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The Legacy of Dictatorship and Persistent Socio-Economic Inequalities in Chile's Educational Policy

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> "*We must recover from the terrible consequences of Pinochet if we want a true democracy (…) In our country, there is no justice, even if we don't have a dictator anymore.*"
>
> - Camilla Vallejo, 2012

1. Introduction

Since 2011 the Chilean education system has faced a crisis of unprecedented proportions. The 2011 school year was virtually paralysed as students of secondary and higher education, as well as teachers, took part in strikes that lasted weeks and flooded the streets of Santiago de Chile in the largest demonstrations the country has seen since the restoration of democracy. The marches have continued throughout 2012 and 2013, with over 150,000 students marching through the capital as recently as April this year (Fang 2013). It is the largest and most persistent social movement to have arisen in the democratic era, dating back to the mass 'pinguino' protests of 2006 where 600,000 students marched for educational reforms (Delano 2011). The movement has sparked national and international scrutiny of the profoundly unequal conditions that exist within the Chilean education system, as well as broader questions of social and economic justice in Chilean society. Students have been campaigning persistently against the excessive cost of education, the widespread privatisation and for-profit nature of educational institutions and the increasing disparities between rich and poor in access to quality education at all levels. Successive attempts to appease the students through greater budgetary allocations as well as reforms to the student loan system have been rejected by the movement (Muñoz 2012, 25). Their demands go far beyond the provision of additional resources for education. They argue that the structure of Chilean education is fundamentally flawed, creating one of the most expensive and unequal education systems in the world. At the core of their frustrations is the belief that the Chilean model of education is a relic of the Pinochet regime. Key features of the current education system were implemented

between 1973 and 1990, a period of institutionalized human rights violations. Furthermore, successive democratic administrations have failed to significantly reform these structural aspects of the education system. Therefore they argue that the time has come for a fundamental reorganization of education in Chile towards a system that provides genuinely free, high quality education that is accessible to all (Muñoz 2012, 6; Delano 2011; Tomasevski 2006,198).

This paper takes the argument of the student movement as its starting point. It will explore the claim that this current state Chilean education has its roots in the social and economic policies implemented during the Pinochet regime that have remained largely unchanged during the democratic era. This raises key questions about Chile's transition from dictatorship to democracy and the failure to address violations of economic, social and cultural rights that occurred during the regime. Therefore, this paper will analyse the development of educational policy in Chile since the Pinochet era, taking a human rights based approach. By drawing on international standards on the right to education, it will examine whether Chile is meeting its obligations under international human rights law, to respect, protect and fulfill the right to education. It will question whether economic and social policy implemented under an authoritarian regime can be considered compatible with social justice. This will require a brief sketch of the right to education under international law and a broader examination of the economic and social policy implemented under the Pinochet regime and following the restoration of democracy. Finally it will examine the nature of Chile's transition from authoritarianism to democracy and whether transitional justice processes have any role to play in addressing current social tensions and the demands of the student movement.

The Chilean student movement has drawn attention to issues that go beyond their immediate demands for educational reform. They have highlighted deeper frustrations lying at the heart of Chilean society: questions of equality and social justice following the restoration of democracy have been sacrificed in the name of economic growth and political stability. The movement has finally brought the intimate relationship between the violence of the military takeover, the violations of civil, political, economic, social and cultural rights that occurred during the regime and persistent social and economic injustices, into the mainstream public discourse.

The Right to Education in International Law

In 1948 the Universal Declaration of Human Rights first established education as a human right stating that: "education shall be free, at least in the elementary and fundamental stages (UN General Assembly 1948, Art. 26)." Further protection for this right has been elaborated in key international and regional human rights treaties, including the International Covenant on Economic, Social and Cultural Rights (ICESCR), the Convention on the Rights of the Child, the European Convention on Human Rights, the Optional Protocol to the American convention on Human Rights and the African Charter on Human and Peoples rights. These instruments place legally binding obligations on all countries that have signed and ratified them to respect, protect and fulfill the right to education. Article 13, of the ICESCR, sets out the international standard for the right to education stating that:

> (a) Primary education shall be compulsory and available free to all;
> (b) Secondary education in its different forms, including technical and vocational secondary education, shall be made generally available and accessible to all by every appropriate means, and in particular by the progressive introduction of free education;
> (c) Higher education shall be made equally accessible to all, on the basis of capacity, by every appropriate means, and in particular by the progressive introduction of free education. (UN General Assembly, 1966)

The United Nations Committee on Economic, Social and Cultural Rights has provided further clarification on the nature of state responsibility to provide free education at all levels:

> "While States must prioritize the provision of free primary education, they also have an obligation to take concrete steps towards achieving free secondary and higher education (...) Sharp disparities in spending policies that result in differing qualities of education for persons residing in different geographic locations may constitute discrimination under the Covenant. (Committee On Economic, Social And Cultural Rights 1999, par. 14)

Chile has ratified the ICESCR and at the regional level it is a signatory to the Additional Protocol to the American Convention on Human Rights in the Area Of Economic, Social And Cultural Rights. This treaty protects the right to education as a universal right that is necessary for the full development of the human personality and its provisions mirror the rights set out in the ICESCR (Organisation of American States 1999, Art. 13). Thus, the Chilean state has both international and regional obligations to respect, protect and fulfill the right to education.

Drawing from this diverse body of international law, the right to education can be understood as a legal obligation on states to provide universal access to free primary education. Furthermore, states must ensure universal availability and accessibility of secondary education and equal access to higher education on the basis of capacity, in particular by the progressive introduction of free education at second and third level. The former Special Rapporteur on the Right to Education, Katarina Tomasevski, developed a simple framework, known as the 4As' approach, that has become the international standard for assessing whether a country's education system complies with human rights standards. Education must be *available*, *accessible, acceptable* and *adaptable*. In other words, education must be free and government-funded and there must be adequate infrastructure and trained teachers able to support it. It must be non- discriminatory and accessible to all, and states are obliged to take positive steps to include the most marginalized. The content of education must be relevant, non-discriminatory, culturally appropriate and of quality. Education must be capable of evolving with the changing needs of society and must contribute to challenging social inequalities (Muñoz 2012, 10-11). Moreover, the right to education is an enabling right: it enables the enjoyment of other rights such as freedom of expression and the right to work (Ibid, 32).

