

CHILDREN'S RIGHTS IN CHILE

Alternative Report to the Committee on the Rights of the Child of the United Nations on the Implementation of the Convention on the Rights of the Child in Chile

October 2019



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I. Context

The following report was prepared jointly by the member institutions of the Articulation of Organizations for the Defense of Human Rights: Centro de Estudios de la Mujer (CEM), Corporación Chilena de Prevención del Sida (ACCIONGAY), Corporación Círculo Emancipador de Mujeres y Niñas con Discapacidad (Cimunidis), Corporación Humanas, Corporación OPCIÓN, Instituto de la Mujer, Movimiento de Acción Migrante (MAM), Observatorio Contra el Acoso Chile (OCAC), Fundación 1367 - Casa Memoria José Domingo Cañas and Observatorio de Violencia Institucional (OVIC).

The report has been developed following Child Rights Connect's indications and having followed the final observations of the Committee on the Rights of the Child (CRC) in 2015 on the fourth and fifth periodic reports of Chile, as well as the development of the concerns and recommendations offered to the CRC in 2014 by the Articulation of Organizations for the Defense of Human Rights.

At the close of this report, children and adolescents suffer all across Chile's territory different forms of extreme violence and rights violations by armed forces and police officers, in the context of massive social demonstrations confronted with the imposition of a state of emergency and curfews in several cities. As a result, currently a verification mission from the UN high commissioner on human rights is deployed in Chile, gathering information regarding the numerous allegations of human right abuses.

II. General measures of implementation

During this period significant developments have been accomplished. Especially notable are:

1. Enactment of Law 20.032, which establishes the forms and conditions for subsidy of the collaborating organizations of the Servicio Nacional de Menores, Sename (National Service for Minors).
2. Creation, through Law 20.835, of the Subsecretaría de Educación Parvularia (Viceministry of Preschool Education), whose function is to design and define politics and programs for the development of pre-school education.
3. Enactment of Law 21.013, that typifies and sanctions relevant corporal punishment against children, elderly persons and people with disabilities.
4. Enactment of Law 21.030, that decriminalize the voluntary termination of pregnancy in three cases: vital risk of the mother, fetal infeasibility and rape.
5. Enactment of Law 20.968, that typifies the crime of torture and cruel inhuman and degrading treatment.
6. Enactment of Law 21.040, that establishes the bases of the Nuevo Sistema de Educación Pública (New System of Public Education).

7. Enactment of Law 21.057, that regulates interviews recorded on video and other protection measures for child victims of sexual crimes.
8. Creation and coming into functions, through Law 21.067, of the Defensoría de la Niñez (Child Ombudsperson), with the purpose of communicate, promote and protect children's rights.
9. Creation and coming into functions, through Law 21.090, of the Subsecretaría de la Niñez (Viceministry of the Child), whose function is to elaborate politics and coordinate prevention and promotion actions for children's rights.
10. Enactment of Law 21.120 on Gender Identity, that recognizes and protects the right to the gender identity of persons older than 14 years old.
11. Enactment of Law 21.153 that designates the Instituto Nacional de Derechos Humanos (INDH) as the National Preventive Mechanism against Torture.
12. Modification of Decree 50 (2014) that updates and expands the definition of dangerous works, including those prohibited for adolescents between age 14 and 17.
13. Enactment of the law that creates compulsory insurance for workers who are parents of children affected by a serious health condition.
14. Enactment of Law 21.160, that establishes the imprescriptibility of sexual crimes against persons under age 18.
15. Enactment through decrees 111 and 112 of 2018 of conventions to reduce cases of statelessness and the status of stateless persons, respectively.
16. Development of the program Chile Reconoce to guarantee the right to nationality of children born in Chile being their parents in an irregular migratory situation.

Our concerns on the quality of these accomplishments will be developed on the following chapters.

From the standpoint of civil society institutions engaged in adjusting Chilean law and institutions to the Convention, we observe with concern several situations and initiatives that negatively affect children's rights in Chile.

29 years after Chile's ratification of the Convention on the Rights of the Child, fracture and unequal developments persists between social policy for effective and universal exercise of children's rights –almost nonexistent-, and policy and programs focused on vulnerable and at risk children. Nowadays, National Congress discuss the third project of law presented since 1990 towards a law of guarantees on the rights of the child, for allowing a full adequacy of the domestic normative to the Convention. The project, entered into legislative process on September 2015¹, does not meet minimum standards to guarantee children's rights. Furthermore, current government decided not to give priority to its legislative breakthrough, pushing instead the project that creates the Servicio de Protección de la Niñez² (Childhood Protection Service), the third of its nature in the last 10 years to split the

¹ See Boletín 10.315-18, in second constitutional procedure, Senate.

² See Boletín 12027-07, in second constitutional procedure, Senate.

Sename in two specialized services, without repealing the Ley de Menores (Minors Law) from 1967 and its tutelary approach.

The whole action of the Chilean state is focused almost exclusively in the situation of children with the highest risk of suffering serious violations of their rights. Policy on childhood tends, on the one hand, to reproduce forms of stigmatization of the population it covers, and on the other, to **exclude most households from the reach of the legislative and administrative measures the state can adopt to give effectiveness to the rights recognized in the Convention**. It is intended to perpetuate a subsidiary State that only plays a role when the family “fails”, without acting upon, on the hand, the structural problems in the roots of many right’s violations, and on the other, the responsibility of guarantee children’s rights universally.

This inability of the State to establish itself as a guarantor of the rights of children and adolescents is exacerbated by **bills that deny children their status as subjects of law** and protect discretion in the use of state force applied against them. This is the case of the Executive initiative that allows police to carry out preventive identity checks from 16 years of age, without even hints of crime³, as well as Law 21.128, called “Aula Segura” (Safe Classroom), which dismantles due process guarantees and denies effective accountability measures for children and adolescents involved in cases of school violence.

The backdrop is **the reproduction of a highly unequal and segregated social structure**, which worries civil society because it negatively impacts the well-being of children and their possibilities for future development. According to the latest Social Panorama of Latin America report⁴, prepared by the Economic Commission for Latin America and the Caribbean (ECLAC), until 2017, 50% of Chilean households accessed 2,1% of the country’s net wealth, while 10% concentrated 66,5% of the total and the wealthiest 1% kept 26,5% of the wealth. According to the same report, Chile registered 0.45 in the Gini Index for 2017. These figures place Chile as the second most unequal country among those that make up the Organization for Economic Cooperation and Development (OECD).

