



UPR Report
Red Ong Infancia y Juventud Chile
(NGO Network for Children and Youth of Chile)

The preparation of a document for UPR nourish to be performed Chile in 2013, is for the NGO Network for Children and Youth of Chile, an opportunity to give an account of their concerns in relation to work with children and teenagers who perform its various member organizations nationwide, forming in effect an exercise of their duties and ways to Network.

The Roij (NGOs Network for Children and Juvetud de Chile) is a nationwide network of 32 organizations representing tables in four regions (Atacama, Valparaíso, Bío Bío and Metropolitan). The institutions of this coalition made daily work with children and teenagers through different intervention strategies in various areas, from a rights perspective.

This time we have decided to timely report the absence of Integral Protection Act in our country, the urgency to ratify the Third Protocol to the CRC, the situation of migrant children, the state violence and police children who experience and girls of Mapuche communities in the south of our country, the lack of specific and reliable background on the situation of working children and finally the concern about the conditions of detention penalized teenagers living with adolescent Criminal Responsibility Law and the criminalization of youth protest.

1. Law on Protection universal for children in Chile:

More than 23 years of signing of the CRC by the Chilean State has not yet adopted the Law of Integral Protection for all children and teenagers living in Chile, with the unfortunate exception in the region. Currently in Congress Protection Act for discussion that does not respect the parameters of the Convention, being built from a special protection paradigm and universal nor comprehensive.

The Roij with other organizations (Campaign "Mobilizing for a Culture of Integral Protection of Rights") have developed a work of more than five years that has resulted, among others, in the creation of a Bill of Universal and Comprehensive Protection Rights with the active participation of children and teenagers, communities and civil society. Lograía subsequently developing a bill agreeing between various actors of civil society, UNICEF, the Ministries of Justice and Social Development, and the National Youth Service, introduced in January of 2012. Despite the breadth of stakeholders in the consensus proposal, it was rejected by the government, which in turn lifted and so unilateral Bill which is currently under discussion and that does not include minimum agreements as:

- A regulatory framework governing for all implementers, which guarantees the rights of all children and teenagers, not just the poorest (universal character).
- A governing body to formulate, implement and articulate universal policies (for all NNA) and targeted (in vulnerable situations).
- An autonomous and independent body to audit and represent the interests of children, as in the case of the Ombudsman for the Rights of the NNA.

- Repeal the 1967 law under
- Budget for the institutions necessary for the implementation of a national policy and plan of childhood attachment.
- The elimination of all forms of violence against children and teenagers, including abuse within the home.

Demand an Integral Protection Act that protects the rights of all children and teenagers living in Chile with its joint budget for local, regional and national levels.

The State of Chile urge you to create the position of defender of the child, the child and teenagers, institutions responsible for enforcement of the rights of children in Chile regardless of the government of the day and attached budget for its operation.

2. Ratification of Optional Protocol to the Convention on the Rights of the Child (CRC) on a communications procedure:

Chile has not ratified the Third Protocol, which was signed on February 28, 2012, international action through which children and teenagers in one country can inform and direct communication with the Committee on the Rights of the Child United Nations, enabling the test of enforceability of rights present at the Convention.

This will offer children individually, the opportunity to direct complaints about violations of their rights to a supranational, by the way, after having exhausted the relevant national resources. Therefore, the Protocol will complement and strengthen existing mechanisms to enable children to inform on the violations of their rights. We demand that the Chilean state ratification of the Third Protocol.

3. Situation of children and teenagers migrants:

In Chile applies the principle of jus soli, by which are Chilean-born Chilean territory. Exceptions are children of resident aliens (Constitution of the Republic of Chile, section 10).

The interpretation that the authorities have made in respect of non-resident alien concept, has brought issues regarding the protection of the right to a nationality (Articles 7 and 8 CRC). In the case of migrant children born in Chile, whose parents are in an irregular situation, it is understood that they are children of resident aliens. Not taken into account the intention of staying in Chile or the time they have been in the country. The consequence of this is that the children do not get born in Chile Chilean nationality, leaving them stateless, unless they can acquire the nationality of their parents, if allowed by the country of origin. This situation has been advised to Chile by the Committee on the Rights of the Child in its concluding observations of 2007, which recommended that Chile has ratified the 1954 Convention relating to the Status of Stateless Persons and the 1961 Convention to reduce cases of statelessness situation to date has not happened.