However, there is a growing trend within economic, social and development policies, at both the national and international level, to regard education as a service for which users should pay, rather than a universal human right (Tomasevski 2006, xxiii). The result has been a dramatic shift in educational provision from the state to private, for-profit, interests. Muñoz points to a global crisis in education that is marked by indifference, lack of dynamic educational policies, the disinterest of the international community and a global financial deficit in the provision of funds for education (2012, 6). The Chilean student movement has been the most sustained and dramatic manifestation of public frustration in the face of this crisis. In an ironic twist of history, the country that was held up as a model for free market reforms in the provision of education has become the champion of the right to education and an inspiration for similar movements across the globe.

2. Economic Shock Therapy: The Imposition of Neoliberalism in Chile

The period immediately preceding the *coup d'etat* of September 11th 1973 was one of dramatic social and economic reform under the democratically elected

government of Salvador Allende, which sought to bring socialism to Chile by democratic means. Allende's government was responsible for the nationalisation of key Chilean industries, increased labour protection, an expansion of the welfare state and it made educational equality one of its principle goals (Muñoz 2012, 21). However, such policies stoked fears among national and international business elites that the socialist government proved a threat to their personal and business interests (Klein 2007, 76-77). Furthermore, the USA feared the growth of Communism in Latin America and the potential of Allende's government to inspire other countries to follow suit. Allende was perceived as a threat to US political and economic hegemony in the region (Klein 2007, 64). This situation led to an extreme ideological polarisation between supporters of the *Unidad Popular* government and its opponents. When Pinochet took power by force in 1973 it was considered a decisive move to counter the threat of socialism and protect the country from "political and economic annihilation (Harvey 2005, 15)."

In the following year the military junta consolidated its rule through the "institutionalization" of a state of emergency that gave the communist threat a "permanent character within national life" and justified the war against the 'internal enemy' (Silva 1999, 176-177). All social movements, political parties and collective forms of organisation were dismantled (Harvey 2005, 8). It is estimated that 3,900 people were murdered or disappeared by the regime, that at least 80,000 people were imprisoned or sent to concentration camps and 200,000 people were exiled (Klein 2007, 77). The overthrow of the Allende administration represented both a military and economic takeover that installed one of the most repressive dictatorships in Latin American history (Silva 1999, 176-177).

In the absence of any political opposition, the Chicago Boys—a group of Chilean economists that had trained under Milton Friedman at the University of Chicago—were incorporated into the regime as economic experts that would manage the transition from 'state socialism' to free market neoliberalism (Harvey 2005, 8). They employed what Harvey refers to as economic 'shock treatment' in order to stabilise Chile's economy (Ibid). This included the negotiation of huge loans from the International Monetary Fund (IMF) on the condition of a major restructuring of the Chilean economy. IMF restructuring policies prioritised the reduction of public spending and the balance of payments deficit. State industries were sold off at bargain prices; only the national copper industry remained in the hands of the state as an essential element in the state's budgetary capacity (Ibid). They also embarked on a process of dramatic reform in social policy which resulted in cuts to wages, state employment and expenditure. By 1975 the rate of unemployment was

between 20 and 25%. Reductions in public sector spending converted "the most advanced social security and public health system of Latin America (outside of Cuba) into a private pay-as-you-go business (Frank 1976, 882)." The reversal of land distribution policies resulted in the dispossession of thousands of peasant farmers. Agricultural production was redirected towards export crops thereby reducing the food supply to the Chilean population. Inflation continued to grow, the real value of wages fell dramatically and price controls were lifted from all foods. By 1975, the cost of bread had reached 75% of the living wage and malnutrition was widespread among the poorest sectors of society, particularly vulnerable children (Ibid, 884). This period was characterised by cycles of economic growth and collapse (Harvey 2005, 154). The spurts of growth were enough justification to maintain the demobilisation of all political opposition. The regime relied on the economic promise of neoliberalism, as a source of legitimacy for their continued rule (Silva 1999, 179).

An economic crisis in 1981 precipitated the first major rupture in the regime's control; unemployment had reached a record high of 30%, there was hyperinflation and the external debt had risen to the unprecedented level of US$14 billion (Klein 2007, 85). The crisis sparked the first large-scale protests since 1973 as people took to the streets to voice their dissatisfaction with the economic policies of the regime and to call for the restoration of democracy. This outpouring of public discontent did not bring the immediate restoration of democracy, yet it was significant enough to prompt the regime to re-examine its economic policies and to take a much more pragmatic approach to the implementation of neoliberalism (Silva 1999, 182-183). The Chilean economy finally stabilised by 1988 and was experiencing moderate but steady economic growth. Nevertheless, 45% of the Chilean population now lived below the poverty line, while the richest 10% of the population experienced a growth in income of 85% (Klein 2007, 86). The 'Chilean miracle', as this period was known, can be characterised not as a period of wealth creation, but rather a massive redistribution of wealth from the poor to the rich and the consolidation of power and social status of the social and business elites. Indeed Harvey signals that "increasing social inequality [has] in fact been such a persistent feature of neoliberalisation as to be regarded as structural to the whole project (Harvey 2005, 16)."

Chile is *the* paradigmatic example of the abandonment of social democracy and the imposition of neoliberalism by force. Indeed, it has the distinction of being the first country to actually apply neoliberal theory in practice and has served as a model, and justification, for the similar imposition of neoliberal policies across the region

(Ibid). The Chilean experience, whereby neoliberal economics were imposed and maintained through the use of military force, illustrates the incompatibility of pure neoliberalism with a functional democracy (Branco 2008, 97-98). Moreover it demonstrates the difficulty in reconciling neoliberalism with the full spectrum of fundamental human rights. Neoliberalism embraces individual freedom as *the* fundamental human right. Freedom of choice and freedom of the market are seen as paramount in order for individuals to exercise this right. Political rights such as freedom of speech and freedom to vote are necessary to ensure that individuals can participate freely in the market. Whereas access to education, health, housing, water and food are considered to be individual preferences or needs, rather than fundamental human rights or legal entitlements. Freedom of the market and consumer choice enable the individual to satisfy preferences through the consumption of goods and services. It relieves the state of its responsibility to provide for economic or social rights as this would constitute an interference with individual choice. Nevertheless, the experience of Chile demonstrates that even the most fundamental civil and political freedoms can be sacrificed in the name of economic freedom (Harvey 2005, 37-38).