One of the most critical dimensions of this inequality in terms of harming children’s rights is that of **territorial of segregation**, especially in relation to high concentration in some territories of violence, organized crime and deficit accessibility to health and education services.

The weak public response to the phenomenon of **widespread and growing violence** against and among children is also a matter of concern. In Chile, 6 out of 10 parents recognize applying some type of abuse to discipline their children and 1 out of 4 children says they

³ See Boletín 12506-25, in second constitutional procedure, Senate.

⁴ See Economic Commission for Latin America and the Caribbean (ECLAC): *Panorama Social de América Latina 2018* LC/PUB.2019/3-P, Santiago, 2019.

have been victims of serious physical abuse by one or both parents⁵. Regarding the school environment, the general complaints before the Superintendencia de Educación (Superintendence of Education) on physical and psychological abuse within the educational communities increased by 26,7% between 2017 and 2018⁶. Meanwhile, 84% of young people declare to have seen or heard an episode of bullying and 60% abuse, among members of their educational community⁷.

Especially serious are the degrees of **institutional violence and arbitrariness in the use of police force** applied against Mapuche children and in the context of student and social demonstrations. Chapter VI will describe problems and cases that account for the non-consideration by the State of the principles of the best interest of the child and non-discrimination. At the close of this report, protests develop throughout Chile against the high cost of living while the State decrees a state of emergency and curfews in several cities. In this context, the Instituto Nacional de Derechos Humanos, INDH (National Institute of Human Rights), registers 471 child and adolescents detained, 78 injured by the action of State's agents and has brought 49 legal actions for victims under 18 years of age⁸.

Finally, we are concerned about the still **weak systematization of information and knowledge** in matters related to childhood, adolescence and families. In Chile, the data is scattered among different actors in the system and there is no unified data bank that allows access to reliable and updated information. An example of this problem is that the Instituto Nacional de Estadísticas, INE (National Statistics Institute), segments the child population with criteria other than those of the Ministerio Público (State Prosecutor) or the Ministerio de Salud (Ministry of Health).

Recommendations:

- 1. Issue as soon as possible a Law on Guarantees of the Rights of Children and Adolescents, in accordance with the principles and norms of the Convention on the Rights of Children, with the consequent repeal of the Law on Minors and the installation of an institutional rights protection system that prioritizes administrative action to ensure the rights of all children living in the national territory.**
- 2. Strengthen the political and administrative capacity of the Subsecretaría de la Niñez (Vice-ministry of Childhood) to articulate all public and private sector organizations that receive state resources in order to comply with inter-sectorial and comprehensive policies aimed at giving effect to the rights recognized by the CRC and other human rights instruments ratified by Chile.**

⁵ Ministerio de Desarrollo Social (2017): Encuesta Longitudinal de Primera Infancia, ELPI. See: http://observatorio.ministeriodesarrollosocial.gob.cl/elpi/elpi_fags.php

⁶ Ministerio de Educación (2019): *Política Nacional de Convivencia Escolar*.

⁷ Instituto de la Juventud, INJUV (2017): *Sondeo N°5: Bullying en Establecimientos Educativos*, available at: http://www.injuv.gob.cl/storage/docs/Sondeo_Bullying_en_establecimientos_educativos.pdf

⁸ See Annex 1.

3. Install a reliable data collection system with data disaggregated by ages up to 18 years, which also allows obtaining information disaggregated by sex and vulnerable groups, in particular nationality and ethnicity.

III. Definition of the child

Concerns continue, raised by the Committee in the last two recommendations made to Chile⁹, regarding **the age to marry**, which in our current legislation maintains the possibility that girls and boys marry from the age of 16 authorized by their parents or legal representatives. For 2017, 344 marriages were registered for children under 18 years¹⁰. Another concern is the cases of marriages of migrants under 16 who are legalized upon entering in Chile. This is even more alarming when figures such as that at the regional level, 1 in 4 women marry or begin to live as a couple before the age 18 in Latin America and 1 in 20 is married or in de facto union before 15 years¹¹.

IV. General principles

Regarding the principle of the **best interest of the child**, there are concerns about the expulsion of foreigners in an irregular immigration situation. As the Legal Clinic of the Diego Portales University puts it, there are currently around three thousand children at risk of statelessness in our country. They were born in Chile, but because of being children of foreigners declared as “passers-by”, they have not been able to opt for nationality, making access to basic services such as education and health difficult. Although in 2014 the Supreme Court recognized the existence of an erroneous interpretation of the law that ensured nationality for all children born in Chilean territory, all those born before that year were left without a document. In addition, that this resolution has an administrative nature and not established in a legal body. At the same time, the large number of requests for refuge by the Venezuelan population, which have not been accepted by the government is of concern.

Although the enactment of Law 21.120 is celebrated, where the right to **gender identity** is recognized and protected, this law has not considered girls and boys under 14 years of age, taking into account the damage caused by not being recognized in terms of their gender identity. As indicated by the data of the School Climate Survey of the Todo Mejora Foundation¹², 70,3% of respondents feel insecure due to their sexual orientation and 94,8%

⁹ See Committee on the Rights of the Child, Final Observations, Chile, CRC/C/CHL(CO/3, 2007 and 2015

¹⁰ Instituto Nacional de Estadísticas (INE, 2017): Publicaciones Estadísticas Vitales. Cifras provisionales 2017.

¹¹ See Poblete, Jorge (2019, August 2): *Matrimonio infantil en Chile: crecer de golpe*, Capital magazine, available at: <https://www.capital.cl/matrimonio-infantil-en-chile-crecer-de-golpe/>

¹² Todo Mejora (2016): Encuesta Nacional de Clima Escolar, available at: <https://todomejora.org/encuesta-de-clima-escolar-7-de-10-adolescentes-lgbt-teme-estar-en-sus-escuelas/> (October 2019)

listen to LGBT-phobic comments in their school, situations that are considered especially serious in this age group.

