



# Convention on the Rights of the Child

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## Committee on the Rights of the Child

### Concluding observations on the combined fourth and fifth periodic reports of Chile\*

#### I. Introduction

1. The Committee considered the combined fourth and fifth periodic reports of Chile (CRC/C/CHL/4-5) at its 2039th and 2040th meetings (see CRC/C/SR.2039 and 2040), held on 24 September 2015, and adopted the following concluding observations at its 2052nd meeting (see CRC/C/SR.2052), held on 2 October 2015.

2. The Committee welcomes the submission of the combined fourth and fifth periodic reports of the State party and the written replies to the list of issues (CRC/C/CHL/Q/4-5/Add.1), which allowed for a better understanding of the situation of children's rights in the State party. The Committee expresses appreciation for the constructive dialogue held with the multisectoral delegation of the State party.

#### II. Follow-up measures taken and progress achieved by the State party

3. The Committee welcomes the ratification of or accession to the following instruments:

(a) The Optional Protocol to the Convention on the Rights of the Child on a communications procedure, in September 2015;

(b) The International Labour Organization, Domestic Workers Convention, 2011 (No. 189), in June 2015;

(c) The International Labour Organization, Indigenous and Tribal Peoples Convention, 1989 (No. 169), in September 2009;

(d) The Rome Statute of the International Criminal Court, in June 2009;

(e) The Convention on the Rights of Persons with Disabilities and its Optional Protocol, in August 2008;

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\* Adopted by the Committee at its seventieth session (14 September -2 October 2015).



(f) The Optional Protocol to the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, in December 2008.

4. The Committee also notes with appreciation the adoption of the following legislative measures:

(a) Act No. 20609 on anti-discrimination, in July 2012;

(b) Act No. 20594 on disqualifications for persons convicted of sexual offences against children and establishing a registry, in June 2012;

(c) Act No. 20507 on trafficking in persons, in April 2011;

(d) Act No. 20545 on maternity protection and postnatal parental leave, in October 2011;

(e) Act No. 20539 prohibiting night work for children under 18 years old in industrial and commercial establishments, in October 2011;

(f) Act No. 20536 on violence in schools, in September 2011;

(g) Act No. 20519, excluding children from terrorist offences, in June 2011;

(h) Act No. 20430 on protection for refugees, in April 2010;

(i) Act No. 20422 on equal opportunities and social inclusion for persons with disabilities, in February 2010;

(j) Act No. 20370 on education, in September 2009.

5. The Committee also welcomes the following institutional and policy measures:

(a) The establishment of the National Council for Children (Consejo Nacional de la Infancia), in March 2014;

(b) The establishment of the National Human Rights Institute (Instituto Nacional de Derechos Humanos) by Act No. 20045, in December 2009;

(c) The establishment of the Intersectoral Panel on Trafficking in Persons, in 2008, and the adoption of its action plan for 2013-2014.

6. The Committee notes as positive the standing invitation extended by the State party to United Nations special procedures, in May 2009, and the visits of the Working Group on Enforced or Involuntary Disappearances, in 2012, the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism, in 2013, the Special Rapporteur on extreme poverty and human rights, in March 2014, the Working Group on the issue of discrimination against women in law and in practice, in September 2014, and the Special Rapporteur on the rights to freedom of peaceful assembly and of association, in September 2015.

### **III. Main areas of concern and recommendations**

#### **A. General measures of implementation (arts. 4, 42 and 44 (6))**

##### **The Committee's previous recommendations**

7. **The Committee recommends that the State party take all measures necessary to address the recommendations made in its concluding observations of 2007 (CRC/C/CHL/CO/3) that have not been implemented or not sufficiently implemented and, in particular, those relating to the adoption of a law on the comprehensive**

protection of the rights of children (para. 8), data collection (para. 20) and allocation of resources (para. 17).

### Legislation

8. The Committee welcomes the several legislative measures taken to advance children's rights and the information that a law on the comprehensive protection of the rights of children has been submitted to Parliament. However, it is concerned that the Juvenile Act of 1967 has a tutelary approach which is incompatible with an appropriate legal framework that recognizes and guarantees the rights of all children. It is also concerned that the attempts made in 2005 and 2012 to change that law were unsuccessful.

