Civil Society Report for the 85th Pre-session of the International Committee on children’s rights

State of Chile

Thematic Unit

Adolescent Criminal Justice

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Faced with the information (laws, figures, surveys, citizen forums, etc.), the State of Chile responds to the consequential violations evidenced by multiple civil society organizations that ensure compliance with the Convention on the children's and adolescents’ rights in Chile. It is possible to rush a judgment regarding the government of Chile and its actions. But, instead, it is plummeting into complacency that can only harm children in our country.

When reading the government's response, one can mistakenly believe in an optimistic image that the country has made uninterrupted progress in children's rights. And, if Chile continues on this path, it will become a model for the future in a couple of years. As a civil society, attentive to what is happening, we call for prudence and transparency with the information that has been shared since. However, there is progress in some areas; there has been painful stagnation and clear and regrettable setbacks in others.

These are the substantial setbacks that, from our point of view, the main responsible is the government of Chile and its harmful actions concerning children and adolescents who are in the country.

There is a need to notice that, although we will address different issues associated with childhood in Chile, our objective is to focus on children and adolescents who have had conflicts with the justice system and the government's control measures against them.

Accordingly, we would like to begin this argumentation by stating that despite the fact the current legislation has tried to approve a "general law for protecting the child's rights” (That the Chilean Congress has denominated as the System of Guarantees and Integral Protection of the Rights of Children and Adolescents). This has been done with inexcusable delay after more than two decades of demands promoted by civil society. Furthermore, the system of guarantees and protection that meant an outstanding debt of the country since the Convention on the Rights of Boys, Girls, and Adolescents occurred on August 14, 1990.

Therefore, what has been legislated is a minimal advance, and there are also severe difficulties around the guaranteed system that has been created; specifically, there are two issues that we want to emphasize:

* The first is that conservative sectors of the country have not wanted to incorporate boys, girls, and adolescents as subjects of rights, with progressive autonomy and individuality (although they are related to their family, it should guarantee their rights and not limit or annul them) [[1]](#footnote-1). This is why titles III and IV of the original projects were modified, generating a certain distance from the product that emerges from Congress with the recommendations of the United Nations and other specialized organizations.
* The second difficulty is that the President of the Republic himself, not agreeing with what Congress has legislated regarding progressive autonomy, has decided to veto the Guarantee System because he is not in the conservative line that his political coalition wishes to install. Saying this, both the Children's Ombudsman [[2]](#footnote-2) and Congress [[3]](#footnote-3) have rejected the veto made by the President and have called for the promulgation of the System of Guarantees and Comprehensive Protection of the Rights of Children and Adolescents soon as possible.

These actions by the executive branch and its governing coalition have impacted the start-up of the System of Guarantees and Comprehensive Protection of the Rights of Children and Adolescents. To which, strangely, he mentions this very same point as an advance in his agenda in matters of childhood and adolescence. It is disconnected from reality that the State assigns itself to act under a framework of guarantees and rights that have been held back steadily, not based on data and the opinion of experts, but on its ethnocentric and conservative vision regarding childhood itself.

Under this gaze, Patricia Muñoz (Childhood defender in Chile) mentions:

"It is deplorable and incomprehensible that, more than 30 years after the ratification of the Convention on the Rights of Children by the State of Chile, the Executive Power continues to prevent this shameful pending debt with children and adolescents from being paid, preventing them from being recognized and treated as subjects of law"[[4]](#footnote-4).

Regarding issues related to children and adolescents in situations of conflict with justice and the use of violence by the State, several elements can be contested as confusing, inaccurate, or directly erroneous in the report issued by the government:

1. The government mentions that on June 5, 2016, the manual of police procedures with Children and adolescents was approved. That document considers the international recommendations in this regard. It explicitly states that identity control cannot be carried out on people under 18 years of age[[5]](#footnote-5), except in cases of flagrant crime. What is serious about this situation is that the government and the political coalition to which it belongs promoted a law in Congress that “strengthens identity control by the police, as well as the control and claim mechanisms in the event of an abusive exercise or discriminatory of the same"[[6]](#footnote-6) in young people between 16 and 18 years old, within the framework of Chile's social protests since October 18, 2019.

We can notice in this way that the government promoted an indication that was aimed not at all the best interests of children but to generate a tool that would allow the police to control the manifestations.

The government and its congressmen, despite UNICEF mentioning that "the application of Preventive Identity Control for adolescents from the age of 14 contradicts the principles of the Convention on the Rights of the Child and other international treaties signed by Chile, such as the International Covenant on Civil and Political Rights and the American Convention on Human Rights "[[7]](#footnote-7), continued promoting a series of laws that violated rights such as freedom of opinion or the roaming around the city of children and adolescents.