Recommendations:

- 1. Issue, as soon as possible, a migration law that establishes the regularization of the situation of the sons and daughters of migrant parents in an irregular situation, providing guarantees to promote family reunification.**
- 2. Include children under 18 in the gender identity law.**

V. Civil rights and freedoms

The **state's punitive action** towards children and adolescents is one of civil society's main concerns, a reality that represents a setback in terms of guarantee and protection of their rights. A clear illustration of this phenomenon was the enactment in January 2019 of Law 21.128¹³, also known as "Aula Segura" (Safe Classroom), which empowers schools to expel students who have allegedly violated the regulations of school coexistence, without establishing adequate mechanisms for due process, depriving them not only of a procedural space to make their discharges, but also of judicial remedies that allow them a superior and impartial entity to know the facts that are accused of and the norms that are supposedly being infringed.

Likewise, the State intends to establish a preventive identity control for adolescents¹⁴, empowering the police to control their identity, without any indication that a crime has been committed or will be committed and without any hypothesis described by the law for the authorization of this control. Simply by being in a certain space, public or private, at the complete discretion of the police officer, which does not pass a proportionality test that justifies such a level of damage of rights for the legal good intended to protect.

Since the students demonstrations of 2011, **sexual violence** has been registered from Carabineros against girls and adolescents detained during demonstrations and evictions from schools. Victims have denounced attacks carried out by police agencies, such as forced nudity, touching, insults and threats. These situations led the INDH and feminist NGOs to bring legal actions against those responsible. However, the tendency has been to close investigations without responsible parties, preventing the proper reparation of the victims. Particularly worrying is that the Ministry of Interior, directly responsible for police action, has not taken part in the cases or taken exemplary measures to demonstrate its absolute rejection of these practices.

¹³ See Mensaje N°119-366 (2018) *Message from the President of the Republic, to initiate a bill (..) about state's subsidies to schools, strengthening principal's faculties regarding expulsions and cancellation of enrollment in the indicated cases of violence.*

¹⁴ See Boletín 12506-25, in second constitutional procedure, Senate.

The INDH, between October 21 and 28 of 2019, brought 18 actions on the grounds of sexual violence (forced nudity, threats, touching and two rapes) against State agents. One highly controversial case was that of Josué Maureira (22), a college student who denounced being severely beaten and sexually tortured by a group of Carabineros officers, who also choose to denigrate him because of his sexual orientation¹⁵¹⁶. Both the INDH and the Catholic University of Chile brought legal actions against Carabineros for his case and demanded special protection due to death threats he has received.

It is alarming that, despite the creation of a system of adolescent criminal responsibility in 2005 that became operational in 2007, the **abusive use of deprivation of liberty** as a precautionary measure persists. 76% of young people in that situation then access to an alternative exit to the criminal process or is sentenced to a penalty in the free environment¹⁷.

It is worrisome that the criminal procedural legal system allows a twelve-hour window since an adolescent is detained by police personnel and the detention is reported to the Prosecutors Office¹⁸, without any difference with the treatment of adults. This generates spaces for arbitrariness and abuse, since the actions taken by the police in that period of time are poorly monitored by the Prosecutors Office. An example of this is that in 2018, 73,517 illegal preventive controls were carried out on minors of which 2,761 ended up in detention¹⁹, without any explanation from the police about how, based on the use of an illegal faculty, an arrest is executed, nor is it recorded how many of those arrests concluded with a control hearing before a guarantee judge.

Recommendations:

- 1. Generate an effective mechanism of control and supervision on the acting of the police from the civil power, for the fulfillment of human rights standards by the protocols of Carabineros de Chile.**

¹⁵ See 24 Horas (October 27, 2019): <https://www.24horas.cl/nacional/estudiante-de-medicina-que-denuncio-abusos-en-comisaria-pense-que-no-iban-a-parar-hasta-que-me-desangrara-3686580> (October 2019)

¹⁶ Maureira's testimony is available to the public here: <https://www.youtube.com/watch?v=HNB4L5evffA> (October 2019)

¹⁷ National Public Defender's (Andrés Mancke) statements, available at: <https://www.emol.com/noticias/Nacional/2016/10/02/824609/Defensoria-Penal-Publica-advierte-uso-excesivo-de-la-prision-preventiva-en-menores-de-edad.html> (October 2019)

¹⁸ Artículo 131, Código Procesal Penal.

¹⁹ In communication addressed by Carabineros de Chile to the Chamber of Deputies, available at: <https://www.camara.cl/pdf.aspx?prmTIPO=OFICIOFISCALIZACIONRESPUESTA&prmID=83738&prmNUMERO=28158&prmRTE=0>. Law 20.931 enables identity checks only to persons older than 18 years, so when a police officer notes that the person is under 18 it has to terminate the procedure. Nonetheless, during 2018, 2.761 adolescents were detained during identity checks, and there are no disciplinary procedures or sanctions against these police officers. A similar situation occurred during 2019's first trimester, when 11.016 illegal identity checks were conducted, of which 395 ended in detention.

2. **Evaluate and reformulate the administrative sanctions imposed on police personnel when their conduct does not comply with the protocols or violates the rights of children and adolescents.**
3. **Substantially change Law 21.128, so that instead of expelling students with disruptive behaviors without due process or concern for their best interests, provides appropriate tools to school communities to address problems of coexistence and violence.**
4. **Reform the terms in which a person under 18 years of age can be detained and its detention informed to the Public Prosecutor's Office, in order to increase the control of civil power over police personnel and their actions with adolescents.**

VI. Violence against children

Violence against children is a manifestation of violence that deprives girls and boys of care and protection, inhibiting their full development. It is an experience that has severe consequences on the victims, impeding their vital development in all its areas: cognitive, emotional and social. The numbers in this regard in Chile are very worrying, since they have remained stable in recent years. These indicate, for example, that 71% of children receive some type of violence from their parents²⁰. More recent studies indicate that 62.5% say they receive violent methods of discipline from their main caregivers²¹. The data of OPCION Corporation that indicate as a cause for admission violence against children to restorative programs, has experienced an upward trend between 2015 and 2018 that goes from 52% to 55% of the total cases attended²².

