



WORLD MOVEMENT *for* DEMOCRACY

Confronting the Challenges to Democracy in the 21st Century

National Endowment for
Democracy, Secretariat

1025 F St., NW, Suite 800
Washington, D.C. 20004

Tel: + 202-378-9700
Fax: +202-378-9889

world@ned.org
www.wmd.org

Defending Civil Society

Report on Laws and Regulations Governing Civil Society Organizations in Chile

Prepared by:
María Inés De Ferrari*

*Statements and views expressed in this report are those of the author and do not necessarily reflect that of the World Movement for Democracy, the National Endowment for Democracy, or the International Center for Not-for-Profit Law.

LEGAL FRAMEWORK

Constitutional Framework

Article 1 of the Constitution, enacted in 1980, but amended several times as part of the transition to democracy,¹ includes two provisions aimed at strengthening Chilean civil society:

- “The State recognizes and protects the intermediary groups through which society organizes and structures itself and ensures that they have sufficient autonomy to fulfill their specific purposes;”
- The State has the duty “to promote the harmonious integration of all sectors of the Nation and to uphold the right of persons to equal opportunity to participate in national life.”

Article 8 outlines the principle of publicity for public legal entities: “The acts and resolutions of State bodies are public, as are their basic principles and the procedures they use. The reserve or secrecy thereof, however, may only be established by means of a law passed by a qualified quorum when publicity would affect the due fulfillment of the duties of those bodies, the rights of persons, the security of the nation or the national interest.” This rule is critical for civil society organizations (CSOs), in as much as it allows them access to relevant information held by government bodies.

Article 19 sets out the following basic rights concerning civil society:

- **Freedom of association (Article 19 No. 15):** CSOs may operate without previous authorization, without the need for government registration and with voluntary affiliation, within the bounds imposed by morals, public order and the security of the State. While political parties do not have a monopoly on citizen participation, the binomial electoral system represents an enormous obstacle to the competitiveness of independent candidates lacking the direct support of a political party.
- **Freedom of thought and information (Article 19 No. 12):** This Article envisages the right to express opinions without prior censorship, which does not preclude citizens from being held liable for potential infractions derived from exercising this right (for example: the offenses of injury, defamation, etc.). While “the law may in no case establish a state monopoly over the social communications media,” there is no guarantee that the communications media will not be manipulated by groups representing different political, social or cultural leanings.
- **Right of assembly (Article 19 No. 13):** The constitution recognizes the right to assemble without prior authorization and without weapons.

Legal Framework

First and foremost, two clarifications: a) Chile is a unitary State (Article 3 of the Constitution), and therefore has a single legal system for the entire national territory; and b) a number of specific laws govern different types of social organizations (for example: political parties, trade unions, churches, neighborhood boards, etc.). This report focuses mainly on the laws concerning not-for-

¹ Available on the Internet: www.camara.cl/camara/media/docs/constitucion_politica.pdf, last searched: October 14, 2010.

profit legal entities (NPLE), which is the legal status applied to the majority of the NGOs in the country.

NPLEs are regulated by the Civil Code (enacted in 1855, and subsequently subject to multiple amendments).² According to Article 545: “A legal person is a fictitious person capable of exercising rights and contracting civil obligations and of being represented legally and extralegally.” Subparagraph 2 of this Article establishes “two types of legal entities: corporations and charitable foundations.”

The Regulation on Granting Legal Personality (2004)³ also sets out the requirements and steps for obtaining and maintaining such status.

The passage of Law No. 20.285 on Transparency and Access to Public Information, which entered into force in April 2009, represents an extremely important milestone in terms of the rights of CSOs. This law facilitates the practical application of the constitutional principles mentioned earlier. It distinguishes two principles of public transparency: *a) active*: which refers to the duty to ensure that certain categories of information enumerated in the law are permanently available to the community through government agency websites, which must be updated monthly; and *b) passive*: which relates to the right of persons, without any discrimination whatsoever, to request and receive information concerning all actions by State administrative bodies. This law also stipulated the establishment of the Transparency Council, an autonomous government body responsible for ensuring observance and dissemination of the law. Public services under the executive branch and the municipalities are wholly subject to the law. A special regime governs State-owned enterprises, the Armed Forces, State universities and the parliament, which are subject only to the principle of passive transparency.

Moreover, in 2010, the National Congress passed a Law on Associations and Citizen Participation in Public Management,⁴ which is currently pending enactment by the Executive. This law introduces several amendments concerning civil society, which will be discussed in Section V of this report.

