

**Universal Periodic Review Chile**  
**28<sup>th</sup> January 2014**  
**XVIII<sup>th</sup> session (27 January - 7 February 2014)**

Whilst FMSI, BICE, IIMA and VIDES International command the Government of Chile for extending a **standing invitation to all special procedures** of the Human Rights Council, and the establishment of the **National Human Rights Institute**, the co-signing organisations remain concerned about the following issues with regard to the implementation of the UPR first cycle recommendations of May 2009:

### **1. Application of the Convention on the Rights of the Child**

#### Scope:

The institutional situation for children and adolescents in Chile requires due attention as there is no **comprehensive national strategy** to integrate a rights-based approach in all policies and measures affecting children in the country. Thus, despite the continuous demand of civil society and the repeated recommendations of the Committee on the Rights of the Child<sup>1</sup>, the government of Chile has not undertaken needed legislative reforms aiming at effectively incorporating the Convention on the Rights of the Child (CRC) into the domestic legal framework. Chile committed in its voluntary pledges to “implementing the instruments provided by the international system” through “numerous actions and policies” that “have improved public institutions, ensuring better protection of the rights of our citizens and improving Chileans’ living conditions”. Nevertheless, national legislation (e.g. Juvenile law n° 16.618) is not in full compliance with international standards.

#### Question:

*When and how the Government envisages to comprehensively harmonising the national legal framework in order to ensure an effective national program implemented in all regions of the country?*

#### Recommendations:

- **Harmonise the domestic legal framework in compliance with CRC and other international obligations and voluntary pledges undertaken by Chile in order to establish a national holistic and comprehensive child rights legislation related *inter alia* to children in conflict with the law, undocumented children and children victim of sexual and economic exploitation or any kind of abuse at home, in work places and in schools.**
- **Establish an ombudsman office for children.**

### **2. Equality and Non-discrimination**

#### Scope:

Despite the UPR first cycle recommendations<sup>2</sup> formulated in relation with indigenous communities and children from those communities, there is still not equal access to the education and basic health care services for vulnerable groups of children, such as indigenous, migrants, refugees, children with disabilities, economically disadvantaged or those in rural areas. For example, the Mapuche children are discriminated because of their physical features and their names; they are excluded from equal access to quality education and technology resources. Chile voluntarily pledged to lay down the “foundations for a more equitable” society with a strong emphasis on social matters and to “protect the identity of our indigenous peoples”<sup>3</sup>, but acts of violence and ill-treatment against them are clear examples of this discrimination (beatings and shootings) against Mapuche children and adolescents belonging to communities mobilized to recover their ancestral lands. In the case of migrants, children from Peru are among the most affected. Policies and programs to address the needs of migrant

<sup>1</sup> UN Doc. CRC/C/CHL/CO/3, §§ 7-9.

<sup>2</sup> **Italy** and **UK** (96-19), **Uzbekistan** and **Azerbaijan** (96-53), **Vietnam** and **Bolivia** (96-18)

<sup>3</sup> Voluntary pledges and commitments of Chile, A/65/730, p. 4 in fine.

children remain insufficient, especially concerning their right to education. In 2003, the Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous people, Mr. Rodolfo Stavenhagen reported that “only 3 per cent of the rural Mapuche population over the age of 15 have any post-secondary education”<sup>4</sup> and expressed concern about the “big increases in school failure and dropout rates, which are already high”<sup>5</sup>. In this community. The situation has not changed significantly since then.

With regard to their right to health, children not belonging to the wealthiest of households have particular difficulty accessing vital health services, including general medical consultation and specialized laboratory tests. Chilean leadership on the global campaign for the health-related Goal of the MDGs, entitled “Deliver Now for Women and Children”, and the hosting of the presidential event on Goals 4 and 5 entitled “Commitment to Progress for Mothers, Newborns and Children” have not benefited to children, especially children from indigenous communities<sup>6</sup>.