The excessive use of force by the police in the context of **student demonstrations**, is considered a very serious problem which, despite the protocols developed within the police, continue to occur, causing serious damage, both physical and among adolescents. At the close of this report, protests develop throughout Chile initiated by secondary students for the cost of transportation. The INDH, between October 17 and 31 of this year accounted for the detention of 471 children and adolescents throughout the country, recording “unfair harassment of children, ill-treatment, hits on faces and thighs, torture, undressing of women, sexual harassment, among other violations”²³. Corporación OPCIÓN, meanwhile, reports at least 16 cases of adolescents, among their users of right’s

²⁰ UNICEF (2012), Estudio de Maltrato Infantil.

²¹ Ministerio de Desarrollo Social (2017): Encuesta Longitudinal de Primera Infancia, ELPI. See: http://observatorio.ministeriodesarrollosocial.gob.cl/elpi/elpi_faqs.php

²² Data provided by Corporación OPCIÓN, 2019.

²³ INDH (20 de octubre, 2019): *22 personas lesionadas, denuncias de desnudamientos, torturas y malos tratos por Fuerzas de Orden dejan jornadas de protestas*, available at: <https://www.indh.cl/22-personas-lesionadas-denuncias-de-desnudamientos-torturas-y-malos-tratos-por-fuerzas-de-orden-dejan-jornadas-de-protestas/> (October 2019)

restauration programs, who, in the exercise of their right to demonstration and assembly, were illegally detained, impacted by police bullets or beaten in the context of their detention by police officers since last October 17²⁴. At the same time, OPCIÓN identified several rights violations among the communities where their programs for children and adolescents are currently operating, with high levels of affectations to child's rights to health, education, leisure and an environment free of pollution, due to the heavy use of tear gas during October's last week²⁵.

This events occur after the intensification during 2018 and 2019 of police repression on students mainly by the Special Forces of Carabineros (militarized police), whose arbitrary and violent entry to school buildings, using heavy anti-disturb weapons and tear gas, has become routine in downtown Santiago²⁶. It is also deeply worrying the recurrence of arbitrary detentions of student's leaders (the majority of whom are between 12 and 17 years of age) and the ill-treatment by Carabineros during detentions, transfer and custody in police units²⁷.

Sexual violence by police officers has also been observed against students detained during demonstrations or in evictions from schools. Victims have reported attacks on police agencies such as forced nudity, touching, insults and threats. This led the INDH and feminist NGOs to bring legal actions against those responsible²⁸. In order to measure the magnitude of these types of cases, the availability and access to the figures presents serious complexities. Although the Public Prosecutor's Office disseminates statistics on processes related to torture, its general nature does not allow further information. As Paulo Sérgio Pinheiro pointed out in his report for the study of violence against children of the United Nations in the case of violence against children and adolescents²⁹, there are no safe procedures to report, no data is collected by the police, and there is no breakdown of them. This situation has been pointed out to Chile since 2009, when the Committee Against Torture, in its Concluding Observations³⁰, pointed its concern about the allegations that police officers commit serious crimes in the performance of their functions and that there are regulatory restrictions that prevent the publicity of such acts, which contributes to the crimes remaining unpunished.

²⁴ See Annex 3.

²⁵ See Annex 4.

²⁶ See Observadores de Derechos Humanos (May 2018): *Informe de Misión de Observación. Desalojos e ingreso de efectivos de Fuerzas Especiales de Carabineros en liceos de la comuna de Santiago de Chile. Arbil/Mayo 2018*, available at: <http://www.observadoresddhh.org/wp-content/uploads/2012/02/Informe-Ingreso-de-FFEE-a-Liceos-de-la-Comuna-de-Santiago-Abril-Mayo-2018-Rev-1.pdf> (October 2019)

²⁷ Idem.

²⁸ See <http://bibliotecadigital.indh.cl/bitstream/handle/123456789/269/Querella-joven-desnudada?sequence=1> and <http://www.humanas.cl/?p=11503>

²⁹ Report of the independent expert for the United Nations study on violence against children, Paulo Sérgio Pinheiro, presented according to the General Assembly's 60/231 resolution

³⁰ UN Committee Against Torture (CAT), Concluding observations of the Committee against Torture: Chile, 23 June 2009, CAT/C/CHL/CO/5, available at: <https://www.refworld.org/docid/4a69b8542.html> (October 2019)

The INDH, meanwhile, publishes on its website an updated list of judicial cases on **torture against children** committed by police officers³¹. This list contains 35 complaints about torture between 2012 and 2018, which shows the persistence of this practice in the police in the context of public demonstrations. Among the acts that seek to be sanctioned are undressing in police stations and illegal detentions with beatings, among others.

Regarding the guidelines and/or **instructions for police actions**, it should be noted that Carabineros de Chile has a public order maintenance protocol that establishes provisions for the detention of young protesters³². A behavioral pattern has been found, particularly among Special Forces, which omits the imperatives of relevance and gradualness in their actions towards children and adolescents. This has resulted in the disproportionate use of force, exercised especially against this kind of protesters, who are subjected to arbitrary detentions and various violations of their rights, including torture. All the aforementioned, seriously undermines the normal development of adolescents, especially when these violent acts of police repression can affect their legitimate right to peacefully protest and push to be heard that anyone has, and in this case, is also enshrined in the CRC.

In the **Mapuche communities** of the Biobío and Araucanía regions, children and adolescents are daily victims of police violence. Faced with these serious situations, the INDH has filed more than 20 constitutional actions of protection in favor of Mapuche children and adolescents³³, the vast majority favorably received by justice, and in which an illegal, irrational and non-proportional use of force is deployed against the communities, violating children's rights, whether in the context of public demonstrations, search warrants and/or various identity checks. One of the most serious events was the case of Camilo Catrillanca, a young 24-year-old villager killed by members of the Special Police Operations Group (GOPE), in the company of the adolescent M.A.P.C., a murder that Carabineros later tried to cover up³⁴. The teenager was illegally detained in the operation, as later established by courts, in addition to being a victim of illegitimate constraints in police departments, which is why a GOPE effective was formalized and is about to face trial. After being the victim of illegitimate constraints and direct witness to the violent death of a loved one, M.A.P.C. was abandoned by the State and subsequently involved in other conflicts with justice, being issued a precautionary measure of interim detention in Sename in August 2019.

³¹ INDH's legal actions, available at: <https://www.indh.cl/destacados-2/causas-judiciales/>

³² This protocol states that force can only be used in a differentiated and gradual form to detain or conduct child and adolescent offenders and disperse meetings. The use of force should limit to the minimum necessary, based on the principles of legitimate purpose of restoring order and the best interests of the child.

