

Submission by the United Nations High Commissioner for Refugees
For the Office of the High Commissioner for Human Rights' Compilation Report
Universal Periodic Review: 3rd Cycle, 32nd Session

CHILE

I. BACKGROUND INFORMATION

In 1972, Chile acceded to the *1951 Convention relating to the Status of Refugees* and its *1967 Protocol relating to the Status of Refugees* (hereinafter jointly referred to as the *1951 Convention*).¹ Chile acceded in April 2018 to both the *1954 Convention relating to the Status of Stateless Persons* (hereinafter the *1954 Convention*) and the *1961 Convention on the Reduction of Statelessness* (hereinafter the *1961 Convention*).

In 2010, *Refugee Law No. 20.430* was adopted, which established the National Refugee Commission (*Comisión de Reconocimiento de la Condición de Refugiado*). The National Refugee Commission is in charge of adjudicating asylum claims and planning, promoting and coordinating public policies relating to the protection of refugees and asylum-seekers. The National Refugee Commission also contributes to the implementation of durable solutions for refugees. The *Refugee Law No. 20.430* is further complemented by its regulatory *Decree No. 837* that came into force in February 2011.

According to UNHCR annual statistical data as of December 2017, Chile hosted approximately 1,870 refugees and 8,414 asylum-seekers from more than 40 countries, the majority of them of Colombian nationality. Approximately 47 per cent of the refugees and asylum-seekers are female. There is no official systematic, reliable and disaggregated data information available on the stateless population in the country and no mechanism exists to identify stateless persons.

II. ACHIEVEMENTS AND POSITIVE DEVELOPMENTS

Positive developments linked to 2nd cycle UPR recommendations

Linked to 2nd cycle UPR recommendation no. 121.17: “Accede to the 1954 Convention relating to the Status of Stateless Persons and the 1961 Convention on the Reduction of Statelessness.” (Azerbaijan).

Chile signed the *2014 Brazil Declaration and Plan of Action* whereby States in the Latin America and the Caribbean region pledged to end statelessness by 2024 including by acceding to the *1954* and *1961 Conventions*. On 11 April 2018, Chile formally acceded to the *1954 Convention relating to the Status of Stateless Persons* and the *1961 Convention on the Reduction of Statelessness*, which enter into force in July 2018.

¹ Chile made four reservations to the 1951 Convention (about Article 34, Article 17 paragraph 2(a) and Article 17 paragraph 2(c)), see at: www.unhcr.org/protection/convention/3d9abe177/reservations-declarations-1951-refugee-convention.html

Linked to 2nd cycle UPR recommendation no. 121.123: “That all the new born children born in Chile should have the right to Chilean nationality with a legal framework for their protection.” (Afghanistan)

The current *Political Constitution* of the Republic of Chile establishes the *jus sanguinis* and *jus soli* principles for the acquisition of the Chilean nationality. Article 10 of the *Constitution* prescribes that children born to foreigners in transit cannot acquire Chilean nationality based on the *jus soli* principle. As of August 2014, through an administrative resolution issued by the Head of the Migration Department of the Ministry of Interior and Public Security, the Government defined the category “foreigners in transit” as being limited to tourists and crew members. Consequently, children born in Chile of foreigners in an irregular situation acquire Chilean nationality at birth, since they are no longer considered children of “foreigners in transit.”

In 2016, the Government, together with UNHCR, the National Human Rights Institution (NHRI) and civil society organizations, launched an inter-institutional initiative called “Chilereconoce” confirming Chilean nationality to children of foreigners in transit.² This inter-institutional project successfully identified more than 250 individual cases in the capital and in the northern region of Chile and supported these individuals to confirm their nationality before Chilean relevant authorities. This initiative has been pursued in 2017, with the additional collaboration of UNICEF Chile, National Service for Children (SENAME) and the Ministry of Education. In June 2017, the Inter-American Commission on Human Rights “welcomed the launch of the “Chile Reconoce” project, by which Chilean nationality is recognized for persons born in Chile to fathers or mothers in a situation of irregular migration. This constitutes an important step forward in efforts to end statelessness in Chile.”³ In addition, in its last Concluding Observations to Chile (2018), the CEDAW “recommends that the State party continue the Chile Reconoce programme and expedite the regularisation process to grant Chilean nationality to all children through the rectification of birth certificates” (CEDAW/C/CHL/CO/7).