#### Question

*While noting the inclusion of new basis for discrimination in the Act N° 20609<sup>7</sup>, the criteria of colour, national extraction and origin are not included in the list set out in the Act, even though they are included in section 2 of the Labour Code. How does the Government apply both the Labour Code and the Act n°20609 in practice and what are the interrelations between the two legal texts in terms of the criteria established and the remedies available to victims<sup>8</sup>?*

#### Recommendations

- **Undertake effective measures to protect children, particularly those belonging to vulnerable groups and ensure their equal access to quality education, public health and other social services;**
- **Remove all legal and institutional discriminatory provisions as well as discriminatory practices preventing children to fully enjoy their rights, especially children from indigenous communities.**

### **3. Worst Forms of Child Labour – Sexual Exploitation**

#### Scope:

In the last three years, there have been irregular meetings of the National and Regional Committees on child labour, although in 2012 the sessions have resumed greater regularity. There is a lack of information and preventive measures, especially in relation to the worst forms of child labour. It was recommended<sup>9</sup> in May 2009 that Chile fought and eradicated the worst forms of child labour and further tackled the problem of street children and worst forms of child labour. Nevertheless, the problem still persists.

In terms of management protocols, we note with concern the lack of specialized services to children victim of sexual exploitation, as well as specific programs to provide assistance to children and adolescents affected by worst forms of child labour.

#### Question

*What is the government strategy to eradicate contemporary forms of slavery, including worst forms of child labour?*

#### Recommendations

- **Implement psychosocial programs and facilitate access to justice for children victim of worst forms of child labour and sexual exploitation.**
- **Encourage the private sector with self-regulation protocols with regard to worst forms of child labour.**

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<sup>4</sup> E/CN.4/2004/80/Add.3 (2003), § 16.

<sup>5</sup> *Ibid.*, § 48.

<sup>6</sup> Voluntary pledges and commitments of Chile, A/65/730, p.4.

<sup>7</sup> The Act N° 20609 of July 2012 establishes measures to combat discrimination.

<sup>8</sup> ILO Doc. ILC.102/III(1A), *Report of the Committee of Experts on the Application of Conventions and Recommendations*, Report III (Part 1A), 2013, p. 440.

<sup>9</sup> Recommendations from **Uzbekistan** and **Azerbaijan** (A/HRC/12/10, § 96.53)

## 4. Right and Access to Education

### Scope:

Despite the recommendations issued during the first cycle<sup>10</sup>, indigenous communities, especially Mapuche children still encountering the lack of availability, accessibility and adaptability to the right education. The education system is characterised by an institutionalised discriminatory practice that exclude children and adolescents from various school levels according to their socioeconomic status. Children enrolment is conducted on the basis of their grades, conduct and/or the family capacity to afford related costs even in compulsory education (6 to 18 years old) funded by the State although the General Law on Education prohibits that procedure up to sixth primary grade (12 years old.)

The most common mechanism of money collection is the “shared financing”, according to which financial contributions can be requested by schools to the families without losing the State funding. As a result, children and adolescents are segregated in the educational system. The population with the highest social vulnerability is concentrated in the municipal public schools (where selection of students and extra fees for families are prohibited) and free subsidized private schools (which are not selective). Finally, the lowest percentage is constituted by non subsidized private schools without State funding opened to national elite which does not exceed 7% of the school population. The fragmentation of the education system impedes access to quality education for the majority of children from low and medium-income families.