Finally, in keeping with its proposal to carry forward an Agenda for Citizen Participation, in 2008, the Bachelet administration signed the “Presidential Directive on Citizen Participation in Public Management” (“Instructivo Presidencial de Participación Ciudadana en la Gestión Pública”). Pursuant to this directive, all public administration agencies were to implement the following measures:

- Establish a general rule on citizen participation;
- Hold an annual public accounting for citizens;
- Establish civil society advisory councils based on the principles of diversity, representation, and pluralism; and,

² Available on the Internet: <http://biblioteca.vitanet.cl/colecciones/300/340/346/civil.pdf>, last searched: October 14, 2010.

³ Hereinafter, **Regulation on Legal Entities**.

⁴ See the history of this bill at: www.camara.cl/pley/pley_detalle.aspx?prmID=3888&prmBL=3562-06, last searched: October 14, 2010.

- Disseminate publically relevant information concerning their policies, programs, activities and budgets in a timely, complete and widely accessible manner.

While this agenda raised many expectations, nearly a year after the end of Bachelet's term, no far-reaching evaluations are publicly available that would indicate whether or not these measures contributed to progress towards their proposed objective. What is clear in general terms, however, is that no dramatic change has been observed relative to previous administrations.

ESTABLISHMENT & REGISTRATION

Organizational Categories

As noted above, Article 545 of the Civil Code distinguishes two categories of legal entities: corporations and charitable foundations. The former are made up of a group of members with a specific shared purpose. The latter are created by a founder who provides the start up capital, which is to be used for a particular purpose. Neither the Civil Code nor the Regulation on Legal Entities establishes a minimum number of members required for the establishment of these entities.

It should be recalled that there are a number of specific laws regulating the various categories of organizations, in addition to other norms established by certain entities for citizen participation.⁵ According to the Regulation on Legal Entities, the Ministry of Justice shall maintain a registry of these entities (Article 37).

The general legal framework described in this report (the Constitution, Civil Code and Regulation on Legal Entities) does not include predetermined objectives by the State for NPLEs, but rather enumerates legal restrictions such as those relating to morals, public order and the security of the State.

Charitable Status

Independently of the other laws in force, Chilean law provides for tax exemptions for corporations that make donations to certain categories of NPLEs in specific areas (e.g. culture and education). Specifically, Law No. 19.885 of 2003 encourages "the good use of donations to legal entities that give rise to tax benefits and extends them to other social and public purposes" (2009).⁶ The entities that benefit from this law are the NPLEs recognized in the Civil Code, namely, corporations and foundations. According to Law No. 19.885, however, such entities must provide services that have a verifiable social relevance based on the standards and procedures established by the State.

There are two types of donations: a) direct donations to the institutions indicated in the preceding paragraph, and b) donations to the Mixed Fund for Social Assistance (Fondo Mixto de Apoyo Social), which is administered by the Executive Branch through a Council chaired by the Ministry of

⁵ For example, the following two laws deal with social organizations: Law No. 19.418 on Neighborhood Boards and Other Community Organizations (1996, last amended in 2002) and Law No. 19.638 on the Legal Establishment of Churches and Religious Organizations (1999). An example of a law creating opportunities for citizen participation is Law No. 19.300 on the General Bases for the Environment (1994, last amended in 2010).

⁶ Available on the Internet: www.leychile.cl/Navegar?idNorma=213294, last searched: November 30, 2010.

Planning and Cooperation and made up of other public and private legal entities. The Council's responsibilities include certifying the entities entitled to receive the benefits available under the law (Article 4). The Ministry of Planning and Cooperation (MIDEPLAN) is responsible for creating and maintaining a registry of the institutions certified by the Council as potential recipients (Article 5). The latter must submit specific projects, and must also certify their current legal status, effective operations and fulfillment of their statutory purpose (Article 5(b)).

The benefits established in this law entail a tax deduction of up to 5 % of the donor's taxable net income (Article 10). Some observers believe that this ceiling is too low and entails "a setback relative to past laws, since prior legal systems provided for up to 10 % of that income in some cases."⁷

The Ministry General Secretariat of Government, which is responsible, for government-civil society relations, administers a Fund for Strengthening Civil Society (Fondo de Fortalecimiento de la Sociedad Civil). This fund, which was worth \$870,877,000 (US \$1,800,000) in 2010, mainly benefits four categories of CSOs:

- Neighborhood Boards and other Territorial and Functional Community Organizations regulated by Law No. 19.418;
- Indigenous Associations and Communities regulated by Law No. 19.253;
- Corporations and Private Foundations (as defined in the Civil Code and Regulation on Legal Entities); and,
- Development NGOs regulated under Supreme Decree 292 of 1993 of the Minister of Justice.⁸ One of the main requirements is to have legal personality approved and registered.