It is worth mentioning that since the launch of preventive identity control by the government, there were 1.9 million inspections in 2016 by the police, up to 5.6 million checks[[8]](#footnote-8). And that the use of preventive control is based on a discriminatory use, to the detriment of populations with lower income, and is applied to minors, even though the law strictly prohibits it.[[9]](#footnote-9)[[10]](#footnote-10). Only between January and September of the year 2020, 27,684 adolescents nationwide were controlled[[11]](#footnote-11).

2. Regarding the previous point that it calls our attention the statement of the Chilean government in its report in which declares that it has promoted "freedom of association and peaceful assembly" in circumstances that the laws promoted by the government of Sebastián Piñera precisely limit and punish the freedom of association and peaceful assembly of children and adolescents, in our country, a series of mobilizations have been generated since October 18, 2019, due to the structural inequalities of our political-economic system. Children and adolescents have been the protagonists of these movements. It is for the same reason that the violence used by the police during the demonstrations has generated alarm.

The reports of the violence used by the police against the protesters who were making legitimate right of their freedom of opinion are varied and come from both Chilean institutions such as the National Institute of Human Rights [[12]](#footnote-12) and international ones like Human Rights Watch, Amnesty International, etc. [[13]](#footnote-13)[[14]](#footnote-14)[[15]](#footnote-15)[[16]](#footnote-16)[[17]](#footnote-17).

In all the reports, there is a consensus that in Chile, the police used violent methods that violated human rights, that children and adolescents were affected by these acts, and that the government of Chile should take immediate action so that these types of violations stopped [[18]](#footnote-18)[[19]](#footnote-19)[[20]](#footnote-20)[[21]](#footnote-21)[[22]](#footnote-22).

Despite the forcefulness of the evidence and the fact that the recommendations made were aimed at "reforming" or changing the police force, the Chilean government has not generated a change in the way it addresses the demonstrations of children and adolescents. For this reason, Ana Piquer, Executive Director of Amnesty International Chile, says, "if we look at how we were a year ago (2020), we see that things are the same or worse. But we have in front of a government that acts as if nothing happened. That he has even said before the United Nations that Chile has already "returned to normality" after the social outbreak, that it continues to support the police without any question, that it reiterates speeches that unduly equate protest and crime, that it persists in dealing with generalized human rights violations occurred as if they were isolated cases "[[23]](#footnote-23).

Ana Piquer's words become relevant if it is considered that instead of making structural modifications to the police, what the government of Sebastián Piñera did was, on one the hand, to generate laws that would give more power to the police forces to the detriment of children and adolescents who were manifesting. But, on the other hand, it injected financing to acquire more weapons to repress the demonstrations.

In this way, we see that the government, in response to the reports issued, promoted a set of laws that sought to criminalize social protest, generating arbitrary arrests. For example, with its regulations, it looked to "combat crimes of public order, such as barricades, and that hinder the free movement of people" [[24]](#footnote-24).

In addition, as already mentioned, it was also invested in weapons of social control; for example, it bought water launchers and gas launchers for 6,600 million pesos[[25]](#footnote-25). It should note that these vehicles emit toxic gas that affects not only the protesters but also families and schools located near where the manifestations occur [[26]](#footnote-26).

This brings us to the next point, where we must detail the police's actions to stop children and adolescents in conflict situations with the law and the State.

3. As mentioned in the previous report, on Thursday, October 17, 2019, after the institutional the breakdown that occurs in the country, the dynamics of historical violations that were established since the dictatorship in the police against children and adolescents worsen, as that state repression becomes more acute, generating a transversal impact on the lives of children and adolescents in Chile. There is a cessation of a framed democratic state. In the right and although not all adolescents were affected in the same way, in one way or another, the actions and negligence of the State reached them, generating a series of violations at the national level [[27]](#footnote-27).

In this way, it can be evidenced that, according to the INDH, one year after the social outbreak began, there were at least 731 complaints against the State for violations of children and adolescents; of these situations, 13 had occurred within educational establishments [[28]](#footnote-28). Of these 731 complaints, by April 19, 2021, 541 causes had closed without responsible, thus evidencing the institutional dynamics of impunity on the part of State agents such as the police in Chile, the public prosecutor's office, the judicial system [[29]](#footnote-29). In other words, there have been no sanctions, no reforms, or a call for attention in the face of violent action by the State against children. Among the multiple situations of violence on the part of State agents, and as an example of what happened, the case of two students from the city of Viña del Mar stands out. On October 23, 2019, they were approached by more than 15 police officers. They were brutally beaten for several minutes[[30]](#footnote-30).