However, despite the change in interpretation in 2014 and the “Chilereconoce” initiative, a number of individuals (approximately 2,000 people) continue to be registered as a “child of foreigner in transit”. The majority of these people have been registered as such between 1995 and 2014 and no request for the confirmation of their Chilean nationality has been made, mainly due to a lack of information by concerned population on the change in interpretation and the procedure of determination of nationality.

III. KEY PROTECTION ISSUES, CHALLENGES AND RECOMMENDATIONS

Challenges linked to outstanding 2nd cycle UPR recommendations

Issue 1: Protection of Stateless Persons

Linked to 2nd cycle UPR recommendation no. 121.17: “Accede to the 1954 Convention relating to the Status of Stateless Persons and the 1961 Convention on the Reduction of Statelessness.” (Azerbaijan)

National legislation does not define the concept of stateless person yet. The *Refugee Law N° 20.430* (2010) explicitly foresees the case of stateless refugees. Chile has not yet instituted a national procedure for determining whether an individual is a stateless person. Although the *1954 Convention* does not include provisions relating to States’ obligation to

² More information available at: <http://chilereconoce.cl/>

³ http://www.oas.org/en/iachr/media_center/PReleases/2017/082.asp

establish a mechanism to identify stateless persons as such, it is implicit in this treaty that States must identify stateless persons within their jurisdictions so as to provide them appropriate treatment to comply with their *Convention* commitments.

Recommendations:

UNHCR recommends that the Government of Chile:

- (a) Collect disaggregated data on the size and diversity of the stateless population in Chile;
- (b) Adopt a law on nationality that includes the protection of stateless persons and facilities for their naturalisation;
- (c) Establish a statelessness determination procedure, in conformity with *1954 Convention* and *UNHCR Guidelines on statelessness* No.2 (HCR/GS/12/02, 5 April 2012);
- (d) Ensure adequate human resources and budgetary allocations for the effective functioning of the statelessness determination procedure;
- (e) Establish adequate and effective procedural guarantees available without discrimination to all persons availing themselves of the statelessness determination procedure; and
- (f) Seek the assistance of UNHCR in the process of establishing a statelessness determination procedure.

Issue 2: Prevention of statelessness

Linked to 2nd cycle UPR recommendation no. 121.123 “That all the new born children born in Chile should have the right to Chilean nationality with a legal framework for their protection.” (Afghanistan)

Neither the Chilean Constitution nor any domestic laws clearly define the concept of “foreigners in transit”. The 2014 administrative guidelines constitute the only source of interpretation on the categories of persons representing “foreigners in transit”. This instrument designates as foreigners in transit tourists and crew members. It is important to ensure that the 2014 administrative guidelines on the interpretation of the term “foreigner in transit” is anchored in law to ensure that civil registry authorities interpret this term correctly and that children born in the territory to women in an irregular situation can acquire Chilean nationality at birth.

Recommendations:

UNHCR recommends that the Government of Chile:

- (a) Ensure that the 2014 administrative guidelines on the interpretation of the term “foreigner in transit” is anchored in the new migration law; and
- (b) Adopt a law on nationality that includes legal safeguards to prevent statelessness, in accordance with *1961 Convention*.