³³ INDH (2018): Report on Legal Actions. Mapuche Childhood 2011-2018.

³⁴ See CNN (December 19, 2018): Prosecutor of Catrillanca Case: "There was no confrontation, it was a homicide and from the first moment the truth was hidden", available at: https://www.cnnchile.com/pais/fiscal-del-caso-catrillanca-no-existio-enfrentamiento-fue-un-homicidio-y-desde-el-primer-momento-se-oculto-la-verdad_20181219/ (October 2019)

The extreme violence present in some **“critical neighborhoods”** is especially disturbing considering the degree of damage on children, co-opted by gangs and drug trafficking networks, many of whom have been killed in account adjustments or clashes between gangs. OPCION Corporation conducted in 2018 an exploratory study regarding the perception of violence in the territories, resulting drug violence and drug trafficking (31.6%), rival gangs (31.6%) and domestic violence (17.5 %) the main problems within the communities. In this regard, the cases of children killed or injured as a result of the so-called **“loose bullets”** are also worrying, a drama that also directly impacts the quality of life of thousands of children who cannot have an adequate development, due to fear and risk of being victims of shootings or shots to the air. These situations are aggravated by confirming that the State has not taken appropriate measures, nor has it adopted effective policies to eradicate the causes of this type of violence.

Recommendations:

- 1. National plan for the eradication of violence against children and adolescents, including awareness and prevention programs against child abuse within households and sexual abuse.**
- 2. Include the explicit prohibition of violence against children in the law of guarantees of children’s rights.**
- 3. Adopt a community-oriented and psycho-social approach in public policies for the eradication of violence in “critical neighborhoods”, as an alternative to police over-intervention.**
- 4. Guarantee the effective subordination of police to the civil power and give the latter effective instruments to supervise the police’s correct treatment towards children.**
- 5. Prohibit the use of chemical weapons, such as tear gas, against children and adolescents.**
- 6. Prohibit the access of Special Forces of Carabineros to school premises.**
- 7. Generate procedures so that complaints of torture, cruel, inhuman and degrading treatment are investigated, promptly and independently; sanctioning those responsible and giving victims their corresponding reparations.**

VII. Family environment and alternative care

In relation to the **care of children**, there is still concern that public policies regarding the care of children is focused on working women and not universally on adult caregivers. The

bill that seeks to extend this benefit does not recognize it as a right of children to have care³⁵ while their adult caregivers work, but as a benefit given to working women (with formal employment contract), which is not consistent with the recommendation made by the Committee in its 2015 report.

Likewise, it is possible to observe that, in relation to establishing work days compatible with personal life, with special attention in the best interests of children and their right to family life, there has been no progress. In addition, when the subject is addressed it is mainly about women's remunerated job, reinforcing gender stereotypes on who is responsible for children care. No progress is observed in the establishment of a regulatory framework for establishments dedicated to child care after regular school hours (called "after schools"), which operate privately, without any state standards or regulations and whose actual coverage it is unknown. In this regard, it is relevant to take into account the extremely narrow range of the Servicio Nacional de la Mujer y la Equidad de Género's (National Service for Women and Gender Equality) programme "4 a 7", which supports schools in the care of children after school schedule.

With regard to **alternative care** for children deprived of family care, there is a drop in hospitalization in residential centers, which borders 6% of the child population served by the Sename³⁶. Although progress is welcomed in the gradual creation of smaller and more personalized centers, staff still do not have the specialization required by the intervention given the complex situation of the children admitted, exposed to high levels of violence and serious violations³⁷, which requires of a wide range of services that allow an effective restitution of rights. Articulating and providing this specialized attention, either directly or indirectly, is an obligation of the State. Its fulfillment is vital for the protection of the most basic rights of the interned children.

There is a concern to avoid hospitalization, which is valuable, but it is necessary to have a programmatic offer that allows children to be protected when the conditions in which they live are highly risky for their integrity. To this end, the model of **foster families** -as an alternative to residential care- does not have awareness campaigns or policies to encourage and sustain their existence, being insufficient to cover the demand³⁸.

Finally, the care situation of children whose adult caregivers, mainly their mothers, are deprived of liberty is worrying, because criminal penalties -especially those established in

³⁵ See Boletín 12.026-13, that creates the social benefit for education at the pre-school level, financed by a solidary fund.

³⁶ Data provided by the Servicio Nacional de Menores (Sename) in its public account 2017.

³⁷ The higher cause of admission to the specialized protection network is parental neglect, followed by serious abuse and sexual violence. Corporation OPCIÓN, 2018.

³⁸ In the Corporation OPCIÓN programs, only 2% of the host families correspond to families outside the child's environment. 98% correspond to an extended family, which often replicates transgenerational violence systems that hinder adequate intervention.

drug law offenses- lack a gender approach and also do not consider the best interests of the child, even though it is a matter that directly concerns and affects them.

Recommendations:

- 1. Reduce the extension of the workday, in order to allow a greater harmony between work and personal life and, thus, better conditions for the effective exercise of the right of children to live in a family environment.**
- 2. Conduct a cadastre and evaluation of the institutions that take care of children after the school day, in order to establish their legal regulation and direct State support.**
- 3. Carry out awareness and recruitment campaigns of host families, together with support policies for their operation.**
- 4. Strengthen the technical capacities of the personnel in charge of the care and the restitution of rights of children that are in residential modality, in accessible programs both for the residences administered directly by the State and those that are executed by collaborating organisms.**
- 5. Protect the best interests of children whose adult primary caregivers are deprived of liberty, strengthening reintegration programs and generating the possibility of alternative sanctions when their children are under three years old.**

VIII. Basic health and welfare

The **health, well-being and development** of children in Chile has been significantly affected by the consequences of climate change and the impact on the environment of various productive activities.