**9. Recalling its previous recommendation (CRC/C/CHL/CO/3, para. 8), the Committee recommends that the State party promptly complete the process of legislative reform and enact a law on the comprehensive protection of children's rights, in conformity with the Convention on the Rights of the Child.**

### Comprehensive policy and strategy

10. The Committee notes that the National Policy on Children 2015-2025 is under preparation. However, it is concerned about the lack of a time frame for finalizing and adopting it and that since 2010, there has been no comprehensive policy and strategy for the protection of children's rights.

**11. The Committee encourages the State party to expeditiously finalize and adopt a national policy and a plan of action on children that are results-oriented and monitored and evaluated in accordance with human rights indicators based on the Convention, and to allocate sufficient human, technical and financial resources for their effective implementation. The Committee recommends that the State party strengthen its cooperation with the United Nations Children's Funds (UNICEF) and the Office of the United Nations High Commissioner for Human Rights (OHCHR) in that regard.**

### Coordination

12. The Committee notes the measures taken to reform the institutional framework for the coordination and implementation of activities relating to the Convention. However, it is concerned that the framework may be adopted before the approval of the law on the comprehensive protection of children's rights, which could have an impact on its effectiveness in protecting all children's rights. The Committee is also concerned about the lack of information on the mechanisms to coordinate the various sectors at the local, regional and national levels.

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

**(a) Ensure that the institutional framework for the coordination and implementation of the activities for the protection of the rights of the child is based on an adequate comprehensive law;**

**(b) Promptly adopt the organic law of the Ministry of Social Development and define it as the government entity responsible for the implementation of children's rights;**

**(c) Ensure that the Ministry is provided with the necessary human, technical and financial resources for its effective functioning;**

(d) **Establish an adequate coordination mechanism at the national, regional and local levels, with a clear delineation of the responsibilities of the authorities at each level and with the participation of civil society.**

#### **Allocation of resources**

14. The Committee is concerned about the continuing lack of a mechanism to track the budget in order to monitoring budget allocations from a child-rights perspective and to ensure a balanced distribution of resources with a view to alleviating disparities. The Committee is also concerned about the difficulties encountered in identifying expenditures relating to children's rights among the different budget items, which does not enable an assessment of the impact of budgetary adjustment measures on the rights of children nor guarantees a specific and progressive budget for children's rights policies.

15. **In the light of its day of general discussion on the theme "Resources for the rights of the child: responsibility of States", held on 21 September 2007, and recalling its previous recommendation (CRC/C/CHL/CO/3, para. 17) the Committee recommends that the State party:**

(a) **Utilize a child-rights approach in the preparation of the State budget, by implementing a tracking system for the allocation and the use of resources for children. The State party should also use this tracking system to assess how investments in any sector may serve the best interests of the child, ensuring that the different impacts on girls and boys as well as children in various vulnerable situations are measured;**

(b) **Ensure transparent and participatory budgeting through public dialogue, especially with children, and proper accountability of local authorities;**

(c) **Define strategic budgetary lines for children in disadvantaged or vulnerable situations that may require affirmative social measures, and make sure that those budgetary lines increase progressively and are protected even in situations of economic crisis, natural disasters or other emergencies;**

(d) **Continue to seek technical assistance for these purposes from, inter alia, UNICEF.**

#### **Data collection**

16. The Committee welcomes the creation of the statistical information system on children and adolescents by the Children and Youth Observatory and the Ministry of Social Development, but is concerned about the delay in its implementation and the lack of indicators to monitor and assess respect for children's rights.

17. **In the light of its general comment No. 5 (2003) on general measures of implementation of the Convention, the Committee urges the State party to:**

(a) **Expedite the implementation of a national, integrated and comprehensive data system. The data should cover all areas of the Convention and should be disaggregated by, inter alia, age, sex, disability, geographic location, ethnic origin, nationality and socioeconomic background, in order to facilitate analysis of the situation of all children, particularly those in situations of vulnerability;**

(b) **Share the data and indicators among the relevant ministries responsible for the formulation, monitoring and evaluation of policies, programmes and projects for the effective implementation of the Convention.**

**In that context, the Committee also recommends that the State party strengthen its technical cooperation with, among others, UNICEF and regional mechanisms.**

**Independent monitoring**

18. The Committee welcomes the establishment of the National Human Rights Institute and notes the steps taken to create an Ombudsperson for children. The Committee is however concerned about the delay in its creation and the enduring structural void in the protection and promotion of children's rights in the State party.