The total amount available for distribution through this fund in 2010 reflected a decrease relative to 2009 levels. According to the Executive Branch, this was due in part to the budget cuts necessitated by the earthquake of February 27, 2010. Each organization can receive between US\$4,000 and US\$20,000 depending on whether the project is local or national in scope, among other factors. The implementation period may not exceed one year.

Barriers to Entry

As noted earlier, Chile recognizes the right to free association, meaning that CSOs are not required to be registered with any State entity. However, in practice, they must have an approved and registered legal personality in order to receive for public funds. This constitutes more than a minor hurdle for grassroots social organizations. The recently passed Law on Associations and Citizen Participation, which is now before the Constitutional Court, is designed more to surmount this barrier than to foster participation per se.

Article 546 of the Civil Code stipulates that each corporation or foundation must be approved by the President of the Republic. According to Article 23 of the Regulation on Legal Entities: "The

⁷ Instituto Libertad y Desarrollo, "El aporte de la sociedad civil en Chile", in *Temas Públicos*, No. 770, May 12, 2006, p. 3. Available on the Internet: www.lyd.com/lyd/controls/neochannels/neo_ch3974/deploy/tp%20770.pdf, last searched: October 14, 2010.

⁸ See the website: www.portalcudadano.cl, last searched: October 14, 2010.

President of the Republic shall grant or deny the requested approval based on the merits reflected in the relevant documentation,” and may even stipulate any modifications deemed necessary (subparagraph 2). This will also change with the recently adopted Law on Association and Citizen Participation as we shall see in the conclusion below.

The approval of the establishment of a corporation or foundation is under the purview of the Ministry of Justice, which serves as the President’s intermediary. The time frames for this process can fluctuate considerably, with some groups obtaining their legal personality within a couple of months while others wait for over a year. The lack of a logical explanation for these variations gives rise to all sorts of interpretations. However, in practice, there have been no known cases where the request for legal status has been denied.

According to Article 559: “Corporations may not dissolve themselves without the approval of the authority that legitimated their existence.” Existing jurisprudence contradicts this rule where it states that legal entities may only be dissolved pursuant to a judicial ruling based on a specific law.⁹ This jurisprudence is essentially premised on the constitutionally recognized freedom of association (Article 19 No. 15). It should be noted that chronologically, the Civil Code (1855) predates the Constitution (1980).

As a rule, Chilean law does not impose restrictions of a natural person associated with founding or joining a particular organization. Restrictions of a natural person must be understood as exceptional in nature. For example, according to Article 8 of the Regulation on Legal Entities, “Except as otherwise indicated in an express statutory provision, anyone who has been convicted of a crime or misdemeanor [*simple delito*] in the fifteen years prior to the date on which they are to be designated, may not serve as a director.” Obviously, this restriction relates to an individual’s capacity to serve as a director rather than as a member although there may be exceptions pursuant to an express statutory provision.

An NPLE must be established by a private instrument, which is drawn up as a legal instrument before a public notary. The bylaws must be attached and, at minimum, must include the following information: a) the name and address of the entity; b) the purposes for which it is intended and the economic means that will be available to it; c) rules governing its members; and d) administrative bodies.

The request for approval by the President of the Republic, which is channeled through the Ministry of Justice, must be submitted by an attorney authorized to practice law. This procedure therefore entails a financial barrier to entry since it is necessary to pay the fees of the professionals authorized to process the legal personality. This will also change under the Law on Association and Citizen Participation, as we shall see in the conclusion.

Operational NPLEs may request a certificate of good standing confirming the type of legal personality approved and registered before the State of Chile (Article 38 of the Regulation). To do this, they must certify that they have complied with the various requirements set out in the Regulation, including: annual reports, financial statements and copies of the minutes of the

⁹ For example: Ruling of the Appeals Court of Santiago, of August 25, 1986 (*Gaceta Jurídica*, No. 28, Santiago, p. 28), and reiterated in the ruling handed down on September 16, 1992 (*Gaceta Jurídica*, No. 147, Santiago, pp. 33 and 34). Cited in: Cruz-Coke, Carlos, *Instituciones Políticas y Derecho Constitucional*, Ediciones Universidad Fines Terrae, Santiago, 2009, p. 466.