Until October 2019, 129 Chilean municipalities are under decrees of water scarcity, affecting 945.792 people³⁹, while approximately 111 municipalities are under agricultural emergency decrees⁴⁰. The last decade has been the driest decade in Chile's history, because of drought's temporal and territorial span, thus configuring a "mega-drought"⁴¹. In towns such as Petorca, Valparaíso Region, 8.000 of its 12.000 inhabitants must be supplied by cistern

³⁹ See Decrees declaring zones with water scarcity by the Dirección General de Aguas, Ministerio de Obras Públicas (General Direction of Water, Ministry of Public Works), available at:

<http://www.dga.cl/administracionrecursoshidricos/decretosZonasEscasez/Paginas/default.aspx>

⁴⁰ Zambrano-Bigiarini, Mauricio (2019, September 13): *Sequía y escasez hídrica en Chile: parecidas, pero no iguales*, El Mostrador, available at: <https://www.elmostrador.cl/destacado/2019/09/13/sequia-y-escasez-hidrica-en-chile-parecidas-pero-no-iguales/> (October 2019)

⁴¹ See Centro de Ciencia del Clima y la Resiliencia (2015): *Informe a la Nación. La megasequía 2010-2015: Una lección para el futuro*, available at: <http://www.cr2.cl/megasequia>

trucks that since 2016 provide an average of 50 liters of water per person weakly⁴², the minimum established by the World Health Organization (WHO). In this way, the State does not comply with its duty to guarantee basic sanitation and development to the maximum extent possible of the children living in the affected localities, estimated in 267 in 2018⁴³.

The protection of the human right to water and sanitation, recognized in Resolution 64/292 of the General Assembly of the United Nations, is seriously threatened in Chile by the lack of efficient state protection against the excessive use of this resource by agribusiness, forest monocultures and mega-mining. The current Código de Aguas (Water Act) and Chilean Constitution protect the commercialization and consequent concentration of water use right's ownership, hindering access under conditions of equality and non-discrimination.

In 2018, the INDH identified 116 **socio-environmental conflicts** affecting the human rights of the population across the country⁴⁴. In the case of Quintero-Puchuncaví⁴⁵, the Supreme Court established the responsibility of the State in the violation of the rights to life, health and to live in an environment free of pollution, ordering the transfer of children and adolescents when levels of contamination directly affect them⁴⁶. This violation was in turn characterized by the Childhood Ombudsperson through a study⁴⁷ that proved serious psychological affectation to the children of the area and established that approximately 1000 children have had to change habits and lifestyles due to the high levels of pollution. "There are no minimum guarantees of rights, as they cannot protect recreational spaces. The beach is lost as a place of enjoyment and places of nature become areas that will become extinct and where they cannot enjoy without fearing for their health," stated the report. At the close of this report and despite the measures dictated by the Supreme Court, schoolchildren continue to abandon their studies in Quintero due to health problems generated by pollution⁴⁸.

⁴² According to the restriction imposed by the Vice-ministry of Interior (Subsecretaría del Interior) through the Ordinary Communication N° 18.087 of August 18, 2016.

⁴³ See INDH (2018, November 26): *Actualización Informe Misión de Observación Provincia de Petorca*, p. 16.

⁴⁴ See INDH (2018) *Mapa de Conflictos Socioambientales en Chile 2018*, available at: <https://mapaconflictos.indh.cl/#/>

⁴⁵ In August 2018, thousands of inhabitants of the towns of Quintero, Puchuncaví and Ventanas, in the coastal region of Valparaíso, suffered health problems and intoxication due to the pollution produced by the Industrial Complex of Ventanas.

⁴⁶ See El Mostrador (2019, May 28): *Suprema ordena la mesa de la contaminación en Quintero-Puchuncaví e imputa toda la responsabilidad al Estado*, available at: <https://www.elmostrador.cl/noticias/pais/2019/05/28/suprema-ordena-la-mesa-de-la-contaminacion-en-quintero-puchuncavi-e-imputa-toda-la-responsabilidad-al-estado/> (October 2019)

⁴⁷ See Defensoría de la Niñez (2019): *Afectación de niños, niñas y adolescentes por contaminación en Quintero y Puchuncaví 2018. Análisis multinivel de afectación, abordaje y soporte*, available at: <https://www.defensorianinez.cl/wp-content/uploads/2019/08/Presentaci%C3%B3n-Estudio-Afectaci%C3%B3n-Quintero-Puchuncavi-EN-FORMATO-02082019.pdf>

⁴⁸ See Palma, Francisca (2019, October 16): *Niños de Quintero deben cerrar año escolar por malestares físicos*, in La Estrella de Valparaíso.

The **sexual and reproductive health** of children is another area of special concern for civil society. Chile has experienced an exponential increase in new cases of HIV/AIDS in the last decade, ranking among the ten countries with the highest increase in the virus globally⁴⁹. Between 2010 and 2017, there was a 50% increase in people living with the virus, with the group of adolescents and young people between 15 and 29 years being the most affected segment, with 96% of new cases. In September 2019, the HIV / AIDS Research Commission of the Chamber of Deputies established the responsibility of this epidemic in the State of Chile, which through its ministries of Health and Education has been unable to implement effective prevention policies and sexual education “without yielding to the pressures of interest and religious groups”⁵⁰.

Sexually Transmitted Infections (STIs) also suffered a progressive increase in the last decade. If in 2012, 9431 cases entered the public health system, in 2017, 23248 did. Of the total cases of 2017, 60% corresponds to persons between 15 and 29 years old and 16% to adolescents, with a higher prevalence of men⁵¹.

With regard to **reproductive health**, there are concerns about the effective exercise of the right to voluntary termination of pregnancy in three cases (vital risk of the mother, fetal infeasibility and rape) by girls and adolescents. A civil society monitoring of its implementation detected ignorance of the law and obstacles to its access as a result of health personnel’s conscientious objection and lack of training⁵². These problems especially affects access of girls who are victims of rape and/or who live in isolated territories or with a small population.

Regarding **mental health**, the high prevalence of mental disorders among children and adolescents is of concern. If the general prevalence in adults is 22.5%, in children between 4-11 years it reaches 27.8%. The evidence reveals that while 15% of children globally have externalizing problems, such as attention deficit, hyperactivity or aggressiveness, in Chile that figure increases to 25% among children under six. While the global average of anxiety and depression in children reaches 5% of the population, in Chile it ranges between 12 and 16%⁵³.

The high prevalence of **childhood obesity** in Chile is also worrying. According to the Ministry of Social Development, 80.4% of children under 8 suffer from overweight or obesity⁵⁴. In

⁴⁹ See ONUSIDA (2019): *Monitoreo Global del Sida 2019*.