Similarly, children who have not been enrolled in the Chilean Civil Registry or whose parents do not have the valid documents of their countries of origin or who have failed the civil registration Chile, from countries which their consulates in Chile do not allow the registration of birth, are exposed to statelessness. This situation is recurrent in the case of

the children of the people who have applied for international protection being denied access to the procedure (practices "pre admissibility" or "reorientation") with as migrants in an irregular situation, as also in the if children born before lodging the application for asylum.

By not allowing people into irregular immigration status by applying for a visa "Chilean link" as an alternative to regulate the residence in the country temporarily, definitely exclude their children from the slightest legal and administrative protection.

Against this, the standards emanating from international regulations are quite clear. Thus, the Convention on the Rights of the Child (whose content is meant integrated into the American Convention on Human Rights and harmonically dynamic interpreting Article 19 in the light of the doctrine of "corpus juris"), "the child shall be registered immediately after birth and shall have the right from birth to a name, to acquire a nationality and, as far as possible, to meet her parents and be cared for them. "Furthermore, "States Parties shall ensure the implementation of these rights in accordance with their national legislation and the obligations they have assumed under relevant international instruments in this field, in particular where the child would otherwise be stateless" (Article 7 of the Convention on the Rights of the Child).

This in turn is complementary to what is stated in Article 29 of the Convention for the Protection of All Migrant Workers and Their Families: "All the children of migrant workers have the right to a name, to registration of birth and nationality. "

We therefore demand that the Chilean State to ensure that all children born in the country to obtain Chilean citizenship, regardless of the immigration status of their parents. We therefore recommend that Chile ratified the 1954 Convention relating to the Status of Stateless Persons and the 1961 Convention to reduce statelessness.

Children have the right to live with their families. However, due to the complexity of migration processes, sometimes this law is seriously violated both their own migration policies either by restriction or omission, precarious employment conditions and housing of migrant families or decisions that the adults of the family groups made without considering infant perception. Migrant families inevitably undergo fragmentation processes affecting care affective bonds and generational relations of power, authority and legitimacy.

In this sense, international legal norms just trying to ensure the principle of the protection of family life, especially for girls and children are most affected by the separation. Particularly the State of Chile has signed conventions that require facilitate the conditions for migrant families can meet. The principle of protecting the family life of migrants in general and girls and especially migrant children is an ethical demand emanating from multiple legal rules converge on the paradigm of respect and guarantee human rights by the state. The facilitating family reunification is an issue that will affect the processes of integration and social cohesion that occur in places of destination, once families have been temporarily or permanently installed.

The figures show that most of the foreigners live without their children in Chile, by the existence of various barriers, legal or economic. According to data submitted by the Jesuit Migrant Service (data extracted by the people served since May 5, 2001 to March 9, 2010), from a population of 4,980 people attended, of which 77.6% states have children, 66.6% of them have left at least one child in the country. Of this, 51.8% has left all her

children in the country of origin and 14.8% have children in Chile and in the country of origin. The amount of people that have all their children in Chile, either reunification or were born in Chile, representing a significant percentage (33.4%), but largely dominated by people who have at least one child in their country of origin (66.6%). Furthermore, the number of children who live in the country of origin is greater than the number of children in Chile (average 2.3 children in the home country vs. 1.7 children in Chile), indicating that the most cases, the people served have more children in the country of origin in Chile.

Moreover, according to information provided by the President of the Association of Peruvian immigrants in Chile since 2010 would have tightened sanctions against criteria given to offenses or immigration offenses. Especially the expulsions and the criteria for admission of foreigners to Chile. In these decisions, not taken into account the principle of family reunification. Moreover, in these proceedings, is not considered the best interests of the child, or the right to be heard and have a say in decisions that affect them. TACRO UNICEF has recommended in a 2010 report, the need for an express provision of these principles in immigration law, which was not the case today.

