

## THE OMNIPRESENT STATE

- In less than 18 months of government, the approved or pending initiatives show a single common factor: increasing the role of the State and, in some cases, directly constraining the private action in the most varied fields of domestic activities.
- The State has stealthily become omnipresent. It has not only interfered with the provision of goods and services that are most efficiently produced by the private sector, but also pronounces itself as to what we should eat, what we can smoke, the music we want to hear and which days we can drive our cars.
- Sooner than later, this will not only impair the country, but it will also inevitably reduce the spaces of freedom and choice for the citizens.

Much has been said about the reforms driven by the current administration, among which the most emblematic ones are the tax, education, labor and constitutional reforms. Notwithstanding the damage caused by these initiatives, whose implementation will exacerbate, it is worth alerting about a much more profound and transversal process, the mother of all reforms: the return of the omnipresent State. In fact, in less than 18 months of government, the approved or pending initiatives have a single common factor: increasing the role of the State and, in certain cases, directly constraining the private action in the most varied fields of domestic activities. Sooner or later, this will not only impair the country, but will also inevitably reduce the spaces of freedom and choice for the citizens.

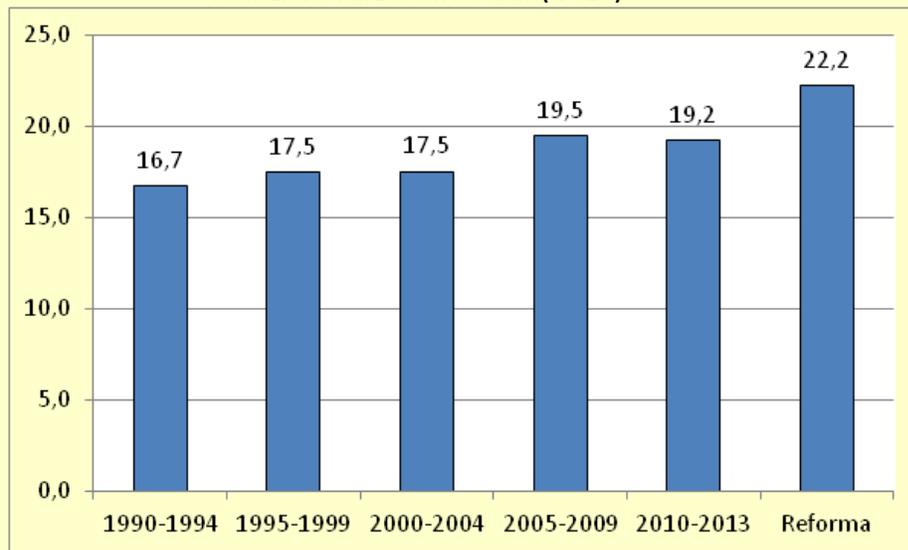
### THE ROLE OF THE STATE

There are opposing views regarding the role of the State to promote the progress of society. These differences have marked the history of Chile, but they had not been so exacerbated until the irruption of the New Majority Program, which has guided the evolution of President Bachelet's Administration. Results have been quite eloquent: economic deceleration, decrease of investment, disapproval of reforms, and drop in the popularity of the President, etc.; however, we have been notified that there is no willingness to change the course<sup>1</sup>.

The current Administration began its presidential period with a significant Tax Reform, whose purpose was to raise the fiscal collection by 3% of the GDP. With the approved reform (Law Nº 20,780), the business tax burden (according to the OECD definition) would be even higher than the average adjusted by GDP or population of the OECD member countries.

**THE TAX REFORM ENTAILED A SIGNIFICANT GROWTH IN THE SIZE OF THE STATE**

**Table 1: Net Tax Burden for Chile (% GDP)**



Source: OECD and Financial Report on Law 20,780.