A Negotiated Transition: From Dictatorship to a 'Protected Democracy'

The crisis in 1981 also led to a dramatic reactivation of civil society after almost 10 years of complete political demobilization. For the following nine years the pro-democracy movements persisted with their claims for political freedom and began to engage in a lengthy process of negotiation with the regime, that ultimately secured a return to democracy by 1990. A coalition of left and centre-left parties—the *Concertación*—emerged with the hope of offering a "moderate and credible alternative to military rule" in the run up to the 1988 plebiscite that would decide Chile's political fate (Silva 1999, 182-183). The need for political stability and credibility inevitably resulted in ideological compromises. Memories of the economic and political chaos that preceded the coup and the violent repression which followed, as well as the monopolistic presence of the Chilean military in all aspects of political life, meant that a conservative approach was taken with regard to social and economic questions. "Socialist demands which could jeopardise the alliance had to be avoided (Ibid)."

A central point of contention was the existence of the Political Constitution of the Republic of Chile that was promulgated in 1980. It formally established the authoritarian nature of the state and ensured that Pinochet would remain a

permanent presence in political life even following the 1988 plebiscite that called for the restoration of democracy (Fuentes 2010, 1741). Other authoritarian features of the Constitution included presidentially appointed senators, veto power for the armed forces within the political system, high levels of military autonomy and an overrepresentation of right-wing sectors within the political system. It included strict barriers to reform that were designed to avoid future transformations of the Constitution, guaranteeing the long-term and disproportionate influence of both Pinochet and the military in Chilean politics (Ibid, 1752). A further obstacle to the introduction of progressive legislation following the restoration of democracy, was the creation of the *leyes orgánicas* (organic laws). These governed legislative change in areas of political, social and economic policy and required a majority vote of three-fifths of the congress to secure approval (Ibid, 1752-53). Nevertheless, the *Concertación* eventually had to "accept the validity of the controversial 1980 Constitution and use the narrow political space left to it" to allow for the democratic handover (Silva 1999, 182).

Chile's transition was thus negotiated between the military and political interests of the former regime, other right wing parties and the *Concertación* coalition; an elite pact that did not leave room for any significant popular participation or debate (Fuentes 2010, 1749). As such there was little public ownership over neither the transitional process nor the democratic framework that was established. This set the pattern for decision making over the coming years. Indeed the Pinochet regime had been very successful at political demobilization that continued through the transitional period (Silva 1999, 181). The Chilean student movement is the most significant expression to date of the dynamic culture of political participation that existed in Chile prior to 1973. For many, the Chilean transitional process established a wholly inadequate democratic framework: "a protected democracy which falls short of even formal democracy (Olavarría 2003, 31)."

The Chilean Constitution, while providing for political continuity and stability, become a key constraint in achieving progressive social reform. Article 1 of the Chilean Constitution states that: "the State recognises and protects the intermediate groups through which society organizes and structures itself and guarantees them the adequate autonomy to fulfill their own specific purposes (Ministerio Secretaría General de la Presidencia, 2011)." In the realm of education, Articles 10 and 11 of the Constitution emphasize parents' freedom to choose the education of their children and freedom of education, including the right to open educational institutions. The child's right to education and the state's responsibility to provide free and compulsory education, are subsidiary to these rights (Muñoz

2012, 20). Thus, the Constitution belies the tendency, established during the Pinochet regime, of favoring private consumption and free market policies over state responsibilities in the provision of essential public goods and services. The "authoritarian enclaves" and the constraints on decision making imposed by the 1980 Constitution guaranteed, during the transitional period and beyond, "the continuity of the policies of the Pinochet dictatorship, foremost of which is its free-market economic model (Olavarría 2003, 11)."

The continuity in economic and social policy from the Pinochet regime has been reflected at a political level by the broad acceptance among the *Concertación* coalition that, rather than reverse the economic policies of the Pinochet era and return to social democracy, a more pragmatic approach to neoliberal economics was the preferred option to ensure further economic growth and stability (Silva 1999, 185). When it has come to tackling the social debt incurred during the regime, the ideal of social justice was replaced with the concept of 'growth with equity' (Olavarría 2003, 12). In other words, the now maligned neoliberal adages of 'the rising tide lifts all boats' and the 'trickle-down effect', whereby steady economic growth will eventually benefit even the most impoverished, provided the ideological foundation for addressing poverty and inequality in Chile (Klees 2008b, 411). Poverty and social inequality were seen as morally repugnant rather than socially unjust. As such, lifting people out of poverty did not depend on addressing the structural inequalities that had been created during the regime, nor the articulation of economic or social rights, rather, the emphasis shifted to the voluntary provision of charity, philanthropy and poverty alleviation programmes for the worst off in society (Silva 1999, 185). The *Concertación* thus maintained a "continuing commitment to the maintenance of political stability at the expense of the mobilization of social demands (Olavarría 1999, 11)." The Bachelet administration that governed from 2006 until 2010 coincided with the first wave of student protests and her government was the first Chilean administration to significantly break this pattern, particularly in the realm of education. Nevertheless, social reforms have been labored and have not addressed the demands of the students for fundamental reform of the education system, nor tackled the root causes of social and economic inequality. Indeed, Chile's transition to democracy is characterized by the maintenance of many aspects of the legal, constitutional and economic order established during the regime, rather than a complete break from the past (Olavarría 2003, 31).

3. Privatisation and structural inequalities in Chile's education system

The shift in educational policy that occurred during the Pinochet regime reflects the global trend towards the commercialization and privatization of educational provision. Indeed Chile, served as a model for other countries to follow. Moreover, Chile is distinguished within the region and among the OECD countries as the country in which the commercialization of education is most advanced (Torres & Schugurensky 2002, 445).