Assembly that elected the board of directors and/or of the Board of Directors meeting to elect the officials of the entity in question. A request for a certificate must be done annually. No distinction is made between national and foreign entities.

GOVERNMENT OVERSIGHT & ENFORCEMENT

Regulatory Authorities

According to Chilean constitutional law, legal requirements for CSOs must be established by law or regulation. Therefore, the authorities responsible for regulating these entities are the National Congress (for the adoption of laws) and the Government (for purposes of exercising its regulatory authority).

At present, two ministries are directly involved in the operations of CSOs: a) the Ministry of Justice, which exercises regulatory authority over NPLEs, and b) the Ministry of State through its Social Organizations Division (DOS by its Spanish acronym), which is responsible for public policy concerning citizen participation and civil society.

Internal Governance

Pursuant to the Regulation on Legal Entities, each NPLE is governed by a board of directors which “shall be elected annually in a regular General Assembly in which each member shall vote for one person [...]” (Article 10). This board of directors shall elect a president, a secretary, and a treasurer from among its members (Article 11).

Under Article 14 of the Regulation, the Board of Directors shall have the following responsibilities: a) oversee the institution and administrate its assets, b) convene regular and special assemblies, c) submit regulations for the approval of the General Assembly as necessary, d) carry out the decisions of the General Assemblies, and f) report in writing to the Regular General Assembly concerning the investment of funds and the institution’s performance during his or her term of office.

No major legal restrictions are imposed on the functioning of this internal governance. For example, Chilean law does not require that the Government of the Republic be notified about meetings of the board of directors. In addition, the government does not have authority to appoint its directors. However, the minutes from the meetings of the board of directors must be registered since they are considered public information.

This information could be requested at the Ministry of Justice, in the Office of Information, Claims, and Suggestions (OIRS) either via hard copy request or electronic. This has been in administrative practice for many years. In addition, since the passing of the aforementioned Law No. 20.285 on Transparency and Access to Public Information, a request for public information can be made directly to the Ministry of Justice even without an explanation either in hardcopy or electronically. In accordance with the Law on Legal Entities and the Transparency Law, this is public information, even though the origin may be private. In fact, Article 11 of the Transparency Law establishes a dominant Relevant Principle, which is “all information is relevant under the organs of the State Administration, in any format, date of establishment, support, origin, classification, and procedures.”

Reporting

Article 36 of the Regulation on Legal Entities states that the Ministry of Justice is responsible for overseeing the corporations and foundations. This means that the Ministry may request different types of reports from legal entities that are already operating, including the minutes from its assemblies, approved accounts and annual reports, accounting ledgers, inventories and remunerations, and “reports of any kind that discuss their activities, for which purpose a deadline will be established.”

Most donors that provide grants through competitive bidding processes require mandatory narrative and accounting reports. This applies to national and international donors. CSOs must submit preliminary and final reports to the government, including financial and programmatic information, based on the project totals and implementation schedule.

Organizations that receive tax deductible donations, such as those regulated by the aforementioned Law No. 19.885 on “the good use of donations to legal entities that give rise to tax benefits and extend them to other social and public purposes,” must keep a Record of Donation “for purposes of certifying the good use of the donations referred to in Article 1.” Such record shall include: a) the donor’s name, b) the total amount of the donation, and c) its purpose.

The Law also requires organization to “prepare an annual report of the status of income received in the form of donations and a detailed description of how those resources were used, in accordance with the contents set out by the Internal Tax Service, which must be submitted during the first three months of each year” (Article 2, final subparagraph). Most of the organizations that receive this type of donation are foundations.

State Enforcement & Sanctions

Sanctions have been established for noncompliance with various legal requirements. For example, after reviewing the requested reports, the Ministry of Justice may order corporations and foundations to correct any infractions found. There is no predetermined time period for this procedure.

The Ministry may also impose, where relevant, disciplinary or corrective measures on members or on those in managerial roles (i.e.: suspension or expulsion from the organization). Finally, “failure to comply with the instructions issued by the Ministry of Justice [...] shall constitute sufficient grounds to revoke the legal personality of the corporation or foundation” (Article 36 of the Regulation).