### Question:

*What is the plan of the Government for the improvement of quality education, access to education for all, including in Mapuche communities, without discrimination of any kind?*

### Recommendations:

- **Put an end to the “shared financing” mechanism and any other extra school fees by introducing free primary and secondary education and secure adequate funding for public schools by increasing the national budget allocation.**
- **Put an end to discriminatory selection methods as a pre-requisite for enrolment and permanence in the education system, so as to ensure effective access to compulsory education for all children and adolescents.**
- **Develop policies and programmes that ensure high-quality education for all children and adolescents, in particular for those in secondary education, incorporating the civil society participation.**
- **Introduce human rights education programs in all level of the education system and periodically assess the impact.**

## 5. Juvenile justice system and access to justice<sup>11</sup>

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<sup>10</sup> **Report of the UPR Working group (first cycle), A/HRC/12/10 : 96.55:** “Continue to increase budget allocations to the educational sector; focus on overall improvement in the quality of education provided, in particular in rural areas, and ensure expansion of the bilingual intercultural programme for indigenous peoples” (**Slovenia**); **96. 56:** “Further guarantee effective access to education for all children, especially those from indigenous communities, refugee children and children whose families live in rural areas or below the poverty line and take effective measures to fight against the factors behind their exclusion from the educational system (**Algeria**); **96.57:** “Complete the process of constitutional recognition of the indigenous populations with the adequate consultations mentioned in its presentation (**Denmark**); **96.19:** “Take further steps to address discrimination against women and people belonging to vulnerable groups including children, minorities and indigenous people (United Kingdom) and intensify efforts for the full respect of their rights and their protection from discriminatory practices” (**Italy**), **96-18:** “Continue to strengthen its measures and mechanisms to overcome the challenges related to the protection of the rights of vulnerable groups, including indigenous peoples (**Viet Nam**) and indigenous women (**Bolivia**); “Japan referred to the concerns raised about inadequate educational access for indigenous children, refugees and those living in poverty and rural areas” (**A/HRC/12/10, § 28**).

<sup>11</sup> **CRC/C/CHL/CO/3 (2007), §§ 8 & 71.**

### Scope:

Act n° 20.084 (2007) has established a special criminal system for adolescents in conflict with law. Unfortunately, it does not provide for public defenders, prosecutors, specialised police officers and lawyers, courts of appeal and child participation in judicial proceedings within reasonable period of time. Excessive use of incarceration and overmedication are serious issues of concern. Furthermore, despite the Act 20.516 on compulsory legal assistance, the access to justice for children encounters many obstacles since the entry into force of the Criminal Procedure Reform in 2000; neither the SENAME (National Service for the Protection of Minors), nor any other public entity has been entitled to offer legal aid to children and adolescents in conflict with law.

These issues have been addressed in May 2009 during the first review of Chile<sup>12</sup> but the relevant recommendations have not received due attention from the Government.

### Question:

*What are the steps and the overall agenda the government intends to develop in order to translate into action recommendations related to the administration of juvenile justice in Chile?*

### Recommendations:

- **Reform and improve the juvenile justice system by providing *inter alia* for public defenders, prosecutors, specialised police officers and lawyers and courts of appeal as well as social workers agencies.**
- **Revise the 2007 Act according to CRC provisions for a more child-friendly juvenile justice system with a restorative approach aiming at offering more efficient substitution measures to incarceration such as deviation, probation and counselling as a mean to fight, *inter alia*, the overuse of incarceration, death, severe injuries in detention and overmedication; alternatives to institutional care; improve detention conditions, including separation of children from adult in detention places, prohibition of excessive use of force, isolation and punishment methods; and education and vocational training programmes to ensure reintegration of adolescents once they come out of the detention system.**
- **Remove all obstacles impeding effective access of children to justice by fostering the SENAME with specific mandate to provide for legal aid, ensure the right to a fair trial and procedural guarantees for adolescent in conflict with law, and to obtain a just and timely remedy to redress child rights violations.**
- **Allocate adequate resources to support SENAME and bolster institutional cooperation between states offices dealing with the rights of the child, especially adolescents in conflict with the law.**
- **Foster a national integrated programme focusing on juvenile justice so as to implement the national law (Act n°20.084) in accordance with the CRC.**
- **Create according to national context and realities indicators to measure progress and challenges in the juvenile justice system.**
- **Create the national Subcommittee that was given the mandate to carry out regular monitoring visits to persons deprived of their liberty according to the Optional Protocol to the Convention against Torture ratified in 2009.**
- **Promote and establish appropriate mechanism and partnerships, including with private sector, for social reintegration of children and adolescents in conflict with the law.**