Globally, this shift has been marked by a change in attitude to education, whereby education has increasingly been considered a service for which the user should pay rather than a fundamental human right. The inability of individuals or certain sectors of society to enjoy their right to education was once considered a failure of the state to guarantee that right. However, it is now considered to be a problem of access that can be solved through market, rather than state, provision (Tomasevski 2006, 185). Education, therefore, has been transformed into a profit making industry that is subservient to the state's "international economic imperative to remain competitive in the global market" in this "new era of flexible accumulation (Torres & Schugurensky 2002, 434)." This shift in responsibility from the state to the individual is one of the primary features of neoliberal economic policy: it promotes the expansion of markets into areas of life where they had previously played a marginal role, particularly in the provision of public goods such as health, education and water. Neoliberalism promotes the opening of markets to privatisation and a reduction of barriers to free competition (Harvey 2005, 2). This often results in the removal of price protections on essential goods and services, while the state is strongly discouraged from intervening in other ways with market forces (Frank 1976, 882). Public goods and services that were once regarded as essential to the general interest of the population are now seen as another source of economic growth and the accumulation of wealth. The impact of this trend on human rights has been characterised by Katarina Tomasevski (2005, 709) as the "progressive liberalisation of trade in education and health [that] is replacing progressive realization of economic, social, and cultural rights."

The liberalisation of education has taken place across all levels of educational provision. It is characterised by the reduction in overall public spending on education, increased competition among schools for students and public funding, the introduction of fees into public institutions, public-private partnerships in educational provision, the creation of for-profit private schools and universities, and state-subsidised private education. Such policies have resulted in an ever

"increasing blurring of the public-private distinction (Torres & Schugurensky 2002, 443-444)." While these trends are now almost universal, Tomasesvki notes that the public provision of education, particularly in developing countries, has come under serious pressure as a result of the Washington Consensus. The demands for liberalisation, structural adjustments and debt repayments have made it financially impossible for many developing nations to meet their international obligations on the right to education (Tomasevski 2006, 185). Indeed many countries have cited the Washington Consensus as "the driver of their shift from free to for-fee education (Ibid)."

Having introduced free public education in 1928, Chile was acclaimed "as a model for the radical democratization of knowledge and access to higher education (Tomasevski 2006, 185)." Spending on education in Chile up until the early 70's absorbed between 12 and 20% of the annual budget and Allende made educational equality one of the highest priorities for his government (Muñoz 2012, 20). The *coup d'état* of 1973 resulted in an unprecedented direct military intervention in the running of schools and the structure of the education system, on the pretext of the necessity to depoliticize and reorganize the schools following Allende's socialist interventions. The military appointed a special representative to each university that would oversee the running of these institutions. Thus Pinochet extended his authoritarian rule over the education system (Muñoz 2012, 20).

There followed swift maneuvers to dismantle much of the public educational infrastructure by reducing the functions of the Ministry of Education and by handing over the running of educational institutes to private corporations (Ibid). Torche describes this situation as close to "an external shock" in the imposition of educational policy as one could imagine (2005, 320). The egalitarian model was turned on its head. The reduction of public spending on education, the creation of a market for private investment and profit making within education, and the promotion of free parental choice as the primary determinant in accessing educational institutions became the priorities for the regime (Muñoz 2012, 20). The Chicago Boys had by then established themselves as expert economic advisors to the regime and played a highly influential, if not central, role in setting the pace and the direction of educational reform. These changes were imposed by technocrats who were completely removed from the social reality, acting on behalf of an "authoritarian regime that was unbound by democratic rule and was backed up by repression and violence" and with no participation from either civil society or the key stakeholders in education (Ibid). Indeed, Tomasevski (2006, 199) notes that these reforms have generated so much controversy and such sustained opposition

from students, precisely because they were implement during "a time which epitomised institutionalised human rights violations."

Decentralisation, Voucher Schools and For-Profit Education

The regime quickly succeeded in its primary goal of dramatically reducing public expenditure on education. By 1988 public spending on higher education alone had reduced from $171 million in 1981 to $115 million (Torres & Schugurensky 2002, 434). The percentage of GDP that was spent on education had dropped from 4.9% in 1982 to 2.5% by 1989 (Torche 2005, 322). This was largely achieved through a shift in emphasis from state to private provision of education, where parents and families were expected to assume responsibility for providing for their children's education.

Responsibility for the funding and management of education was decentralised from the Department of Education to municipal governments. Municipalities now had control over resource allocation, the employment of teaching staff and curriculum development. Educational inequality in Chile grew at an unprecedented rate as a result of the drop in state subsides per pupil and the fact that levels of funding varied greatly between municipalities. This municipal divide has been a major contributor to social stratification in Chile, as schools in wealthier municipalities have larger tax bases and enjoy access to far greater funding and resources. Moreover, those wealthier families from poorer districts who could afford to enroll their children in private schools, began to remove their children from public education institutions. As a result, municipal schools experienced a steady decline in standards and an increasing social stigmatisation (Torche 2005, 322).

Finally, the introduction of system of subsidies—whereby public and semi-private, voucher schools were given state subsidies for each student enrolled—resulted in the transformation of a one-tier system of educational institutions into a three-tier system of public, semi-private and private schools. The voucher schools tended to be established in wealthier areas and were more selective in their admittance policies, whereas public schools were legally obliged to accept all students who wished to enroll. This resulted in the unprecedented expansion of the private sector, with many of the schools functioning on a for-profit basis (Ibid, 322-324). Moreover, voucher schools allowed for the weakening of teacher contracts, the flexibilization of working conditions for teachers and the abolition of union membership for teachers working in those schools (Klees 2008, 323).

Prior to 1981, 80% of Chilean students attended public schools. However, this number had dropped to 54% by 1999. The value of the state subsidy per child enrolled in school fell by 20% between 1982 and 1987, with a disproportionate impact on public schools that could not supplement their income by charging fees (Klees 2008, 323-324). Finally, charging fees at third level public institutions resulted in the de-facto privatisation of the public universities (Torres & Schugurensky 2002, 434). This all took place within the context of the general retrenchment of the social welfare system, a weakening of the social safety net and the economic crisis of the mid-eighties. It resulted in increasing levels of poverty and inequality throughout the 1980's, it disproportionately affected poorer families' ability to access quality education at primary level and led to reduced enrolments at secondary and tertiary levels. These factors contributed to ever increasing stratification throughout the education system (Torche 2005, 322-324).