As noted earlier, however, revocation of legal personality can and must be decided by a court of law. Therefore, an organization that considers a government decision unfair or arbitrary may turn to the courts of justice, whose rulings are completely independent of the Executive Branch. It should be recalled that there is a debate in Chile over whether or not the government has the power to dissolve legal personality. The scale is tipped in favor of the conclusion that it does not, despite provisions in the Civil Code and the Regulation on Legal Entities, grant the government this authority. This position is substantiated by the principle of constitutional supremacy, and the Constitution recognizes the right to *free* association.

Dissolution, Winding Up, & Liquidation of Assets

It should be reiterated that the process for involuntary dissolution remains a matter of debate, with the jurisprudence inclined towards the judicial over the administrative venue.

For voluntary dissolution, the membership of a particular entity may decide to proceed with its dissolution in accordance with its by-laws, including a two-thirds majority. Members may not dissolve the entity in and of themselves. Rather, they must initiate a dissolution procedure that is very similar to the one used to obtain legal personality, and can be equally slow and cumbersome. Once the entity has been dissolved, the by-laws may provide for the disposal of its assets, in which case it should proceed according to those instructions (Article 561 of the Civil Code). There is a distinction between the by-laws of a corporation and those of a foundation. According to Article 564 of the Civil Code, “Foundations are extinguished through the termination of the assets used for their support.”

The predominant position in Chilean legal doctrine holds that an organization’s by-laws may not provide for the distribution of assets among its members, since the latter would obtain a profit or benefit contrary to the essence or nature of this category of legal person. Each institution, therefore, must previously designate an institution that satisfies a series of requirements and to which the assets will devolve should the entity wind up its activities and close.

Other Constraints

One of the constraints on the development and activities of CSOs working on nonpartisan political issues (democracy, human rights, participation, etc.) in Chile is resources to finance them. Chile ranks among the countries with the worst income distribution in the region,¹⁰ and much progress needs to be made in terms of political reforms to improve the democratic system. At the same time, however, because the country’s macroeconomic indicators are strong relative to other Latin American countries, it enjoys political stability and it joined the OECD last year. As a result, it is no longer a priority of international cooperation.

CSO ACTIVITIES

General Powers

The activities of corporations and foundations must adhere to the purposes set out in the by-laws approved during the process to obtain legal personality. As a general rule, and subject to the provision that they may not engage in trade union or for profit activities, NPLEs may “promote, practice and develop, by any means available to them, any work for social progress or to benefit the community, and may collaborate with legally constituted institutions in any undertaking conducive to the fulfillment of its purpose” (Article 6 of the Regulation).

In terms of capital, these entities “may acquire assets of any nature and by virtue of any title” (Article 556 of the Civil Code).

¹⁰ The per capita income of the richest 20% of households is 14.1 times higher than the per capita income of the poorest 20%. www.pnud.cl/datoschile/1.asp, last searched on January 2011.

Expression/ Advocacy/ Public Policy Activities

As noted earlier, the Chilean Constitution respects freedom of thought and information. At least in theory, citizens are free to express their opinions, arguments, etc., and are held accountable *a posteriori* for any potential legal infractions they may have committed against others, such as attacks on honor.

While there is plenty of freedom to express oneself politically, there is also a shortage of sufficiently independent and pluralistic media outlets with national coverage. It is difficult to criticize the government or other authorities or to discuss certain issues that have been catalogued as “values-based” (such as abortion rights or same-sex marriage) due to the lack of fluid and expeditious channels for the public expression and debate of such ideas. This level of expression would require the development of communication strategies that few CSOs are in a position to undertake, mainly because of the high cost involved. Alternative outlets such as virtual media are being explored, but the Internet coverage in Chile is still not sufficiently widespread.

A complicating factor is the concentration of media ownership in Chile (see the Appendix). This is particularly true of television and the print press. That said, the State does not hold a monopoly over the media, nor does the Executive Branch engage in any persistent effort to confiscate or close down private media outlets. To reiterate, the problem is that these media outlets do not provide enough space for CSOs to express their views.

In terms of political affinities, several CSOs are quite open about their political positions and preferences. Over the past ten years, a burgeoning number of research centers (“think tanks”) or political foundations affiliated directly or indirectly with political parties or other political entities have emerged. Some of these organizations do in fact have a presence in the media through, for example, columns in the print press, radio and television commentary, and so forth.