The Chilean government signed the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families on September 24, 1993, ratifying it on March 21, 2005. Article 44 of the Convention requires States to adopt appropriate measures to ensure the protection of the families of migrant workers, paragraph 2 relates to facilitate the reunification of migrant workers with their spouses, sons and daughters who are in a position of minority.

The Convention on the Rights of the Child, ratified by Chile on August 13, 1990, Article 9 states explicitly requires the State to ensure that girls and children are not separated from their mothers or fathers, except in situations where such separation safeguards the interests of children. Whereas, Article 10 of the Convention refers explicitly to those cases where the family is separated by national borders, including migration can be considered.

The law currently regulates international migration in the State of Chile, called "Aliens Act" was enacted in 1975 (Decree Law No. 1094), during the military dictatorship in the country. Due to the socio-historical context in which it was intended, the Act expressly does not commit the principle of family reunification. This has meant that in practice when, in general, adult migrants and in particular, girls and children migrants entering the country is not considered the exercise of the right to family reunification. Similarly, when requested and granted residence visas or immigration sanctions are not considered these situations from the point of view of the right to family reunification.

The April 15, 2010 the State of Chile enacted the Act makes provision for the protection of refugees (Law No. 20,430, 2010). In Article 9 of this Act enshrines the principle of family reunification for family members, among which are mentioned the daughters and sons in minority situation: "They are entitled to the recognition of refugee status by extension the spouse of a refugee or person with whom being bound by reason of coexistence, ascendants, descendants and minors under their guardianship or conservatorship".

It urges the State of Chile to ensure compliance with international treaties and conventions ratified by the country, as to ensure the effective exercise of the right to family life by girls and children affected by international migration of their mothers, parents and / or guardians, further boosting-based migration Policy Rights Approach and fully manage the migration phenomenon where children participate for reasons of family reunification,

especially considering family migrations between neighboring countries Southern Cone region.

We recommend that the State of Chile in developing national Migration Policy Rights Approach consider and migration of girls and children because of family reunification. This would facilitate the conditions for issuing visas, the exercise of the right to education and health, among others. Specifically, it requires the creation of the family reunification visa for girls and children who are under 18 years of age.

In terms of access to public health care system for serious violations of rights remain especially in the area of access, further demonstrating the presence of discriminatory practices by public officials in this sector. Of particular concern are situations of exclusion that are configured from the accounts of public officials and members of organizations and migrant families. They show that the agreement between the Ministry of Health and the Department of Immigration and Migration (MINSAL, 2008), which provides mechanisms to regulate immigration of foreign children, and as a result, access to system public health on equal terms of Chilean children finally effectuate not been achieved. As posed in its recommendation, the year 2011, the Committee on Migrant Workers and Their Families: CMW/C/CHL/CO/1 31. The Committee recommends that the State party ensure the effective implementation of Official Letter No. 3229, of June 11, 2008, on access to health care for migrant workers, in particular providing its provisions to health workers and establishing a mechanism for monitoring the implementation of the regular job.

We propose that the Ministry of Health to produce a procedure to facilitate the effective implementation of existing legislation and the creation of an office, or a responsible official delegation, which address the issues associated with the migrant population, the latter in the Ministry.

4. Situation of violence experienced by children and teenagers Mapuche:

A look at the life of the Mapuche communities in the Region of Bio Bio, Araucania and Los Rios in Chile over the last decade must necessarily contain the occurrence of numerous acts of violence by the state and its agents in connection with industrial action drive these communities.

Police operations directed against Mapuche communities and families are characterized by excessive violence against people of all ages and conditions. Violence and abuse affect everyone across and do not notice the condition of special vulnerability of children, who usually can testify suffered abusive actions, threats, and attacks such racist word from police officers permanent performing controls on streets and roads. Most of these situations go unreported because there are no suitable channels and a common experience that encourages hope in the justice system, much less in the police. Rather, these abusive situations have become normal part of the deal that the state and its institutions lavish Mapuche communities.