Reforms Following the Return to Democracy and Growing Inequalities

It is testament to the importance Pinochet placed on education that one of the final acts of his regime was to introduce the Organic Consitutional Law on Teaching (LOCE), on his final day of office in 1999 and which remained in force until 2006 (Muñoz 2012, 23). The LOCE guaranteed the right to education and affirmed the role of the state in protecting that right. Nevertheless, it was controversial from its inception for the restrictions it placed on the government and the Ministry for Education in managing the system and implementing educational reform. Moreover, it granted substantial freedoms to private individuals to establish educational institutions without due state regulation (Ibid). Indeed it was the opposition to this law that sparked the initial student protests of 2006. Their demands for greater government control over the financing and quality of education, and that the state, as opposed to 'intermediate groups' be the sole guarantor of the right to education, spurred the *Concertación* Government, led by Michelle Bachelet, to commit to a more comprehensive educational reform (Ibid). The result was the General Education Law (LGE) which came into force in 2009. It guarantees education as a right at kindergarten, primary and secondary level, reaffirms Chile's commitments to its international obligations and lays out a number of other rights constituent to the right to education. These include, equality in access to quality education, respect for cultural, social and ethnic diversity, participation in the educational process and transparency and flexibility (Ministry of Education Chile 2009, Art. 2). It also provides guarantees against discrimination on socio-economic grounds; educational institutions may not expel

or sanction a student in any way during the school year for failure to pay relevant fees. For schools that receive state subsidies they may not examine either previous academic achievement or parental financial status when considering the admission of a student (Art. 11).

Following a series of major reforms in 2005 the right to education also enjoys Constitutional protection in Chile (Muñoz 2012, 20). Article 10 states that:

> The objective of education is the complete development of the individual in the various stages of his life. Parents have the preferential right and duty to educate their children. The State shall provide special protection for the exercise of this right. The estate is obliged to provide preschool education and to guarantee free access to and financing of secondary education (…) Basic education and middle education are mandatory, to that effect, the State must finance a gratuitous system designed to ensure access thereto by the entire population (Ministerio Secretaría General de la Presidencia, 2011).

These legal protections and guarantees have not, however, satisfied the demands of Chilean students who have continued to mobilise throughout the course of these reforms. The LGE represents a significant attempt to redress the violations of human rights embodied in the educational policies imposed during the dictatorship and "reverse the most critical aspects of the effects of the military market-led and privatization-centred reform (Tomasevski 2006, 199)." Nevertheless, it falls short of the reforms demanded by the Chilean student movement. It fails to address the four principal causes of the systematic inequality in education: the voucher system, the municipalisation of the funding structure, the imbalance in funding between private and public schools and the for-profit character of many educational institutions (Delano 2011). Sebastien Piñera's conservative administration, elected in 2010, has made repeated attempts, since this latest cycle of protests began in 2011, to appease the student movement. These measures have included greater budgetary allocation of funds for education, reform of the student loan and scholarship system and further Constitutional guarantees on the right to education, which have been largely rejected by the student movement, as the two sides have become increasingly polarized (Muñoz 2012, 25). Piñera's government has responded with increasing force to the student's public demonstrations and the movement in turn has forced the resignation of two successive Ministers for Education. The students have demonstrated an unwillingness to compromise, in pursuit of their demands for a transformed education system that provides free, quality education at all levels (Ibid).

International studies into the state of education in Chile affirm many of the assertions made by the Chilean student movement regarding the deep disparities

in accessing quality education and the impact of privatization on the right to education. These studies demonstrate a trend of persisting inequalities and even greater reliance on private educational institutions since the restoration of democracy.

In 2004 the UN Committee on Economic, Social and Cultural Rights (UNCESCR) expressed concern over "the disparity in the quality of education offered in municipal and private schools (UN Committee On Economic, Social And Cultural Rights 2004, para. 29)." The UNCESCR raised questions over the discrepancies in budgetary allocations between state and private education and measures the state had taken to guarantee, in practice, the right to education especially for poorer families (Ibid). The Committee recommended that the state party address the quality of education in public schools (Ibid, 31-33),

In her global report 'Free or Fee' Tomasevski commends Chile on the progress it has made in educational provision since the end of the dictatorship. She notes that there has been a gradual shift in budgetary prioritisation from military spending towards financing social services, nevertheless spending on education in Chile still remains at 3% of GDP, below the OECD average of 4.5% and well below the UNESCO recommended 6% (Muñoz 2012, 42; Tomasevski 2006, 198).

The 2009 OECD report into Tertiary Education in Chile highlights many inequalities that are endemic to the structure of education. The primary cause identified by the report is the segmentation which exists in Chilean society and which is reflected throughout the school system. Children of wealthier families who can afford to attend private schools consistently outperform children from lower income families in university entrance tests (OECD & World Bank 2009 11). All higher level education in Chile, including public institutions, is fee paying and the financial aid available for students is decided on the basis of academic achievement, as well as need, thus favouring students who have been able to attend high performing private primary and secondary institutions. Students from lower income groups, who tend not to perform as well, are less able to access more prestigious institutions and are more likely to end up paying full fees (Ibid, 15). These trends reflect the discrepancies in educational quality between private, semi-private and public schools which results in a disproportionate level of students from wealthier families gaining access to higher level education. Third level fees in Chile account for some of the highest in the region and even where students succeed in attaining funding, it rarely covers the full cost of fees. Thus university completion rates are much lower among poorer students (Ibid, 17). From this report it is clear that the

social stratification in the primary and secondary sectors of education has a direct impact on the ability of students from lower income backgrounds to access education at third level.

In 2011 the Special Rapporteur on the Right to Education, Kishore Singh, called attention to the protests taking place in Chile and claimed it was an "opportunity to re-evaluate the country's education policies with an emphasis on human rights." He added that

> "...Access to quality education, whether primary, secondary or at higher level cannot be subjected to students' or their families' abilities to pay or take on debt... in recent decades Chile has made great progress in re-establishing a state of law and democracy, ensuring education that is accessible to all is a fundamental part in consolidating these advances." (UN News Centre 2011)

Moreover, the 2011 report by Mr. Singh addresses inequality and the need for states to address the

> "... multiple forms of inequality and discrimination through comprehensive policies. Prevailing disparities in access to education—between boys and girls, and between rich and poor regions—must be given special consideration, recognizing that good policies backed by a commitment to equality can make a difference (Singh 2011, para. 72)."