Also, the case of a 16-year-old young man was of public notoriety, who on October 02, 2020, while he was manifesting, was attacked by the water launchers and gas launchers, to which he had to cross a nearby bridge. In this place, the police intercept him, and one of them performs a "tackle" against the young man. And throws it into the waters of the river. I was falling, due to this, about 20 meters, where a large part of his body suffers permanent injuries. In this regard, the young man mentioned, "… I was running when I felt that they grabbed me from behind with both hands over my backpack, at the height of my ribs, under my armpits. I felt a push that lifted me, and I collided with the western railing of the Pío Nono bridge ... Psychologically, I don't feel well. At first, I wanted to recover, but then I began to realize what happened to me. I cried every night; I didn't stop crying, I didn't even leave my room to eat " [[31]](#footnote-31). As the story shows, the Chilean police did not have the slightest respect for the Convention over the Rights of Boys, Girls, and Adolescents at the time of arresting the adolescent. Neither did their actions followed the protocols stipulated by the State of Chile or the legal framework that governs police action.

It should note that this type of action goes beyond the scope of protests. A situation that shows this happened in residence in charge of SENAME "Carlos Macera" in Talcahuano; on November 18, 2020, a police group entered the residential home of children and adolescents and began to shoot, injuring 14- and 17-year-old teenagers [[32]](#footnote-32). It is evident that there is no safeguard, there is no human rights approach, as the Chilean government wants us to believe in this report.

These situations are repeated in other contexts; for example, they are common in the different communities of the Mapuche people. Police officers enter with military weapons to repress members of the Mapuche Nation, among them boys and girls. Thus, in March 2018, two Mapuche children, aged twelve and fourteen, were illegally detained and undressed on their way home from school in the Ercilla commune [[33]](#footnote-33); Similarly, as happened on Friday, October 02, 2019, when a 10-year-old Mapuche boy went to talk with the police to prevent the clearing of trees and was shot by the police[[34]](#footnote-34); Another fact that also allows us to show the violations at the time of the police arrests refers to what happened in December 2017. On that occasion, police officers who reduced the adolescent Brandon Hernández Huentecol (now of legal age) decided to shoot him more than 100 pellets in his back, which caused Brandon intense physical and psychological injuries that accompanied him this day[[35]](#footnote-35).

To the above, it can be added that throughout the year 2019 and part of the year 2020, the Chilean police, by order of the government, intervened daily in the country's schools, exercising violence that has attacked the psychological and physical health of the students. An example of this is what happened at the National Institute, where the lawyer Alfredo Morgado had to file an appeal on behalf of several school students for the "illegal, arbitrary, disproportionate and abusive" use of tear gas by the Special police forces[[36]](#footnote-36).

In this way, it can be verified that the violent behavior of the police, and with it the State, becomes a daily practice that threatens not only the freedom of movement of adolescents but also limits the possibility of studying, living in a healthy environment, etc., directly attacking their physical, psychological, and social health and in the worst case against their life.

Another aspect of the detention process involves the violations committed when adolescents are detained and taken to the police stations. An NHRI report in this regard mentions that irregularities are detected, such as the nonseparation by the age of arrested persons and between accused persons and subject to identity control. This would be producing a breach of both what is established by law 20,084 and the law 16,618 (Juvenile Law) and the Beijing protocols[[37]](#footnote-37).

In the said report, it is also mentioned that inside the police stations, there would be situations of physical and psychological abuse at the time of deprivation of liberty, grounds for arbitrary privation of freedom, lack of communication of rights to persons deprived of freedom, delay in indicating the reason for the denial of liberty or the reason for the deprivation of independence due to questioning police’s actions[[38]](#footnote-38).

The collected cases that are part of the NHRI's judicial actions regarding police violence reflect that there are practices of beatings - resulting in various types of injuries -, stripping and sexual assaults by officials of the Carabineros de Chile when they are under their control. Custody of persons deprived of liberty, thereby failing to fulfill the function of guarantors of the State assigned to them by law. About the systematic abuses of the forces of order during the social crisis of October 2019, we can present situations that exemplify the seriousness of the actions.