NGOs working on issues such as democracy and citizenship from a pluralistic standpoint find it difficult to insert their issues into the mass media, which is frequently more interested in controversial events or statements or those with an immediate hook. The difficulties CSOs face are not about expressing opinions or providing information concerning topics under debate so much as situating issues that are relevant or have been downplayed in the media on the agenda. More specialized CSOs tend to enjoy greater visibility and make a recognized contribution to specific thematic issues.

Communication & Cooperation

A number of Chilean CSOs participate in international networks and exercise varying degrees of influence in those forums. There are no State restrictions on this.

CSOs increasingly are forming alliances and networks, particularly when they have a common or analogous purpose. Many of these alliances operate through Web sites, and the government does not impose any restrictions on the Internet use by CSOs. More than a few Chilean social organizations, however, and particularly the more vulnerable ones, lack necessary skills to use digital tools.¹¹ Moreover, the degree to which these networks actually function and exert influence varies considerably.

¹¹ Although as a whole, Chile enjoys a high degree of Internet access. According the LATINOBAROMETRO report, Chile ranks first in Latin America with 58 % having access to the Internet or electronic mail at least

For example, the Chilean Association of Nongovernmental Organizations (Asociación Gremial de Organismos No Gubernamentales – ACCIÓN) consists of 70 civic institutions¹² and the Solidarity Network [Red de Organizaciones Solidarias] comprises over 90 social assistance entities.¹³ Despite these efforts, however, they still find it challenging to coordinate activities or keep their networks going.

Seeking/Securing Funds

CSOs are not legally barred from seeking foreign funding and are subject only to the normal economic restrictions applicable to any national entity. At the same time, no particular facilitation or support is available for obtaining such funds.

In practice, Chilean civil society faces serious hurdles to obtain funds. Due to financial challenges, several NGOs that had worked for years on issues such as gender, democracy, poverty, and human rights have had to close. This panorama is mainly attributable to Chile's relative institutional and economic stability compared to other Latin American countries, which has led many cooperation agencies to leave the country or to remove Chile from their list of receiving countries (OXFAM, for example). This has placed Chilean CSOs in a very complicated situation since, while it is true that, comparatively speaking, other countries may face greater difficulties, Chile is still far from being a developed country.¹⁴

State funds reserved for CSOs are scarce relative to the demand and generally involve small amounts (US\$4,000 - US\$8,000 annually). Bidding processes to obtain these funds are generally cost free and are publicized mainly through the Internet.

New Associations & Citizen Participation Law

As noted earlier, the National Congress recently passed a Law on Associations and Citizen Participation in Public Management,¹⁵ which is currently before the Constitutional Court and pending enactment. In addition to amendments to existing laws described in this report, this Law introduces new provisions:

Concerning Not-for-Profit Associations, the Law highlights the following:

Right of Association

The Law stipulates that all “persons have the right to associate freely in pursuit of licit purposes.” Under Article 1 of the Law, the only limitations are those relating to “morals, public order and the security of the State.” The Law further provides that the State must

once (LATINOBAROMETRO 2010, Corporación LATINOBAROMETRO, Santiago, p. 99. Available on the Internet: www.latinobarometro.org, last searched: December 6, 2010.

¹² See: www.accionag.cl, last searched: October 15, 2010.

¹³ See: www.comunidad-org.cl, last searched: October 15, 2010.

¹⁴ Suffice it to say that it is still one of the most unequal countries in the world: in 2003, the top 10% on the income scale accounted for 46.9% of income, while the bottom 20% accounted for only 3.5%. Cfr. Solimano, Andrés y Arístides Torche, “La distribución del ingreso en Chile 1987-2003: Análisis y consideraciones de política, June 2007, p. 20. Available on the Internet: www.bcentral.cl/conferencias-seminarios/seminarios/pdf/solimano_torche.pdf, last searched: December 6, 2010.

¹⁵ See the history of this bill at: www.camara.cl/pley/pley_detalle.aspx?prmID=3888&prmBL=3562-06, last searched: October 14, 2010.

ensure the autonomy of associations and may not take measures that interfere with their internal life. These associations would still obtain legal personality according to the provisions set out in the Civil Code, albeit with certain amendments discussed below.

National Registry of Not-for-Profit Legal Entities

A new registry would be established for these entities under the Civil Registry and Identification Service. In other words, the registry would no longer be under the direct purview of the Ministry of Justice as it is under the current Regulation on Legal Entities. This Service would issue the certificates of good standing for NPLEs.