Together with the greater availability of economic resources to make the State grow, public employment has experienced a substantial increase in the last two years. Actually, according to data from the National Statistics Institute (INE, in Spanish), the branch of economic activity “Public Administration and Defense” went from grouping 416,220 people in the quarter of April-June of 2013 to more than 467,000 in the same period of the present year. Another datum which reflects the State expansion is that from the 2.7% growth of salaried employment, between the quarter January-March 2014 and 2015 –first year of the current government- 1.6 points are explained by public salaried employment, that is, 60%.

The above has been accompanied by a large legislative agenda that has reinstalled the presence of the State in the most diverse spheres, including social security, productive activities and personal decisions. Some of them are described below.

**HEALTH, EDUCATION AND SOCIAL SECURITY: MORE STATE**

The provision of key services, such as education, health and social security, have suffered this assault with statist characteristics.

In health matters, there are several areas affected, where investment on infrastructure deserves to be highlighted. Bachelet's government announced an unprecedented and millionaire investment plan on hospital infrastructure for the period 2014-2018, which envisages US\$4 billion for the replacement, standardization and construction of new hospitals. The government's initial expectation was to rely on 20 built hospitals, 20 "under construction" and 20 "under consideration or bidding", by the end of 2018.

In order to fulfill this objective, the 2015 Budget allocated nearly US\$1 billion to public health investment, a real increase of approximately 90% (almost the double) in relation to the allocations for this item in the 2014 Budget. Likewise, the door was explicitly closed to private participation through the concession modality: in 2014, the government cancelled the bidding process (already under way) of 4 hospitals (Marga Marga, Quillota-Petorca, Sótero del Río and Puente Alto) and decided not to put under concession another 3 hospitals, which were already planned under this modality: Curicó, Linares and Chillán<sup>ii</sup>. This abandonment is incomprehensible if we consider the benefits of this modality and the budgetary execution incapacity shown by the government on this matter (recognized by the authorities themselves<sup>iii</sup>). In fact, by June 2015 only 10.6% of the investment budget had been executed.

But the State assault on health matters does not end here. There have been recent signals that the government will legislate with the aim of strengthening the role of the Central Supply Clearinghouse (CENABAST, Central Nacional de Abastecimiento) so that it may act as a mediator in the purchase of drugs, both for the public and private sector, by establishing profit margins and, furthermore, by playing a much more active role in the import of drugs.

Finally, a reform to the system of private health insurances is going to be introduced in the near future, which will embody the Presidential Commission's conclusions received in 2014. Everything seems to indicate that instead of improving the ISAPRE system, the reform will end up reducing or even destroying them, thanks to the incorporation of a "solidary" cutting in the contributions of their affiliates (whose amount and purpose are still unknown), which could drive the population to obligatory choose the deteriorated public system.

In education, the government's reforms also aim at increasing its interference power in educational institutions. At the school education level, the Law N° 20,845, which eliminates profits, selection and copayment with the purpose of preventing owners to obtain profits for their management, the reform specifically details how schools must be organized, by means of an unprecedented series of requirements and a restrictive list of how schools should use their financial resources, clearly limiting the progress of educational processes. Moreover, the State will be responsible for deciding which school will attend each child, through a centralized raffle with discretionary criteria, and parents will not be allowed to complement these public resources to improve the education of their children.

Likewise, the bill for the new Teaching Career is focalized on giving broad powers to the Ministry of Education (MINEDUC, in Spanish) with regard to initial training, permanent further training, evaluation and remuneration of teachers. In this manner, the State will be responsible for evaluating and promoting all teachers of 93% of the country's subsidized schools (municipal and private), without considering the opinion and specific vision of the schools and their boards of management.

In relation to higher education, the creation of two new public universities (enacted law) and 15 technical training centers (bill under discussion), which will operate under quality assurance mechanisms different from the rest of the private institutions, demonstrate the strategy of the government of extending the role of the State to this education level, even though the figures associated to quality (accreditations and scientific publications) show that the already existing public universities are lagging behind not only from traditional private universities, but also from several institutions created after 1981.