19. **In the light of its general comment No. 2 (2002) on the role of independent national human rights institutions in the promotion and protection of the rights of the child, the Committee recommends that the State party:**

(a) **Expediently establish a specific mechanism to monitor children's rights that is able to receive, investigate and address complaints involving children and by children in a child-sensitive manner, ensure the privacy and protection of victims and undertake monitoring, follow-up and verification activities for victims;**

(b) **Ensure the independence of that monitoring mechanism, including with regard to its funding, mandate and immunities, so as to ensure full compliance with the Paris Principles;**

(c) **Seek technical cooperation from, among others, OHCHR, UNICEF and the United Nations Development Programme.**

**Children's rights and the business sector**

20. The Committee notes the steps taken by industrial companies and extractive industries to increase compliance with human rights standards. However it is concerned about the lack of a national plan or general regulation on business and human rights that considers the impact of business on children's rights, and about the limited and ad hoc measures.

21. **In the light of its general comment No. 16 (2013) on State obligations regarding the impact of the business sector on children's rights and the Guiding Principles on Business and Human Rights: Implementing the United Nations "Protect, Respect and Remedy" Framework, the Committee recommends that the State party establish and implement regulations to ensure that the business sector complies with international and national human rights, labour, environment and other standards, particularly with regard to children's rights. In particular, it recommends that the State party:**

(a) **Establish a clear regulatory framework for private businesses operating in the State party to ensure that their activities do not negatively affect children's rights or endanger environmental and other standards, especially those relating to children's rights;**

(b) **Ensure effective implementation by companies, especially industrial companies and extractive industries, of international and national environment and health standards, effective monitoring of the implementation of those standards and appropriate sanctions and remedies when violations occur, as well as ensure that appropriate international certification is sought;**

(c) **Require companies to undertake assessments, consultations and give a full public disclosure of the environmental, health-related and children's rights impacts of their business activities and their plans to address such impacts.**

**B. Definition of the child (art. 1)**

22. The Committee is concerned that Chilean legislation provides the possibility for children to get married at the age of 16, with the authorization of their parents or legal representatives.

23. **The Committee recommends that the State party set the minimum age for marriage at 18 years in all circumstances.**

**C. General principles (arts. 2, 3, 6 and 12)****Non-discrimination**

24. The Committee welcomes the legislative and policy measures taken by the State party to address discrimination. However, it is concerned that girls continue to be subjected to gender-based discrimination, owing to the persistence of adverse and traditional attitudes and norms. It is also concerned about persistent discriminatory attitudes and practices against indigenous children, children with disabilities and immigrant children. The Committee is further concerned about continuing negative attitudes against and discrimination faced by lesbian, gay, bisexual, transgender and intersex children.

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

(a) **Strengthen policy and programme measures to combat the multiple forms of discrimination against girls, indigenous children and children with disabilities, and target 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.**

**Best interests of the child**

26. The Committee notes that the best interests of the child is a fundamental principle in the legal system of the State party and that it is integrated into some laws. However, the Committee is concerned that it does not apply in all areas, including in decisions sentencing parents to long terms of imprisonment, and that the reasoning of the court does not always explain the criteria used for determining the child's best interests. The Committee is further concerned that the best interests of the child is not a cross-cutting consideration in all areas of policymaking.

27. **In the light of its general comment No. 14 (2013) on the right of the child to have his or her best interests taken as a primary consideration, the Committee recommends that the State party strengthen its efforts to ensure that this right is appropriately integrated and consistently interpreted and applied in all legislative, administrative and judicial proceedings and decisions, as well as in all policies, programmes and projects that are relevant to and have an impact on children. In that regard, the State party is encouraged to develop procedures and criteria to provide guidance to all persons with the authority to determine the best interests of the child in every area and to give those interests due weight as a primary consideration.**

**Respect for the views of the child**

28. The Committee welcomes the participatory processes carried out by the State party, including in the preparation of the report under review, and commends the decision to

involve children in the process of constitutional reform. The Committee is however concerned that:

(a) The legal system does not explicitly recognize children's right to be heard and to have their views taken into account in all matters that affect them, in particular in education, health and family matters;

(b) Children are not considered rights holders in Act No. 20500 (2011) on associations and civic participation in public affairs;

(c) There is an absence of formal structures for children's participation in the development of national, regional and local policies on children, including processes showing how their opinions are duly taken into account.