A recent UNESCO study that was commissioned in response to the ongoing turmoil in Chile has found that in 1990, public funding of private schools and colleges stood at 32%, by 2011 this had risen to 52%, whereas state support for public schools fell from 58% to 39% over the same period (Muñoz 2012, 39). Private education institutions now account for 48% of all educational institutions (Ibid). According to international standards on the right to education, private education is considered complementary to, not a central component of, educational provision. Thus Chile stands out as an exception in this regard. Neighbouring countries such as Argentina and Uruguay do not dedicate significant funds to subsidise private educational institutions, whereas in Chile there are many complex legislative provisions regulating the financing of private education (Ibid, 30). The LGE authorizes the granting of subsidies to private institutions and at the same time allows these institutions to impose charges during the selection and enrollment processes as well as monthly fees (Ibid, 49). This has created a situation in which private education continues to be subsidized by the state, at the expense of public education, which remains underfunded and of low quality.

The right to education stresses the state's obligation to progressively introduce free education at second and third level. Moreover, states have a duty under the ICESCR to avoid retrogressive measures that would affect the realisation of the

right to education. According to Muñoz the Constitutional and legislative framework in Chile has created a complex system of subsidies for private education that reduces the guarantee of the right to education and distorts the idea of education as a public good (2012, 42 & 49). Despite the existence of systems of supervision and control over the allocation of subsidies, the Chilean education system is founded on processes of privatization rather than state provision (Ibid, 49). Chile remains one of the most expensive countries in the world to receive an education. Tomasevski and the Chilean student movement attribute this situation to the legacy of the educational policies imposed by Pinochet that made "education un-free in many different meanings of this word (Tomasevski 2006, 198)."

4. Addressing the Legacy of Educational Injustice Through the Lens of Transitional Justice

It has become evident that over the last two years the student movement's demands have evolved from the cry for free education, to the demand for a complete re-examination of the neoliberal foundation of Chile's economy, society and education system. In the words of Camila Vallejo, leader of the student movement until 2012: "we realised the problem was bigger, the problem was structural (…). The debate became about the link between education and the bigger economic model in Chile (Kingsley 2012)."

The 17 year Pinochet regime in Chile is infamous for the gross and systematic human rights violations which were carried out by the military Junta. Since the restoration of democracy in 1990, Chile has taken important steps towards addressing this history of violence and repression by engaging with transitional justice processes. A Truth and Reconciliation Commission (TRC) was established immediately following the restoration of democracy, to examine the gravest abuses of human rights committed by state forces during the regime (Ensalaco 1994, 659). This was an important step towards justice for the victims of the regime yet its mandate was restricted due to the political realities of the "pacted" transition. Therefore the investigations focused principally on discovering the fate of those murdered and disappeared by the regime and did not address issues of social and economic justice (Ibid, 657).

The transitional process in Chile has been commended for its peaceful nature and for it's ability to maintain economic progress and stability. Nevertheless, the country continues to struggle with the legacy of political, social, economic and

cultural repression (Ibid, 670). Much of this struggle is borne out of the unwillingness of successive governments to address the economic injustice and violations of ESC rights that that have occurred since 1973. The TRC acknowledged in its conclusions that the Chilean crisis had "deep roots of a socioeconomic character" but it refrained from addressing these issues as facets of the transitional justice process, on the basis that they did not come under its mandate (Laplante 2008, 335). Political forces in the country have remained equally as reluctant to acknowledge the intimate connection between direct state violence and repression, the liberalisation of Chile's economy and violations of ESC rights. Indeed, the majority of those who supported the deposed *Unidad Popular* government led by Salvador Allende came from lower income backgrounds and the popular classes and it was they who suffered the most brutal repression by the armed forces in the aftermath of the coup. Moreover, these groups were disproportionately affected by retrenchment of the social-democratic state in Chile during the dictatorship (Letelier 1976).

Chile is no exception in this regard; a similar pattern has emerged in many contexts, in post-authoritarian or post-conflict processes. Many truth commissions have avoided engaging in questions of social and economic injustice out of the real or perceived need to maintain social and political stability in the fragile period of transition. According to Miller, the insistence on memorializing violations of civil and political rights, while ignoring violations of ESC rights, may in fact represent an attempt to negate the "narration of past economic oppression (Miller 2008, 268)." Thus, truth commissions generally focus their investigations on the role played by the military, judicial and political institutions in perpetrating violence. Their recommendations generally focus on institutional reforms, legal justice, reparations for victims and the incorporation of international human rights standards and safeguards into all aspects of law, order, security and judicial proceedings. They have rarely gone so far as to prescribe remedies for economic or social injustice. The TRC in Chile took the unusual step of recommending reparations in terms of health care, social security and educational benefits for victims of state violence. These, however, were recommended for individual cases and functioned "in-lieu" of a broader project of social transformation (Ensalaco 1994, 661).

There is growing recognition that societies in transition can no longer afford to ignore the historical legacy of socioeconomic inequalities. Laplante has underlined the fact that the increased social tension in post-authoritarian and post-conflict societies—manifested in massive demonstrations, blockades and strikes—often

arises out of the "frustrated attempts to seek redress from the state" for socioeconomic grievances, such as lack of access to health, education or basic infrastructure. Such grievances are historic in nature and are often linked to the socioeconomic circumstances that played an instrumental role in fomenting the original conflict. The massive student movement in Chile is symptomatic of this reality (Laplante 2008, 332).

Thus, in order for Chile to meaningfully address the legacy of the dictatorship, the transitional justice process must address all human rights violations, be they of an economic, social, cultural, civil or political nature: "post conflict recovery entails a holistic approach that should include economic, political and social structural reform (Lapalante 2008, 332)." The Chilean government can no longer avoid addressing the deep inequalities in Chilean society out of fear of a return to the ideological polarisation and violence that immediately preceded the coup.