But there is more. The MINEDUC published a document outlining the initiatives aiming at reforming the higher education system, which proposes an institutional change that delegates a large number of tasks to the State, as for example: administration of the mandatory admission system, establishment of new and increased operation requirements for the institutions, determination of the research relevancy, fee-fixing to allocate public funds and even decisions regarding the institutions' governance. There is clearly a progressive control of the State, involving it in matters that exceed the autonomy corresponding to a higher education institution.

In social security matters, instead of strengthening the State's subsidiary role by improving the "solidary pillar" (which provides income for the most vulnerable sectors in the passive stage), the government decided to propose the creation of a public AFP (Pension Fund Managers). This initiative does not contribute at all to solve the problems of the country in social security issues, but it can entail elevated costs, which transcend the fact that there is still no definition regarding a mechanism that ensures returns on invested capital. There may also exist conflicts of interest in related investments, investment risk in politically profitable projects, but of uncertain benefit for the contributors, and the political risk of profitability scenarios below the average of the system. Thus, the sole justification left to persist on the idea of a public AFP is the objective of a State that is present in all possible spaces.

#### **PRODUCTIVE SECTORS IN THE TARGET**

The tentacles of the State have also reached the productive areas. In energy matters, the bill that extends the line of business of the National Petroleum Company (ENAP, Empresa Nacional del Petróleo) to include power generation, revives the times of the Entrepreneurial State, although no

expert recommended the entry of the public sector to this market. This is concerning not only because of ENAP's lack of competence in this line of business and its weak financial situation, but also because it could send wrong signals to the market, in the sense that the development of electricity projects could be benefited inasmuch as they operate together with the public company.

As for the public transport system, the bill that increases the subsidy to Transantiago includes a provision to extend the Metro activity to the operation of buses and others. The authorities have justified this by stating that the Metro could operate a bus fleet in case of an emergency, for example, during a shut-down by any of the bus operators. However, it does not seem reasonable for Metro to maintain a bus fleet of this size just for contingencies, not only because of the cost of underused capital, but also of the cost of keeping that amount of drivers hired for those purposes; and if the objective is for Metro to transitorily manage a fleet, it should be defined in those terms. Therefore, there is an evident risk for the authority to be tempted to use the Metro to absorb the current bus operators as the system deepens its insolvency.

The housing sector has neither been outside the purview of the search for "solutions" that increase the role of the State. This week, the Ministry of Housing and Urban Development announced that it would evaluate the construction of social housing units for rent. This would not only turn the State into a real estate agent, but it would also entail all sorts of problems, such as requiring the payment of rents that are due, with the consequent fiscal cost. This proposal had already been announced in the report delivered by the National Council for Urban Development (CNDU, in Spanish)<sup>iv</sup> on last May. The report included other recommendations that aim at increasing the actions of the State; for example, it proposed to define social housing quotas per neighborhoods (*comunas*) and generate new institutions with expropriation rights<sup>v</sup>. Likewise, it contemplated to broaden the powers of the Housing and Urban Planning Regional Services (SERVIU, in Spanish), in order to establish priority rights mechanisms to the purchase of real estate by the State, among other things.

#### **PUBLIC ORGANISMS: MORE TAKEOVER**

The irruption of the State has also become evident in a series of bills that have strengthened the administrative bodies, many times exaggerating its role and powers.

A good example is the bill that strengthens the National Consumer Service (SERNAC, in Spanish), where the government, with the alleged intention of giving greater protection to the consumers, confers too many functions and powers to this Executive body. Thus, the SERNAC will be able to, among others, supervise, sanction, ask for the obligatory fulfilment of contracts, act as mediator, and additionally, to interpret and dictate regulations applicable to all markets, even those already regulated by other specific organisms. This reveals a clear attempt to violate the separation of powers from the State, while conferring it jurisdictional powers that constitutionally correspond to

the Courts of Justice. A similar situation is observed in the free competition bill, which also revokes powers of the Court for the Defense of Free Competition (a jurisdictional body) and transfers them to the National Economic Prosecutor, an organism that, in the end, depends from the Executive.