Public Interest Organizations

As defined under Article 15 of the Law, public interest organizations are “those not-for-profit legal entities whose purpose is to promote the general interest in terms of citizens rights, social assistance, education, health, the environment, or any other matter for the common good, and particularly voluntary entities, and which are registered in the registry established in the following article.” This registry is the updated, public list of organizations maintained by the National Council of the Fund for Public Interest Organizations (Consejo Nacional del Fondo de las Organizaciones de Interés Público). This registry must be permanently available to the public on the Council’s Web site.

Voluntary Organizations

Article 19 of the Law states that “voluntary organizations are public interest organizations whose main purpose is achieved based on solidarity to benefit others, and is pursued in a free, systematic and regular manner without paying any remuneration to its participants.” As observed, these entities are a species within the type of public interest organizations and they are mainly distinguished by the fact that they do not remunerate their members.

The Law seeks to establish a “Fund for Strengthening Public Interest Organizations.” It would be part of the State budget and also obtains contributions from international cooperation. “The Fund’s resources shall be allocated to finance national and regional projects and programs that are consistent with the specific purposes set out in Article 15 (1) [definition provided above]” (Article 21 of the Law).

Under this law, a Council would be established as the fund administrator. It comprises three categories of members: a) Government officials, such as the Under Secretary of the Ministry General Secretariat of Government, the Under Secretary of the Ministry of the Treasury, and the Under Secretary of the Ministry of Planning; b) two individuals appointed by the President of the Republic, approved by the Chamber of Deputies; and c) six representatives of public interest organizations, elected by their peers from duly registered entities. The President of the Republic shall appoint the Council Chair from among these six members, representing the registered public interest organizations.

Amendments to other laws are also under the Constitutional Court’s review. In general, these amendments aim to strengthen the “Principle of Citizen Participation” across State administrative bodies. The following are among the most relevant:

- **Law No. 18.575 Organic Constitutional Law on the General Bases of State Administration (2001):** a) *Principle of citizen participation:*¹⁶ The principle of citizen participation is formally established, and supplements existing principles such as responsibility, efficiency, effectiveness, probity, transparency, etc. (Article 3); b) *Title on citizen participation:* A complete title on citizen participation has been added, which specifically, under the amendments, provides that “Each State administrative body shall establish the formal and specific modes of participation available to persons and organizations within their sphere of jurisdiction.”; c) *Annual accounting:* The amendments would establish the duty of government bodies to provide an annual public accounting of the policies, plans and programs they implement; d) *Matters of public interest:* Under the amendments, public interest organizations shall identify matters of public interest that require people’s opinions; and e) *Civil society councils:* Government bodies would be required to set up these advisory councils comprised of not-for-profit associations related to the area of their respective jurisdictions.
- **Law 18.695 Organic Constitutional Law on Municipalities (2006):**¹⁷ a) *Citizen Participation Ordinance* requiring that a public procedure must be included in the process to handle submissions or complaints; and b) With the amendments, the name of the former Economic and Social Council would be changed to the Communal Council of Civil Society Organizations. This entity “aims to ensure the participation of territorial or functional community organizations engaged in activities relevant for the economic, social and cultural advancement of the community” (Municipalities Law, Article 94). This Council would be elected by local community and public interest organizations. It may also include representatives of trade unions and associations in a percentage not to exceed one-third.
- **Law No. 19.418 on Neighborhood Boards and Community Organizations (1997):**¹⁸ With the amendments, this law would authorize community unions of neighborhood boards and functional community organizations to form provincial, regional, or national federations and confederations. These umbrella entities shall enjoy legal personality simply by depositing their articles of incorporation and by-laws with their local municipal secretariat.
- **Civil Code:** The amendments to the Civil Code change the provisions outlined above for the better. Specifically, the phrase in Article 546 of the Civil Code, indicating that those entities that “have not been approved by the President of the Republic” are not legal entities, is replaced by a phrase stating that those entities that have not “been established in accordance with the rules set out in this title” are not legal entities. In addition, Article 559 providing for dissolution by the President of the Republic, which has been challenged in the jurisprudence, has been completely changed. Strict grounds have been established for this purpose, including expiration decided by the general assembly and a legal ruling (in case of a violation of the law). In other words, the Presidential authority has been removed from the process of establishing and dissolving NPLeS.

¹⁶ Available on the Internet: www.interior.gov.cl/filesapp/Ley_18575.pdf, last searched: December 3, 2010.

