoted by the Ministry of Education and recent legislation (LGE, Inclusion Act) that indicate that students should not be discriminated against either because of pregnancy, their customs and culture, educational attainment, sexual orientation, tuition debts, among others; students continue to face situations of discrimination and expulsion from the educational system. It is relevant to note that the manuals regulating the school environment have

been often used as tools to justify the expulsion of students rather than promoting school's cultures that endorse the appreciation of diversity and students' participation in schools.

Access and Control over the production of information

In general, the Chilean education system has significant challenges in improving the availability of information to the public, as the current system of information is not easily accessible to everybody, and the information available is not always detailed to display the characteristics of education throughout the country. Despite the fact that in 2008 the Law 20.285 (Law of Transparency and Access to Public Information) was enacted to supply official information from the Ministry of Education, the access to information still disorganized and bureaucratic. A clear example of lack of access to detailed information is lack of disaggregated data in terms of socioeconomic status, indigenous groups, or migrants, which signals outstanding challenges in this area.

To the foregoing, it is important to add that at school level, public accountability is not performed in a participatory manner. This situation does not ensure that the processes of generating information adhere to standards of transparency in the use of resources public. Importantly, this issue besides signaling the difficulties in access to information indicates a problem associated with low participation and control of education by the educational community. This is reflected in the fact that the generation of information is the result of a process in the hands of educational providers given the power invested by the law

without including the participation of the wider community (students, parents, teachers, and education assistants).

Recommendations

The team that has participated in this pilot phase of the construction of the Right to Education Index recommends the following actions as responsibilities for the Chilean State, in tune with the demands of the Social Movement for Education³:

- Ensure the Right to Education in the Constitution of the Republic.
- Design, implement, and evaluate a National Education Plan ensuring the participation of educational communities in all phases.
- End for-profit private educational institutions financed with public resources.
- Initial and continuing teaching training must be regulated in public universities.
- Access to information must be accessible to the public in a non-bureaucratic way. Educational communities should be in control of the production of information.
- Privatization of education has to end, strengthening at the same time public education.
- Having a national unified education system, comprehensive, free, and public encompassing from early childhood education to higher education.
- Ensuring universal and free access to higher education.

- End standardized tests that encourage schools competition for funding/enrollment.
- Design, implement, and evaluate a participatory funding system to replace the current subsidy system.
- End all additional educational fees to families.
- Designing policies that ensure curriculum relevance to territorial, cultural, and social characteristics.

³ More details in regards proposals between 2006-2015 at:
<http://campanaderechoeducacion.org/post2015/wp-content/uploads/2015/08/D%C3%A9cada-luchas.pdf>