The law that refines the bidding system of the electricity market, approved early this year, also increases the State participation, in spite of the objections presented during the proceeding process. In fact, the bidding system (formerly in the hands of distributors) is now in charge of the National Energy Commission (CNE, in Spanish), thereby receiving a series of powers that do not rely on the necessary counterweight to reduce potential discretionality degrees.

The Labor Reform, on the other hand, proposes to significantly increase the role of the Labor Department, especially in collective bargaining matters, in its triple role of controller, negotiator and arbiter. And not only that, but also with a definite and recognized pro-worker bias, which constitutes the essence of its *raison d'être*.

The approved Tax Reform (Law Nº 20,780) also increases the regulatory powers of the Internal Revenue Service (SII, in Spanish) and Customs. A general anti-evasion clause was also incorporated, which broadens the regulatory powers, thereby favoring the judicialization of tax matters.

Finally, the bill that creates the Securities Commission would considerably increase the infringements' investigation and penalty powers, including communications interception, among others.

## **FINANCING OF POLITICAL PARTIES AND POLITICAL CAMPAIGNS**

The increasing role of the State has also been introduced in the bill that reforms political parties, while proposing to establish them as juridical persons of public nature. In this case, they would be much more supervised by the State, being only capable of doing what is expressly allowed. This, in addition to the fact that the State will dispose of the resources for their financing, could entail the imposition of excessive requirements to all political parties, thereby endangering their formal and operational autonomy. Thus, contravening the tendency of successful models of democratic development, where political parties strengthen their links with the civil society on a daily basis, the Executive proposes that parties operate on the margins of stateness, with the implications and known risks of bureaucratization and estrangement from their specific environment.

Additionally, the bill regarding the financing of politics limits the contributions to political campaigns, eliminates financing by juridical persons and restricts the forms, places and modalities of the campaigns, by reducing the right of association, the freedom of speech, etc. The full control of

politics by the State is no doubt a serious aspect that can adversely affect the independence, transparency and electoral competition.

## **CONCLUSIONS**

The State has stealthily become omnipresent, concentrating the power and making decisions for us. It has not only interfered in the provision of goods and services that are more efficiently produced by the private sector, but also pronounces itself as to what we should eat, what we can smoke, the music we want to hear<sup>vi</sup> and which days we can drive our cars. Moreover, the government has announced a bill that aims at changing the relation of the State towards children, considering them as self-sufficient individuals, thereby weakening the role of parents in their upbringing.

If after this review you still want to defend your freedom to choose and undertake, it would be advisable to start with being aware of what is going on.

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<sup>i</sup> Interview to President Bachelet "Algunos leyeron sólo la palabra realismo, no escucharon el 'sin renuncia'" (Some people just read the word realism, they did not listen to 'without giving up'), La Tercera, August 9<sup>th</sup>, 2015.

<sup>ii</sup> It should be noted that the investment portfolio that the government decided not to put under concession is equal to US\$926 million, an amount close to a whole year of the government's Investment Plan, and 2,926 hospital beds, more than one fourth (26%) of the new beds that could be available if the 60 hospitals announced at the beginning of Bachelet's administration were completely executed.

<sup>iii</sup> The former Minister Helia Molina indicated, following the last speech of May 21<sup>st</sup>, that health services (responsible for calling to bids and hire the projects' execution) "do not have enough staff nor the training to do this job" and that "maybe out of naïveté, I did not anticipate that judicialization or land problems would take so long to be solved and thereby delay the deadlines".

<sup>iv</sup> Proposals for a Land Policy for Urban Social Integration, Final Report, May 2015.

<sup>v</sup> The measure N° 8 of the CNDU proposes the creation of new Urban Development Regional Services (SRDU, in Spanish), with broad urban management authority and other powers. Its first responsibility is the provision of expropriation powers.

<sup>vi</sup> The Law N° 20,810 enacted on April 2015, sets minimum broadcasting percentages of Chilean music and oral folk-rooted music to Chilean radio stations.