¹⁷ Available on the Internet: www.cmvm.cl/umbral/ltp2/doc/Ley%20Municipalidades%2018695.pdf, last searched: December 3, 2010.

¹⁸ Available on the Internet: www.chiledeportes.cl/pdfs/ley_19418.pdf, last searched: December 3, 2010.

CONCLUSIONS: CHALLENGES FOR CITIZEN PARTICIPATION

Since 1990, Chile has generally made progress in building a stable, representative democracy. Nonetheless, there is awareness—although not necessarily the political will—of the need for political reforms in areas such as voter registration¹⁹ and revamping the binominal electoral system.

Chilean civil society played a crucial role in the restoration of democracy in the 1990s. During that period, it worked actively and collaboratively with political parties. Trade unions, neighborhood organizations and NGOs were well aware of their social and the political role. Since the return to democracy, however, the gap between the social and the political realms has widened for a number of reasons and has led to growing public alienation and distrust of political activities and of partisan political players in general. This clearly poses an urgent challenge in Chile since social progress conducive to a more egalitarian and fair society cannot occur if citizens are disengaged and do not have means to influence issues of public concern. In order to strengthen civil society and, in turn, restore the legitimacy of political parties, it is necessary to rebuild a type of relationship that acknowledges the legitimacy and need for the combined and independent efforts of both sectors in promoting and furthering proposals and projects on civic matters. This is clearly a pending task in Chile.

Chile must foster a culture of dialogue among citizens and between citizens and the authorities. The experience of CSOs working in the field has revealed that certain vulnerable groups do not have a permanent and legitimate forum where they may articulate their issues and interests. Moreover, when opportunities for participation and dialogue have been created, they have been taken advantage of and contested. An ongoing challenge for Chilean democracy—and something that most CSOs are demanding—is to achieve a more inclusive and participatory democratic system that incorporates more social oversight and truly represents the country's diversity and multiculturalism.

It is time to take advantage of the new tools offered by the recent Law on Associations and Citizen Participation in Public Management and to disseminate other existing, but heretofore unused mechanisms, in order to activate the system, detect good and bad practices and propose necessary legal reforms. A positive facet of this Law is that it envisages and combines the right of association and not-for-profit organizations in a single law. This is a step towards reducing the bureaucratic red tape associated with setting up CSOs, as described earlier. Conversely, the legislation's weakness is the scant importance it accords citizen participation in the sense of effective, ongoing, and institutionalized advocacy in public management. In other words, instead of creating a general, ancillary system for citizen participation, it merely amends certain specific norms (for example, those relating to municipalities, neighborhood boards, etc.), and this is confined to secondary or formal aspects of legal integration, as opposed to effective progress in creating channels for political advocacy by CSOs.

Public advocacy is still piecemeal under the new Law and to make matters worse, it is still not binding on the authorities. The final language of the Law does not include all of the observations

¹⁹ Currently, registration is voluntary and voting mandatory, meaning that over two million eligible young people do not vote.

submitted by CSOs concerning the initial draft bill. It is, nonetheless, a step forward that CSOs hope to build on in the future.

It is still necessary to continue to publicize the Access to Information Law if the goal of social oversight of public management is to be achieved. Some CSOs, such as the Corporación Participa, are working tirelessly to publicize the Law and to train grassroots social organizations in the use of the practical tools it provides. This experience has revealed how useful the Law can be and has also exposed the widespread difficulties associated with navigating its technical and virtual language in order to submit the relevant requests.

Despite these limitations, Chile's enormous social and cultural diversity finds expression in its vast array of social organizations. There is a growing shift from the sweeping narratives of ideologically driven political parties to micro-narratives in defense of specific causes that often garner crosscutting support in the political arena. This has positive and negative effects. While a great deal of energy is invested in specific causes, it is also difficult to find strong social movements advocating causes at a more programmatic level.

Finally, it is important to mention the significant citizens' movements that occurred in 2010 around environmental issues. The public has become increasingly aware of issues such as the energy grid, large mining operations and, in general, the environmental and social costs of economic development. There is also more awareness of the impact political and economic decisions in this area have on the life of small communities and on the general public. In response, several CSOs have begun to approach their work from the standpoint of sustainability. This has opened a door for learning, disseminating, exercising and advocating for the rights to participation and access from the standpoint of specific issues that are clearly meaningful to people and it has triggered mobilizations and an active commitment on the part of citizens. The challenge: to learn about and from these processes and ensure that citizens contribute to greater participation and, in general, to a more democratic and inclusive Chile.