In the Report on Institutional Violence towards Mapuche Children in Chile, presented to the Human Rights Commission by ANIDE Foundation, in conjunction with the NGO Network for Children and Youth of Chile (Roj - Chile), and the Network for the Rights of Children and teenagers (REDLAMYC), in March 2011 identified more than a hundred cases of children and teenagers injured by rubber bullets, beaten by the police forces,

interrogated in their communities, schools and other public spaces, kidnapped, subjected to harassment, ill-treatment, including torture by state agents. All events between 2001 and 2011 under the brutal repression and criminalization of those communities that initiate social mobilization Mapuche to claim its right to recover usurped territories.

It should be noted that since 2010, communities have resorted several times to the courts with resources protection for children whose rights during police procedures, and the Supreme Court ruled in 2012 only three times in favor of the Mapuche communities affected (Case January 5, 25 July and 26 September 2012), urging the police institutions to perform their procedures respecting existing constitutional guarantees and international principles that Chile has signed, referring explicitly to the obligation to respect the Rights of the Child. However, not even the clear interpellations that has made the highest judicial authority in the country have stopped the violence of the state police institutions against Mapuche communities mobilized, including their children.

As a simple example suffices to mention what happened on the morning of April 30 this year, when hundreds of Police Investigations (PDI) with support from helicopter and armored vehicles carried out a massive raid on the lof of Xapilwe and Mawizache, in the commune of Freire. According denounced the Mapuche Territorial Alliance, groups of heavily armed police raided several homes frightening with beatings, threats and racist abuse its occupants, including the elderly, children, questioning them about the existence of weapons and on alleged "terrorist Indians" that hide in the area.

The commoner Eulogio Painevilo made public the story of what happened at home that morning. He said plainclothes officers dragged him outside of his house with his hands cuffed behind his back, throwing him to the ground and questioning with shouts and blows weapons allegedly would own. "The biggest was feeling helpless screams and cries of my children aged 5 and 6 years from inside my house ... thereby responding to questions that made him cry the police, who threatened to kill his father if not say where hiding (l) weapons. Then they (my children) and my wife told me to come to offer sweets, candies and even with that lit lanterns as gifts if they said where had the weapons. "He added that the police messed and caused severe damage to your home. "After I was released and no weapons found, which did take cell phones were a pike, and cash as in all homes raided".

In both Chile for the State of the obligation to respect and promote the rights of children and teenagers of indigenous peoples according to principles laid down in instruments and legislative bodies that the State itself has enacted or signed, has been revealed the breach of this duty of the authorities, especially by the police forces operating in the Mapuche conflict zone.

Therefore, we demand that the Chilean create an Independent Ombudsman for Children for the prosecution of crimes and human rights violations perpetrated by the Chilean state institutions against Mapuche communities, including children and girls.

5. Child Labour:

Do we now have reliable and updated information about the real dimension of this problem in our country. This prevents the creation of timely and relevant public policies to address this violation of rights.

We demand that the State should generate a diagnostic study on this reality with reliable figures also consider the use of free time under 18, as it would help to relieve the history of child domestic work currently invisible.

6. Criminal Liability Act teenager:

We express our concern about the penalty of social protest and particularly young people in recent years. Currently being debated in Parliament, a bill (Bulletin # 7975-25) established a new offense of disorderly conduct, giving prison sentences to persons holding certain public or private, who hide their identity (which is quite diffuse, as the use of scarves, hats, etc. can be a cause).

We demand a halt to the discussion of this bill criminalizing social protest as limiting citizen participation. We believe it is necessary to promote human rights educational spaces to safeguard social security of citizens, but not encourage the generation of repressive laws.

Also teenagers alleged to have committed offenses or who plead guilty or accused of having infringed the law. With Law currently 20,084 real deal NOT have comprehensive rehabilitation of greatly hindering their chances of reintegration, suffering a new violation of their rights. The current custodial sentences in prisons fail to meet basic hygiene and health.

We demand that the State strengthen social reintegration offers for juvenile offenders, improving their conditions of detention and considering this form of prison in extremely necessary cases, favoring the enforcement of sentences in other modalities.

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