Issue 3: Protection of victims of trafficking in need of international protection

Linked to 2nd cycle UPR recommendations No. 121.99: “Take immediate effective legal and practical measures to prevent and combat trafficking in persons, in particular women and children, and make the offenders accountable” (Islamic Republic of Iran) **and Recommendation No. 121.100:** “Take measures to give adequate enforcement to Law No. 20.507, such as developing a standard operating procedure to identify victims of trafficking.” (Italy)

UNHCR would like to note with concern that asylum-seekers and refugees are especially at risk of falling victim to trafficking or smuggling, particularly due to the vulnerable and volatile security situation in the country and the lack of access to information on Chilean legislation

and practice. Since 2015, according to information gathered by civil society organizations, access to territory for people in need of international protection has been improved. However, systematic and periodic monitoring at border zones and permanent training to migration police are still required, in close coordination with asylum authorities. Asylum-seekers enter Chile mainly through the international airport Comodoro Arturo Merino Benitez in Santiago or through border control points in the north of the country, via the borders with Bolivia and Peru. Some of them apply for asylum at the borders with migration police, while the majority formalize their asylum applications after their entry into the territory.

Recommendations:

UNHCR recommends that the Government of Chile:

- (a) Identify and address the specific protection needs of victims of trafficking and ensure that those who are in need of international protection are referred to the competent authorities and have access to adequate procedures for the examination of their claims in an age- and gender-sensitive manner, by *inter alia*:
 - (i) Establishing a proper referral system to the refugee status determination (RSD) procedure, in order to ensure that the victims' right to seek and be granted asylum is fully and duly respected;
 - (ii) Adopting standard operating procedures to facilitate their prompt identification and referral to the asylum system, when appropriate;
 - (iii) Improve RSD procedures to ensure that asylum claims from victims of trafficking are fairly and appropriately examined, in line with international standards; and
 - (iv) Adopting specialized programmes and policies to protect and support victims who cannot return to their countries of origin.
- (b) Implement regular training of border police and migration authorities on the identification of victims of trafficking and people in need of international protection;
- (c) Investigate all allegations of trafficking, prosecute and punish perpetrators accordingly; and
- (d) Ensure access to adequate rehabilitation services for victims of trafficking as well as safeguards during criminal investigation and justice processes.

Issue 4: Reform the 1975 Migration Law

Linked to 2nd cycle UPR recommendations no. 121.179: “Continue its efforts to adopt a law modernizing the migration regime, which incorporates a human rights approach, recognizes the rights and obligations of regular and irregular migrants and contains provisions regarding a national migration policy, the fight against trafficking in persons and the protection of refugees.” (Guatemala)

In Chile, migration issues are still regulated by *Decree No. 1094*, which dates back to 1975 and no longer adequately responds to the current dynamics of mixed migration flows. Two projects of reform of the Migration Law were introduced in 2013 and 2017 to the National Congress (*Proyecto de Ley de Migración y Extranjería, Boletín No.8970-06* and *Proyecto de Ley que establece Nueva Ley de Migraciones, Boletín No.11395-06*), respectively, but both failed to be adopted. In April 2018, the government has introduced modifications to the 2013 draft Migration Law.⁴

Human rights treaty bodies have repeatedly stressed the importance to adopt a new migration legislation in Chile, such as the Committee on the Elimination of Discrimination against Women (CEDAW/C/CHL/CO/7, 2018), the Committee on the Rights of the Child (CRC/C/CHL/CO/4-5, 2015), and the Human Rights Committee (CCPR/C/CHL/CO/6, 2014).

⁴ <https://prensa.presidencia.cl/comunicado.aspx?id=73015>; <https://prensa.presidencia.cl/discurso.aspx?id=73020>

It is important that the Government and the Congress ensure that the new Migration *Law* is consistent with *Refugee Law No. 20.430* and incorporates legal safeguards regarding the protection of persons falling under UNHCR's mandate, including introducing humanitarian visas for people fleeing armed conflicts or similar situations. Experience has shown that modern migration legislation, which fully incorporates international human rights standards, has a positive impact on the situation of asylum-seeking, refugee and stateless people living in Chile.

In the context of mixed migration, we wish to note the importance of establishing protection-sensitive entry systems with differentiated processes and reception arrangements, as well as mechanisms for profiling and referral at entry points. Furthermore, the Chilean context calls for specialized training and capacity building of officials who come into contact with foreigners in the territory to ensure that they understand that persons apprehended may be asylum-seekers, refugees, persons at risk of statelessness or victims of trafficking.