Challenging the legitimacy of the economic and social model of organisation imposed by the Pinochet regime and maintained by successive democratic governments, has become the driving force behind the student movement. This sets them apart from other social movements that have occurred in Chile, as they have made a direct connection between policies implemented during the regime and the current inequalities in the Chilean education system that deny many students the full enjoyment of their right to education. Their demands have evolved from educational reform to encompass a broader social transformation and a vision of a more just and equitable society (Delano 2011, Kingsley 2012). As such, they have called attention to the failure of the transitional process in Chile to address Pinochet's legacy of socioeconomic injustice. As the importance of addressing ESCR in transitional justice process gains greater recognition and legitimacy, embracing this discourse may give further weight to the students' demands. By formulating their arguments within this legal framework, their demands for social justice would be perceived as "legitimate, sensible and humane calls on a state to fulfill its international obligations and carry forward a reform agenda (Laplante 2008, 341)."

It is the particularly undemocratic nature of the development of educational policy in Chile that may prove to be the student movement's greatest bargaining tool. By drawing attention to the roots of economic repression and violations of socio-economic rights, the mechanisms of transitional justice can also contribute to the repair of the rupture in the social contract that occurred over the 17 years of Pinochet's rule. As Laplante puts it: "the path to reconciliation would include

mending (or creating) the social-economic-political conditions that bolster the foundational social contract needed for stable peace (Ibid, 349)."

Conclusion

The Chilean student movement is the largest and most persistent social movement Chile has witnessed since the restoration of democracy. It has highlighted not only the profound educational inequalities that exist in Chile but also the deep social and economic injustices that have resulted from 30 years of free market policies. As the movement continues to struggle towards a free and equitable education system, they have succeeded in transforming the political landscape in Chile. As all political parties begin preparations for the 2013 presidential elections, the question of education can no longer be ignored. At the launch of her presidential campaign Michelle Bachelet acknowledged that "this is a moment for structural change (…) The first project that I will send to Congress will put an end to profit and will advance free education at all levels (Montes 2013)." Each candidate has in turn put forward his or her plans to respond to the current crisis in education, some determined to maintain the status quo, fearing a 'state monopoly' in the field of education, while many others are open to the possibility of substantial reform (Long ; Siekierska 2013). Even more significant is the acknowledgement by Michelle Bachelet that

> "we know there is an almost universal discontent among citizens. We have seen this from the students in their mobilization for free, quality education (…) For a long time we dedicated ourselves to adjusting and changing the model. Some of these changes have been good. But others have been insufficient. We have to carry out much deeper reforms if we truly wish to end inequality in our country (Montes 2013b)."

The student movement has thus succeeded in throwing a spotlight on a country that continues to struggle with the legacy of competing socioeconomic ideologies that span over 40 years of political, social and economic upheaval. That education has become the epicentre of this struggle is no coincidence. Education was one of the areas of social policy that experienced the most dramatic changes across the Allende administration, the Pinochet regime and the *Concertación* governments. Education is at once the great social equalizer and the great social divider; it has the potential to create and perpetuate either a more equitable society or even deeper social and economic inequalities. Moreover, education is a direct reflection of societal values: whether a particular society is concerned with addressing inequality, injustice and disadvantage by providing equitable access to quality

education or whether it is driven by a profit motive and the concern for capital accumulation. Thus, the Chilean student movement embodies the desire in Chile for a broader process of social transformation, towards a more equitable society where all human rights will be respected, protected and fulfilled.

The transitional justice framework offers the Chilean student movement the possibility of articulating its demands through the language of rights violations and redress for social injustice. This has increasingly become a tactic of social justice advocates from societies in transition. With regards to the provision of education in South Africa, the state was obliged to "consider all reasonable alternatives for effective access... taking into account equity, practicability and *redressing the imbalance created by apartheid policy* (Jaichand 2010, 332 emphasis added)." There is no reason why an approach aimed at redressing the imbalances created by Pinochet's education policies could not be applied at this juncture in Chile. By recognising economic repression, inequality and social injustice as violations of rights, there is an imperative on the state to address its human rights obligations and find remedies for the victims of violations (Laplante 2008, 351). Due to the structural nature of violations of ESC rights, which often affect whole populations, it is necessary to employ a more expansive approach to justice that would focus on wider social redress and transformation (Miller 2008, 287). Considerations of structural inequality, discrimination and social injustice would have to feature as part of this process and redress would include redistributive social and economic policies and defined frameworks and timespans for the progressive realisation of ESC rights (Ibid).

The passion, creativity and dedication of the hundreds and thousands of students and their supporters who have marched through the streets of Chile, gone on strike and occupied schools and universities, have repeatedly made national and international headlines. They have forced Chilean society and the international community to scrutinize the reality of growing poverty and inequality in the region's most prosperous and stable economy (Delano 2011, Kingsley 2012). The crisis in the Chilean education system presents an opportunity to finally address the rupture in the social fabric that was caused during the Pinochet regime and the failure of successive democratic governments to address the resulting inequalities in Chilean society. Addressing the structural problems within education, as the primary social equalizer, can be a first step in this direction.

> "The strong commitment to the right to education in Latin America originated in the struggle against military dictatorships. Chile ruled by General Pinochet had a model of education imposed while human rights were denied. Hence,

> vindication of the right to education remains part of the battle for human rights (Tomasevski 2006, xxx)."

Bibliography

Arbour, Louise. 2007. Economic and Social Justice for Societies in Transition. *N.Y.U. Journal of International Law and Politics*. 40:1-27.

Associated Press. 2011. Chile's Senate approves education budget. The Guardian, 25 November, World News.

Branco, Manuel Couret. 2008. *Economics Versus Human Rights*. New York: Routledge.

Committee On Economic, Social And Cultural Rights. 1999. 'General Comment No. 13' in 'Implementation Of The International Covenant On Economic, Social And Cultural Rights,' E/C.12/1999/10.

Delano, Manuel. 2011. Claves de la rebelión estudiantil chilena. El País, August 8, International Section.

Ensalaco, Mark. 1994. Truth Commissions for Chile and El Salvador: A Report and Assessment. *Human Rights Quarterly.* 16:656-75.

Fang, Weiru. 2013. Chilean students scoring better as a whole, still wide disparities. Santiago Times, April 17, Education

Frank, Andre Gunder. 1976. Economic Genocide in Chile: Open Letter to Milton Friedman and Arnold Harberger. *Economic and Political Weekly*, 11: 880-88.

Fuentes, Claudio A. 2010. A Matter of the Few: Dynamics of Constitutional Change in Chile, 1990-2010. *Texas Law Review.* 89:1741- 1775.