On Sunday, October 20, Daniel Nain Colin was arrested for the alleged crime of robbery in an uninhabited place, committed in the context of the looting of supermarkets in the center of the San Bernardo commune (metropolitan region of Chile). He was transferred to the 14th Police Station in the same commune. The victim's account indicates that he was forced to completely undress and squat in the presence of a police officer. In addition to the latter, Daniel's nephew, a minor, was also in the same place, who was also stripped at the same time and forced, like his uncle, to do squats[[39]](#footnote-39); On the other hand, on October 21 at 1 am a teenager was arrested along with three adults by Carabineros officials belonging to the 43rd Peñalolén Police Station. The police forces at the police station crucified him on a metal structure and tortured him for hours[[40]](#footnote-40).

This brings us to the next point, where we must detail the State's actions regarding the incarceration of children and adolescents in conflict with the law and the State.

4. In Chile, there is a Law of Criminal Responsibility of the Adolescent (Law 20.084); this law was created as a response to the pacts assumed by the State of Chile when returning to a democratic system of government, and it was agreed to generate the necessary actions to give adolescents when they had conflicts with the law. In this way, an attempt was made to change the protective treatment of adolescents who conflicted with the law, and at the same time, it was sought to provide a legal treatment framed within the guarantees of the State of law[[41]](#footnote-41)[[42]](#footnote-42). Given this, it should be noted that most crimes committed by adolescents are theft and minor offenses [[43]](#footnote-43). Thus, for example, violent robberies do not reach 15% of the crimes attributed to this population. Furthermore, when the commission of violent crimes is analyzed, it is evidenced that these have systematically decreased in the last years[[44]](#footnote-44) (see graph).

Gráfico, Gráfico de líneas

Descripción generada automáticamente

The preceding is exposed to contextualize the excessive use of adolescent internment in juvenile prisons in the context of Law 20,084.

Thus, in 2008 provisional internment was applied in 4,455 cases and 2016 in 1,589 cases. It can be seen that a marked decrease was generated between 2008 and 2011 (1483 admissions), with an average reduction in income of 900 cases per year. Still, no significant variations have been caused in subsequent years, despite the differences in the number of crimes [[45]](#footnote-45).

Suppose an analysis was made and contrasted with graph 1 (evolution of crimes) using preventive measures with provisional admission. In that case, it can be seen that even though there has been a constant decrease in crimes since 2010, this has not led to a reduction proportional in the use of temporary confinement. However, showing a percentage increase if the number of court cases that end with an adolescent deprived of liberty is considered. This is important since law 20,084 indicates that temporary confinement can only be used when the sanction is in a closed environment. Therefore, as the figures show, the number of severe crimes by young people is low, and the possibility of ending in a closed should also be below.

An exceptional edge on this point is made up of political prisoners or prisoners of conscience. According to the National Institute of Human Rights registry, 9,245 people were detained during the social outbreak, from October 17, 2019, to February 3, 2020. More than a thousand cases correspond to children and adolescents[[46]](#footnote-46). The government, aware that it was not going to be well seen internationally the fact that adolescents were arrested for demanding rights, such as access to health, education, housing, etc., began to prosecute young people under the excuse that they had committed common crimes (looting, fire, mistreatment of the police, etc.).

Given this, organizations have expressed their apprehensions regarding the government's actions. For example, cases of young people detained in the circumstances described as "strange and by unidentified personnel such as police officers" have been disclosed. They have also said that the investigations have been slow, that there is no evidence to prove many of the charged crimes, and that "class-biased practices that mainly affect young people and sexual minorities" have been applied. In addition, there are many cases in which the youths have been detained for a long time, the trials have been postponed, and most of them have no prior records, so "preventive detention for so long is not understood." In this sense, they allege "unequal treatment and obstructions"[[47]](#footnote-47).

For example, we can name the case of J.C and S.A, who were detained by police officers when they were on their way home after participating in the manifestations. The judge determined that J.C and S.A were a danger to society, leaving them in the Sename Temporary Internment Centers. One of them closed his school year early during his internship, and the other took the PSU along with other young people from Sename. On January 22, both adolescents returned to their homes after having been in confinement for 78 days, suffering isolation and, in the case of J.C., being the victim of torture, according to his complaint in the middle of the trial. Marlén Quintanilla, the public defender of the young man, assured that "the rights of minors, in our opinion, were violated from day one" and that his client was subjected to "prohibited mistreatments” since he was forced to strip down and made squats [[48]](#footnote-48).

It must be remembered that the deprivation of liberty of adolescents must be a measure applied exceptionally and as a last resort, as required by the Convention on the Rights of the Child and recommended by the United Nations Rules for the protection of minors deprived of their freedom (Beijing Rules).