Recommendations:

UNHCR recommends that the Government of Chile:

- (a) Adopts the new *Migration Law* and ensures that this legal framework includes a basis for the implementation of protection-sensitive entry mechanisms for people in need of international protection, as well as access to fair, efficient and gender-sensitive RSD procedures. This new migration law should also include legal safeguards to prevent statelessness as well as statelessness determination procedure.

**UNHCR
July 2018**

ANNEX

Excerpts of relevant Recommendations from the 2nd cycle Universal Periodic Review and Concluding Observations from UN Treaty Bodies

CHILE

We would like to bring your attention to the following excerpts from the 2nd cycle UPR recommendations and UN Treaty Monitoring Bodies' Concluding Observations relating to issues of interest and persons of concern to UNHCR with regards to CHILE.

I. Universal Periodic Review (Second Cycle – 2014)

Recommendation ⁵	Recommending State/s	Position ⁶
International agreements		
121.1. Consider withdrawing its reservations to the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families.	Philippines	Noted
Nationality and Statelessness		
121.17. Accede to the 1954 Convention relating to the Status of Stateless Persons and the 1961 Convention on the Reduction of Statelessness.	Azerbaijan	Noted
121.123. That all the new born children born in Chile should have the right to Chilean nationality with a legal framework for their protection.	Afghanistan	Supported
Non-Discrimination		
121.52. Take steps to fully enforce the 2012 Anti-Discrimination Act and adopt concrete measures to reduce the risk of violence against vulnerable groups.	Canada	Supported
121.54. Implement the recently passed Anti-Discrimination Law and take other appropriate measures to make sure that any remaining discriminatory regulations and practices are abandoned.	Germany	Supported
Detention		
121.84. Continue the improvement of the detention system.	Slovenia	Supported
121.85. Take effective measures to bring conditions of detention in line with international standards, in particular to reduce overcrowding, to improve the situation of juveniles and women in prisons and to promote non-custodial measures.	Austria	Supported
Violence against women		
121.86. Establish an effective system to address and prevent violence against women.	Iran (Islamic republic of)	Supported
121.87. Develop a comprehensive strategy and action plan to prevent violence against women, as well as establish an effective institutional mechanism to coordinate, monitor and assess the effectiveness of the measures taken, so that all forms of violence are systematically and duly	Poland	Supported

⁵ All recommendations made to Chile during its 2nd cycle UPR can be found in: "Report of the Working Group on the Universal Periodic Review of Chile" (2 April 2014), A/HRC/26/5, available at: <http://www.ohchr.org/EN/HRBodies/UPR/Pages/CLIndex.aspx>.

⁶ Chile's views and replies, in English, can be found in: *Addendum* (5 March 2014), A/HRC/26/5/Add.1, available at: <http://www.ohchr.org/EN/HRBodies/UPR/Pages/CLIndex.aspx>, and revised, in Spanish, in: *Revision* (18 June 2014), A/HRC/26/5/Add.1/Rev.1, available at: <http://www.ohchr.org/EN/HRBodies/UPR/Pages/CLIndex.aspx>.