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<sup>12</sup> Report of the UPR Working group (first cycle), A/HRC/12/10 , § 96.50: “Take all necessary steps to ensure that persons between the age of 14 and 18 are under all circumstances tried by a specialized juvenile justice system, that the best interests of the juvenile offenders are given the highest priority so they can successfully be reintegrated into society, and that deprivation of liberty of children is used only as a measure of last resort” (Austria); § 96.35: “Continue to reform and upgrade its detention system in order to improve the situation of inmates” (Norway).

## 6. Institutional violence against children<sup>13</sup>

### Scope:

The repression of 2011 student protests led to thousands of **illegal detentions, expulsions and school enrolment cancellations** that have affected at least to 11'097 students, causing them **physical and psychological harms** because of **police violence** and even **sexual humiliation**. Sexual violence perpetrated on women and girls. This sexual violence consisted of unlawful touching of girls' breasts and buttocks; obligation to taking off clothes or t-shirts at the bus stations or in the police vehicles; and even naked girls being compelled to physical exercise; blows on genitals and verbal offences with sexual connotation.

Mapuche children and adolescents belonging to communities claiming their rights to access their ancestral lands faced **brutal repression**, including **verbal and physical ill-treatment (battering and gunshots), abduction and kidnapping**. These violations are still being committed despite the reform of the antiterrorist Law and the pressing recommendations from UN specialised agencies such as UNICEF.

**These human rights violations remain non-investigated and perpetrators unpunished<sup>14</sup>.**

### Question:

*Is there any independent body for the investigations on violence perpetrated by police forces and what concrete measures the Government undertakes to put and end to the impunity, prosecute perpetrators and restore justice for victims?*

### Recommendations:

- **Withdraw or thoroughly revised the “Bill Reinforcing the Public Order” that contains many provisions endorsing police violence including on children.**
- **Integrate in the curricula of police schools the Rights of the Child component, including prohibition of torture, excessive use of force, and violence against children in order to guarantee compliance to international and regional pertinent standards, and carry out legal reforms related to the supervision of police forces so as to ensure that child rights violations by police do not remain unpunished.**
- **Repeal the unlawful 1983 Decree n° 1086 (dictatorship period) regulating the right to assembly and implement *Palamara Sentence* (i.e. reduce the jurisdiction of Military courts exclusively to crimes of military nature) in conformity to the October 2011 conclusion of the Inter American Commission on Human Rights hearing “Human Rights and Public Demonstrations” on the case of Chile<sup>15</sup>.**
- **Implement protocols of action to prevent and sanction illegal and excessive use of force against indigenous communities, especially Mapuche children.**

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<sup>13</sup> CRC/C/CHL/CO/3 (2007) § 39.

<sup>14</sup> **Report of the UPR Working group (first cycle), A/HRC/12/10, 96.34:** “Fully investigate the alleged cases of torture, ill-treatment and excessive use of force committed by police and security forces and bring the perpetrators to justice”; **(Azerbaijan); 96.42:** “Strengthen accountability for abuses by the police and ensure that civilian authorities investigate, prosecute and try human rights abuses by police” **(Netherlands); 96.43:** “Thoroughly investigate all forms of human rights violations particularly of those who were arrested in the course of police operations **(Uzbekistan); 96.44:** “Continue to provide specific and practical human rights education and training to all prison officers and members of the Carabineros, Policia de Investigaciones and Gendarmeria, and ensure their full accountability for any violations of human rights as well as effective access to remedies for victims **(Czech Republic)**.”

<sup>15</sup> Government's authorization for peaceful demonstrations is unacceptable in a democratic society and violates accordingly article 15 of the Pact of San José, Costa Rica.