Due to what has been stated earlier, that there is a call made for the State of Chile to:

• Frame your actions under what was agreed upon by adhering to the Convention on the Rights of Boys, Girls, and Adolescents (NNA). Emphasizing that it must guide its actions in the best interests of children and adolescents, considering that the imposition of one right cannot deny the execution of another and that the opinion of children and adolescents must be considered at all times.

• That particular emphasis is placed on the police and social control forces (Article 19). It must be prohibited that the public order forces (or anybody dependent on the State) subject children and adolescents to torture and other cruel, inhuman, or degrading treatment or punishment. Likewise, it is emphasized that children and adolescents are not deprived of their liberty illegally or arbitrarily. In addition, the State must guarantee that the arrest, incarceration, or imprisonment of an adolescent will be carried out following the law and will be used only as a last resort and for the shortest possible period (Article 37). In no case can a child or adolescent disappear after being arrested.

Furthermore, when they are deprived of liberty, they will have the right to have access to legal assistance (Article 37) promptly.

• Do not prevent what is mentioned in Articles 14 and 15 of the Convention, about allowing children and adolescents to express themselves freely in their opinion and that they can associate without receiving violent treatment for it. Freedom to roam the streets must be guaranteed at all times, and association with peers is part of a nurturing framework for their healthy development.

• Likewise, in line with what is stated in Article 17, the State must ensure that it does not provide information through the media that is detrimental to the healthy development of children and adolescents. The generation of fear or stigmatization should be prohibited practices at the national level.

• Finally, when a child or adolescent is charged with a crime, their dignity and value must be respected, guaranteeing a human rights framework at all times of the legal process. Emphasizing the presumption of his innocence, that they receive information about what he is accused of and that they are brought before a judge (Article 40).

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3. https://radio.uchile.cl/2021/07/29/camara-de-diputados-declara-inadmisible-veto-presidencial-a-la-ley-de-garantias-de-la-ninez/#:~:text=Nacional- [↑](#footnote-ref-3)
4. (https://www.defensorianinez.cl/noticias/defensoria-de-la-ninez-rechaza-anuncio-de-veto-presidencial-a-ley-que-crea-el-sistema-de-garantias-y-proteccion-integral-de-los-derechos-de-la-ninez-y-adolescencia/ [↑](#footnote-ref-4)
5. https://www.unicef.org/chile/comunicados-prensa/unicef-reitera-su-posici%C3%B3n-frente-al-control-preventivo-de-identidad-para [↑](#footnote-ref-5)
6. https://www.radionuevomundo.cl/2021/02/12/documento-texto-integro-presentacion-bancada-pc-ante-corte-interamericana-de-dd-hh-solicitando-suspension-del-control-de-identidad-para-menores-de-edad/#\_ftn8 [↑](#footnote-ref-6)
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9. https://www.ciperchile.cl/2021/02/09/control-preventivo-de-identidad-cuando-la-politica-publica-va-contra-la-evidencia/ [↑](#footnote-ref-9)
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12. https://www.indh.cl/informe-de-ddhh-en-el-contexto-de-la-crisis-social/ [↑](#footnote-ref-12)
13. https://www.amnesty.org/es/latest/press-release/2019/11/chile-responsable-politica-deliberada-para-danar-manifestantes/ [↑](#footnote-ref-13)
14. https://www.hrw.org/es/news/2019/11/26/chile-llamado-urgente-una-reforma-policial-tras-las-protestas [↑](#footnote-ref-14)
15. https://www.amnesty.org/es/latest/research/2020/10/eyes-on-chile-police-violence-at-protests/ [↑](#footnote-ref-15)
16. https://www.ohchr.org/Documents/Countries/CL/Report\_Chile\_2019\_SP.pdf [↑](#footnote-ref-16)
17. https://placedeladignite.com/wp-content/uploads/2021/04/informe-final-mision-quebeco-canadiense-ddhh.pdf [↑](#footnote-ref-17)
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19. https://www.hrw.org/es/news/2019/11/26/chile-llamado-urgente-una-reforma-policial-tras-las-protestas [↑](#footnote-ref-19)
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28. https://mapaviolacionesddhh.indh.cl/public/estadisticas [↑](#footnote-ref-28)
29. https://www.ciperchile.cl/2021/04/19/estallido-social-fiscalia-ya-cerro-sin-responsables-541-causas-por-violaciones-de-dd-hh-contra-menores-de-edad/ [↑](#footnote-ref-29)
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