investigated and perpetrators are effectively prosecuted and punished.		
121.88. Continue to improve its domestic system to protect women against violence and promote gender equality.	Singapore	Supported
Trafficking in persons		
121.99. Take immediate effective legal and practical measures to prevent and combat trafficking in persons, in particular women and children, and make the offenders accountable.	Iran (Islamic Republic of)	Supported
121.100. Take measures to give adequate enforcement to Law No. 20.507, such as developing a standard operating procedure to identify victims of trafficking.	Italy	Supported
121.101. Adopt legislation on trafficking in persons, including for the purpose of the sale of human organs, and investigate all allegations of such crimes.	Russian Federation	Supported
121.102. Continue its efforts to take the necessary measures to combat the trafficking and smuggling of persons and to protect and assist the victims.	Yemen	Supported
121.103. Further consider the implementation of the national plan of action on trafficking in persons, which is currently being drawn up.	Bhutan	Supported
121.104. Further step up efforts to combat trafficking, including measures to protect the victims of human trafficking, as well as consider the possibility of inviting the Special Rapporteur on trafficking in persons, especially women and children.	Belarus	Supported
Migrants, minorities, indigenous peoples and refugees		
121.178. Take all measures to establish a legal framework to address the issues affecting the migrant population, minorities, refugees and indigenous people.	Iran (Islamic Republic of)	Supported
121.179. Continue its efforts to adopt a law modernizing the migration regime, which incorporates a human rights approach, recognizes the rights and obligations of regular and irregular migrants and contains provisions regarding a national migration policy, the fight against trafficking in persons and the protection of refugees.	Guatemala	Supported
121.180. Establish a legal framework for the comprehensive protection of the rights of migrants, in particular the rights of migrant children or children of migrant parents.	Colombia	Supported
Sexual orientation and Gender Identity		
121.72. Support new laws and measures to counter discriminatory attitudes in society and to prevent discrimination on the basis of sexual orientation and gender identity by providing public education and supporting equality initiatives.	Netherlands	Noted

II. Treaty Bodies

Committee on the Rights of the Child

Concluding observations, (30 October 2015), [CRC/C/CHL/CO/4-5](#)

Non-discrimination

24. The Committee welcomes legislative and policy measures by the State party to address discrimination. However, it expresses concern that girls continue to be subjected to gender-based discrimination, due to the persistence of adverse and traditional attitudes and

norms. It is also concerned about enduring discriminatory attitudes and practices against indigenous children, children with disabilities and immigrant children. It is furthermore concerned about continuing negative attitudes and discrimination faced by lesbian, gay, bisexual, transgender and intersex (LGBTI) children.

25. **The Committee recommends that the State party:**

- (a) **Strengthen policy and programmatic measures to combat the multiple forms of discrimination against girls, indigenous children and children with disabilities, targeting the stereotypes on which those discriminatory attitudes are based;**
- (b) **Strengthen its efforts to combat negative attitudes and eliminate discrimination against children on the basis of their actual or perceived sexual orientation, gender identity and sex characteristics.**

Birth registration

30. The Committee is concerned about cases of children born in the territory of the State party being denied birth registration due to their parents' irregular migrant status.

31. **The Committee urges the State party to take all legislative and administrative measures to ensure that children born in its territory have due access to birth registration, irrespective of their parents migrant status.**

Nationality

32. The Committee shares the concern expressed by the CEDAW Committee upon the consideration of the combined fifth and sixth periodic reports of Chile (CEDAW/C/CHL/CO/5-6, para. 26), namely that the exception to the jus soli principle relating to foreigners in transit is systematically applied to migrant women in an irregular situation, irrespective of the length of their stay in the State party, and that, as a result, their children cannot receive Chilean nationality at birth and can only opt for Chilean nationality within a period of one year immediately following their twenty-first birthday.

33. **The Committee encourages the State party to:**

- (a) **Review and amend its legislation to ensure that children who are born in the State party can acquire Chilean nationality at birth, irrespective of their parents migrant status, and who would otherwise be stateless, as recommended by the Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families (CMW/C/CHL/CO/1, para. 33);**
- (b) **Ratify the Convention relating to the Status of Stateless Persons (1954) and the Convention on the Reduction of Statelessness (1961).**

Asylum-seeking and refugee children

75. The Committee is concerned that administrative procedures do not take into consideration the specific needs and rights of asylum-seeking and refugee children and that many of them do not have access to an adequate standard of living, health and education. The Committee is also concerned about the lack of available, disaggregated and updated data on asylum-seeking and refugee children.