Ginsburg, Mark, Oscar Espinoza, Simona Popa and Mayumi Terano. 2003. Privatisation, Domestic Marketisation and International Commercialisation of Higher Education: vulnerabilities and opportunities for Chile and Romania within the framework of WTO/GATS'. *Globalisation, Societies and Education*, 1: 414-444.

Harvey, David. 2005. *A Brief History of Neoliberalism* Oxford ; New York: Oxford University Press.

Jaichand, Vinodh. 2010. Impetus for rebellion? Self-determination and minority rights in South Africa. In *Stella Iuris: Celebrating 100 years of Teaching Law in Pietermaritzburg*, (eds.) Kidd, M & Hoctor, S. South Africa: Juta & Company

Klees, Stephen J. 2008. A quarter century of neoliberal thinking in education: misleading analyses and failed policies. *Globalisation, Societies and Education.* 6:311–348.

Klees, Stephen J. 2008b. Neoliberalism and Education Revisited. *Globalisation, Societies and Education.* 6:4, 409-414

Klein, Naomi. 2007. *The Shock Doctrine : The Rise of Disaster Capitalism.* London: Allen Lane.

Kingsley, Patrick. 2012. Chilean rebel Camila Vallejo: 'The problem is bigger—it's structural.' The Guardian, 20 November, World.

Kurtz, Marcus J. 2002. Understanding the Third World Welfare State after Neoliberalism: The Politics of Social Provision in Chile and Mexico. *Comparative Politics*. 34: 293-313.

Laplante, Lisa J. 2008. Transitional Justice and Peace Building: Diagnosing and Addressing the Socioeconomic Roots of Violence through a Human Rights Framework. *International Journal of Transitional Justice*, 2: 331-55.

Letelier, Orlando. 1976. The Chicago boys in Chile: Economic Freedom's Awful Toll, *The Nation*, August 28.

Ministry for Education Chile. 2009. Ley General De Educación Law 20370, Date of Pulication: 12/09/2009.

Miller, Zinaida. 2008. Effects of Invisibility: In Search of the 'Economic' in Transitional Justice. *International Journal of Transitional Justice*, 2: 266-91.

Montes, Rocío. 2012. El movimiento estudiantil en Chile recupera su fuerza. El País 29 August, International

Montes, Rocío. 2013. El movimiento estudiantil marca la campaña presidencial en Chile. El País 13 April, International

Montes, Rocío. 2013b Bachelet lanza su campaña presidencial y promete grandes reformas en Chile. El País 28 March, International

Muvingi, Ismael. 2009. Sitting on Powder Kegs: Socioeconomic Rights in Transitional Societies. *International Journal of Transitional Justice*, 3:163-82.

Muñoz, Vernor. 2012. *El derecho a la educación: una mirada comparativa Argentina, Uruguay, Chile y Finlandia,* Santiago:UNESCO

OECD & World Bank. 2009. Tertiary Education In Chile—2009. OECD and the International Bank Reconstruction and Development/The World Bank.

Olavarría, Margot. 2003. Protected Neoliberalism: Perverse Institutionalization and the Crisis of Representation in Postdictatorship Chile. *Latin American Perspectives*. 30: 10-38.

Organization of American States. 1999. *Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social and Cultural Rights ("Protocol of San Salvador")*, 16 November 1999, A-52.

Pastrana, Jill P. 2007. 'Subtle Tortures of the Neo-liberal Age: Teachers, Students, and the Political Economy of Schooling in Chile,' *Journal for Critical Education Policy Studies.* 5:2.

Political Constitution of the Republic Of Chile, Santiago, 1980, Chapter III, last updated 11-07-2011.

Silva, Patricio. 1992. Intelectuales, tecnócratas y cambio social en Chile: pasado, presente y perspectivas futuras. *Revista Mexicana de Sociología*, 54:139-66.

Silva, Patricio. 1999. The Chilean Democratic Tranistion. In *Societies of fear : the legency of civil war, violence and terror in Latin America*, eds. Dirk Kruijt and Kees Koonings, 76-77. London: Zed Books, 1999.

Siekierska, Alicja. 2013. Elections 2013: Chile's Presidential candidates on education. Santiago Times. 15 April, Elections 2013

Singh, Kishore. 2011. 'Report of the Special Rapporteur on the right to education: The promotion of equality of opportunity in education,' A/HRC/17/29 18 April 2011.

Tomaševski, Katarina. 2001. Human rights obligations: making education available, accessible, acceptable and adaptable. London: The Right to Education Project.

Tomaševski, Katarina. 2005. Unasked Questions about Economic, Social, and Cultural Rights from the Experience of the Special Rapporteur on the Right to Education (1998-2004): A Response to Kenneth Roth, Leonard S. Rubenstein, and Mary Robinson. *Human Rights Quarterly*, 27: 709-20.

Tomaševski, Katarina. 2006. *The State of the Right to Education Worldwide, Free or Fee: 2006 Global Report*. Copenhagen.

Torche, Florencia. 2005. Privatization Reform and Inequality of Educational Opportunity: The Case of Chile. *Sociology of Education*. 78: 316-43.

Torres, Carlos A. and Schugurensky, Daniel. 2002. The Political Economy of Higher Education in the Era of Neoliberal Globalization: Latin America in Comparative Perspective. *Higher Education*. 43: 429-55.

UN Committee On Economic, Social And Cultural Rights. 2004. 'Concluding observations of the Committee on Economic, Social and Cultural Rights' in 'Consideration Of Reports Submitted By States Parties Under Articles 16 And 17 Of The Covenant Chile.' (1 December 2004), E/C.12/1/Add.105.

UN Committee On Economic, Social And Cultural Rights. 1999. 'General Comment No. 13' in 'Implementation Of The International Covenant On Economic, Social And Cultural Rights,' E/C.12/1999/10 (08/12/1999).

UN General Assembly. 1948. *Universal Declaration of Human Rights*, 10 December 1948, 217 A (III).

UN General Assembly. 1966. *International Covenant on Economic, Social and Cultural Rights*, 16 December 1966, United Nations, Treaty Series, vol. 993.

UN News Centre. 2011. Chile: UN expert calls for quality education that is accessible and affordable to all. Available at http://www.un.org/apps/news/story.asp?NewsID=39498#, 09/09/2011