⁵⁰ See Cámara de Diputados de Chile (2019): *Informe de la Comisión Especial Investigadora de la actuación del Ministerio de Salud y demás organismos públicos competentes en relación a la crisis que afecta a Chile en el tratamiento del VIH/SIDA desde el año 2010 hasta el año 2018*,

⁵¹ See Mesa de Acción por el Aborto en Chile y Fondo Alquimia (2019): *Informe de Monitoreo Social. Implementación de la ley de interrupción del embarazo en tres causales*

⁵² See Mesa de Acción por el Aborto en Chile y Fondo Alquimia (2019): *Informe de Monitoreo Social. Implementación de la ley de interrupción del embarazo en tres causales*

⁵³ J Clin Child Adolesc Psychol (2011) *International comparisons of behavioral and emotional problems in preschool children: parents' reports from 24 societies*, 40(3): 456–467, doi: 10.1080/15374416.2011.563472

⁵⁴ See Programa Elige Vivir Sano (2019): *Radiografía de la Obesidad en Chile*.

terms of the evolution of the problem, according to the National School Aid and Scholarship Board (Junaeb), between 2017 and 2018 obesity experienced an increase in early childhood and a decrease among middle school students⁵⁵. These measurements show the effectiveness of certain policies to promote healthy living, but at the same time their fragility and limited scope.

Finally, the public safety approach that predominates to address the problematic use of drugs and alcohol in children is worrying. The National Service for the Prevention and Rehabilitation of Drug and Alcohol Consumption (SENDA) depends on the Ministry of Interior, not Health. Consequently, drug prevention programs have no national coverage or universal approach⁵⁶. In the 2016 National General Population Survey of the Ministry of Interior, it was found that 40,977 people between 12 and 17 reported having problematic drug use and only 8,163 have received treatment. The treatment and rehabilitation programs treated during 2018 6,207 adolescents with problematic consumption who are law offenders and 1,727 who are not⁵⁷, all of which indicates that there is no approach with a human and health rights perspective.

Recommendations:

- 1. Ensure the human right to water through a water policy that allows the responsible state bodies to guarantee the basic sanitation, health and maximum development of children.**
- 2. Ensure the effective access of girls and adolescents to the Law of Voluntary Interruption of Pregnancy in 3 Cases, implementing informative and prevention campaigns on sexual and reproductive health, together with adequate and prompt training of health personnel.**
- 3. Expand the social and age scope of the benefits of the Chile Crece Contigo program, making it an effectively universal policy through accessibility for all children up to 17 years old.**
- 4. Strengthen public health and access to all levels by children, especially with regard to mental health.**

IX. Education, leisure and cultural activities

⁵⁵ See JUNAEB (2019): *Mapa Nutricional 2018*.

⁵⁶ The prevention programs are deployed in 277 of the 346 municipalities, through collaboration agreements with the municipalities. See SENDA public account 2019, available at: <http://www.senda.gob.cl/wp-content/uploads/2019/06/CUENTA-PUBLICA-PARTE-2.pdf>

⁵⁷ Idem.

Despite the sustained increase in coverage and public spending for school education in recent decades, serious gaps in quality and integrity related to the social origin and economic capacity of families remain. Although measures such as the end of shared financing and the new organizational architecture for public education are valued, it is a concern that the voucher-based financing system persists. This incentive to competition between schools provides variable resources to a fixed cost structure, especially affecting schools in low-income sectors, where absenteeism and cost per student are higher, and hindering the goal of reducing the average number of students per classroom. Thus **the right to education under conditions of equality and non-discrimination is affected** for a wide range of children.

Civil society also identifies a negative impact on the **integrality of school education** and "the need for education to be child-centered, child-friendly and empowering"⁵⁸, given the incentives to competition, curriculum impoverishment and bureaucratization of the teaching process imposed by the over-use of standardized quality measurements such as the National Learning Results Assessment System (SIMCE), today applied universally from second basic to middle third. Alarming is also the decision of the Ministry of Education to close schools categorized as "insufficient" in this test for four consecutive years, as a resource for educational improvement ends up being used to reduce the educational offer for precisely the children who need it most.

In the matter of **pre-school education**, there is concern about the absence of universal public offer and the devaluation of the teaching work of kindergarten and differential teachers. In the absence of public preschool education for middle and upper sectors, but only for the population classified as "vulnerable", there are few political incentives to commit the State to improve its quality, as well as to counteract the social segmentation of the offer during a level of vital importance for the development of children. Symptom and reaction against this debt was the important national mobilization of the teaching union in 2019, in which for the first time the demand for initial and differential educators acquired prominence for the non-payment of the Professional Recognition Bonus that corresponds to them by Law 20.158 approved in 2006⁵⁹.

In the field of **sexual education**, there is an absence of effective policies that guarantee the right of children to receive emotional and sexuality education, contributing to the prevention of HIV and STI infections, as well as child sexual abuse and gender-based violence against children, areas in which alarming increases were recorded as detailed in chapters VIII and VI, respectively. Likewise, the weakness of the anti-discrimination policies is worrying, due to the high prevalence of discrimination suffered by children in the school environment based on their gender identity and sexual orientation.

⁵⁸ UN Committee on the Rights of the Child (CRC), General comment No. 1 (2001), Article 29 (1), The aims of education, 17 April 2001, CRC/GC/2001/1, available at: <https://www.refworld.org/docid/4538834d2.html>

⁵⁹ See Mensaje N° 555-354, *Message from the President of the Republic, to initiate a bill granting benefits to the educational professionals that indicates.*

The State's debt persists in terms of an action plan for **human rights education**, as the World Program for Human Rights Education and the CRC in 2015 urged in its recommendation 72. The new Formación Ciudadana (Citizenship Training) course, mandatory for 3 Middle and 4th, does not include the matter in its curricular program.