76. **The Committee recommends that the State party:**

- (a) **Ensure that refugee status determination procedures take into account the specific needs and rights of asylum-seeking children;**
- (b) **Ensure that refugee and asylum-seeking children enjoy an adequate standard of living and effective access to health, social services and education without discrimination;**
- (c) **Provide disaggregated statistics on the current number of asylum-seeking and refugee children and expressly include these groups in planning activities and in economic and social indicators and statistical data;**

- (d) **Seek the technical support of the United Nations Office of the High Commissioner for Refugees in this regard.**

Children in situations of migration

77. The Committee notes the steps taken by the State party to increase the regularization of children in situations of migration and their access to education and health services. The Committee is however concerned that the current migration law lacks direct reference to the rights and guarantees of children. It is also concerned about the existence of administrative procedures that still hamper access to birth registration, education and health care services.

78. **The Committee recommends that the State party:**

- (a) **Adopts its new migration legislation and ensure that it makes direct reference to the rights and guarantees of children;**
- (b) **Disseminate and monitor compliance with existing regulations in public services and institutions, in particular civil registries, educational institutions and health services;**
- (c) **Implement a comprehensive plan for social inclusion of migrants, including conducting awareness-raising campaigns to promote respect and inclusion.**

Committee on Economic, Social and Cultural Rights

Concluding observations, (7 July 2015), [E/C.12/CHL/CO/4](#)

Non-discrimination

12. The Committee takes note of the information provided by the delegation on the amendment of Anti-Discrimination Act No. 20.609. It is, nonetheless, concerned at the persistent discrimination against indigenous peoples, lesbian, gay, bisexual and transgender persons, migrants, asylum seekers and refugees, particularly in the areas of employment and education, but also as regards access to health services (art. 2, para. 2).

The Committee recommends that the State party should undertake a comprehensive revision of Act No. 20.609 with a view to ensuring effective protection against discrimination. In particular, it recommends that the State party should:

- (a) **Explicitly include all the prohibited grounds of discrimination set out in article 2, paragraph 2, of the Covenant, taking into account the Committee's general comment No. 20 (2009) on non-discrimination in economic, social and cultural rights;**
- (b) **Define direct and indirect discrimination in accordance with the obligations incumbent on the State party under the Covenant;**
- (c) **Include provisions for obtaining access to redress in cases of discrimination through judicial, administrative and other procedures and adopt effective and appropriate remedies for victims of discrimination;**
- (d) **Adopt the necessary measures to prevent and combat persistent discrimination against indigenous peoples, lesbian, gay, bisexual or transgender persons, migrants, asylum seekers, refugees and any disadvantaged or marginalized persons or groups, including awareness-raising campaigns, with a view to ensuring the full exercise of the rights recognized under the Covenant, particularly access to employment, social security, health care and education.**

Health system

28. The Committee is concerned that, despite the reforms adopted in order to improve the health system, access to basic health services remains limited, particularly for disadvantaged and marginalized groups on low incomes (art. 12).

The Committee recommends that the State party should allocate sufficient resources to the health sector and continue its efforts to ensure the accessibility, availability, affordability and quality of health care, paying special attention to the needs of disadvantaged and marginalized groups, especially those on low incomes, and those of indigenous peoples, migrants, asylum seekers and refugees. The Committee draws the attention of the State party to its general comment No. 14 (2000) on the right to the highest attainable standard of health.

Human Rights Committee

Concluding observations, (13 August 2014), [CCPR/C/CHL/CO/6](#)

Trafficking in persons

20. While it notes the measures adopted by the State party to combat trafficking in persons (including internal trafficking), forced labour and domestic servitude, the Committee is concerned at the persistence of such practices, particularly when the victims are women and girls. The Committee is concerned at the ineffectiveness of the measures taken to combat this crime (art. 8).

The State party should step up its efforts to put a stop to trafficking in persons, including internal trafficking in persons. The State party should ensure that the existing legal framework is used effectively at all levels of the State to combat trafficking in and smuggling of persons. It should continue to train police and immigration officers and should provide protection, rehabilitation and reparation to victims. The State should, furthermore, ensure that allegations concerning these practices are investigated and that the perpetrators are brought to justice and given appropriate penalties.