Recommendations:

- 1. Strengthen public school education through a baseline financing system, which allows to overcome the inequality gaps in access to quality education and to focus the schools on the learning of children and not in school's competition for vouchers.**
- 2. Adapt the use of standardized measures of school performance to the management of educational improvement policies, reducing their frequency, quantity and limiting the publicity of their results.**
- 3. Deepen the progress in preschool education with a focus on universalizing the public offer and improving the training and working conditions of the pre-school educators.**
- 4. Develop a normative framework establishing the mandatory nature of sexual and emotional education programs from the preschool level in all educational establishments recognized by the State.**

X. Special protection measures

With regard to the eradication of **child labor** and its worst forms, the invisibility of the subject remains a concern, insofar affects its prevention, the dismantling of prejudices about victims and timely and effective therapeutic intervention. In addition, the specialization of those intervening is insufficient, affecting investigations and criminal sanction. There is also concern about the lack of unified registration and effective detection of the worst forms of child labor, which does not allow for a real diagnosis of this problem, in addition to the absence of policies and preventive programs for the eradication of the worst forms of child labor, where what is required is to have a coordinated work between the Ministry of Labor, the Ministry of Social Development and the Ministry of Justice to have the necessary budget and comprehensive interventions that achieve effective reparation and social reintegration.

Regarding the specialization of the juvenile justice system recommended by the Committee in its final report in 2015⁶⁰, in March 2017 the government presented a bill that advances in that direction⁶¹, but at the end of this report it has not concluded its first constitutional process.

⁶⁰ CRC/C/CHL/CO/4-5 Recommendation N°86, a

⁶¹ See Boletín 11174-07

With regard to the **deprivation of freedom** of adolescents, the infrastructure problems of the internment centers, educational activities and labor reintegration are not adjusted to the needs of young people. It is especially serious the use of punishments and deterrents when there are quarrels, fights and riots. In addition, there are no clear protocols to make complaints in case of cruel, inhuman and degrading treatment by Gendarmería de Chile (gendarmerie). Along the same lines, the high number of young people in pretrial detention is worrying, in 2017 there were 2,114 young people in provisional detention, a higher figure than the 1,756 young people who are serving sanctions in a closed regime⁶², a situation that worsens, taking into account what raised by the Office of the Public Defender, who states that 76% of cases of young people who are in pretrial detention, do not end with prison sentences⁶³.

It is also of extreme concern, the case of 18 young people who are in the juvenile justice programs run by Corporación OPCIÓN throughout the country, where they indicate that, in contexts of detention and investigation, they have been victims of threats, ill-treatment, torture and illegitimate constraints by the police. These cases have been reported, however, they have been dismissed by the criminal system. One of the points is that adolescents do not feel safe or protected, when they testify against the Police, so the conditions are not met for these demands to conclude⁶⁴.

On the other hand, until 2014, the reports of the Interinstitutional Commissions of Deprivation of Liberty Centers (CISC) were public, which generally accounted for deficiencies in custodial centers⁶⁵. However, these ceased to be published electronically, although permanent visits to the Deprivation Centers are maintained. This circumstance does not allow society to monitor the observations and the necessary improvements that the authority commits.

Recommendations:

- 1. Carry out effective awareness actions in the territories, involving the community in the prevention and eradication of commercial sexual exploitation of children.**
- 2. Implement intersectorial programs aimed to prevent and repair children in worse forms of child labor, with an adequate budget and comprehensive approach.**
- 3. Improve the detection and systematization of data concerning the registration of worst forms of child labor.**

⁶² SENAME (2017), *Public Account 2017*.

⁶³ National Public Defender's (Andrés Mancke) statements, available at: <https://www.emol.com/noticias/Nacional/2016/10/02/824609/Defensoria-Penal-Publica-advierte-uso-excesivo-de-la-prision-preventiva-en-menores-de-edad.html> (October 2019)

⁶⁴ Cases attended by the Torture Program of the Corporation OPCIÓN during the year 2018 and 2019.

⁶⁵ See <http://dosvias.minjusticia.gob.cl/cisc-rpa/>

4. **Create a system with higher levels of specialization in the juvenile justice system, which must be accompanied by the appropriate budget.**
5. **Review the actions that are being developed to achieve a real reintegration of young people, they should be in line with delivering skills and competencies according to the current needs and interests of adolescents.**

XI. Ratification of international human rights instruments

Civil society is concerned about the non-ratification by the State of Chile of the following international human rights instruments.

Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW): Chile does not yet recognize the competence of the Committee for the Elimination of All Forms of Discrimination against Women to receive communications from people who report being victims of violations of the rights enshrined in the CEDAW. As stated in this report, girls and adolescents are exposed in Chile to various rights violations that national justice does not always punish and consequently prevent. It is then necessary to expand the possibilities to demand compliance with the Convention ratified by Chile in 1989 and achieve the restitution of victims' rights.

Additional Protocol to the American Convention on Human Rights (Protocol of San Salvador): This legal text complements the American Convention on Human Rights insofar as it recognizes economic, social and cultural rights and commits States to adopt the necessary measures, to the maximum of available resources, in order to achieve the full effectiveness of such rights. Its non-ratification by Chile facilitates non-compliance by the State in this matter, seriously affecting the necessary integrality of social policies and the persistence of violations in terms of the right to health, education and work, among others, that affect transversely the well-being and standard of living of children and adolescents in Chile.

Global Pact for Safe, Orderly and Regular Migration (Marrakesh Pact): The refusal of the State of Chile to sign this pact hinders the necessary international cooperation to address the challenges of migration in the Latin American region. Thus, Chile lacks tools to address the situation, fulfill its international obligations and safeguard the human rights of migrants, especially children and adolescents who are particularly exposed to situations of violence and violation of rights.

Regional Agreement on Access to Information, Public Participation and Access to Justice in Environmental Matters in Latin America and the Caribbean (Escazú Agreement): Given the seriousness and extent of socio-environmental conflicts that affect the rights of people and especially children and adolescents in Chile, the protection of environmental defenders is a matter of utmost urgency in the country. The Escazú Agreement does not establish new

rights or force serious adjustments to national legislation, so there are no serious arguments to postpone its signature.

Annexs

1. Instituto Nacional de Derechos Humanos (2019), *Monitoreo de DDHH en Estado de Excepción. Datos obtenidos por observación del INDH.*
2. Defensoría de la Niñez (2019), *Informe sobre trabajo y detecciones de la Defensoría de los Derechos de la Niñez – Octubre de 2019.*
3. Reporte de casos registrados al 29 de octubre de 2019, Corporación OPCIÓN.
4. Informe de Corporación Opción frente a la situación de derechos humanos luego de iniciadas las movilizaciones y protestas del 18 de octubre de 2019.