**29. In the light of its general comment No. 12 (2009) on the right of the child to be heard, the Committee recommends that the State party take measures to strengthen this right in accordance with article 12 of the Convention. To that effect, it recommends that the State party:**

(a) **Ensure the effective implementation of legislation recognizing the right of the child to be heard in all matters relating to children's rights, in particular, education, health, justice and family matters;**

(b) **Review Act No. 20500 (2011) to recognize and guarantee children's right to direct participation in associations and in public administration matters;**

(c) **Establish formal structures for the participation of children, with particular attention to girls and children in vulnerable situations, in the development, implementation and monitoring of national, regional and local policies on children, including processes showing how their opinions are duly taken into account.**

#### **D. Civil rights and freedoms (arts. 7, 8 and 13-17)**

##### **Birth registration**

30. The Committee is concerned about children born in the territory of the State party being denied birth registration owing 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 Committee on the Elimination of Discrimination against Women upon the consideration of the combined fifth and sixth periodic reports of Chile (CEDAW/C/CHL/CO/5-6, para. 26) 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 all children born in the State party who would otherwise be stateless can acquire Chilean nationality at birth, irrespective of their parents migrant status, as recommended by the Committee on Migrant Workers (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).**

**Right to Identity**

34. The Committee is concerned about limitations on the right to identity of indigenous children as part of their cultural identity. Furthermore, while noting the measures being considered to legally recognize the gender identity of transgender children, the Committee is concerned about the limitations on the exercise of the right to identity imposed on lesbian, gay, bisexual, transgender and intersex children.

35. **The Committee recommends that the State party take the necessary legislative, policy and administrative measures to:**

(a) **Respect the right to identity of indigenous children in accordance with their culture;**

(b) **Recognize the right to identity of lesbian, gay, bisexual, transgender and intersex children, including the gender identity of transgender children;**

(c) **Foster an environment of inclusion and respect in mainstream society.**

**Freedom of association and peaceful assembly**

36. The Committee is deeply concerned about the repressive manner adopted by the State party to address the 2011-2012 demonstrations by students demanding changes in the education system and the abusive use of detention measures.

37. **The Committee urges the State party to:**

(a) **Develop and monitor the implementation of police protocols and procedures on dealing with public protests that are compliant with human rights standards and the Convention in particular;**

(b) **Issue guidance to the police and the Prosecutor's Office to ensure all detentions are in strict accordance with the law.**

**E. Violence against children (arts. 19, 24 (3), 28 (2), 34, 37 (a) and 39)**

**Freedom of the child from all forms of violence**

38. The Committee is deeply concerned about violence occurring in the home, a concern that was voiced by children themselves.

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

(a) **Develop, based on studies already carried out, a comprehensive strategy for prevention and intervention in cases of violence against children, in particular violence that children are exposed to in the home, including the provision of psychosocial support to victims;**

(b) **Establish a national database on all cases of violence against children in the home, including ill-treatment, abuse and neglect and other family violence.**

40. The Committee welcomes the enactment of Act No. 20536 (2011) addressing school violence, but it is deeply concerned about the high levels of violence in educational settings, including homophobic and transphobic bullying.

41. **Recalling the recommendations of the independent expert for the United Nations study on violence against children (see A/61/299), taking into account its**

general comment No. 13 (2011) on the right of the child to freedom from all forms of violence and taking note of Sustainable Development Goal 16.2 to end abuse, exploitation, trafficking and all forms of violence against and torture of children, the Committee recommends that the State party:

- (a) **Develop, based on Act No. 20536 (2011), a comprehensive strategy to prevent and address all forms of violence against children in educational settings, including gender-based violence, encompassing the following:**
  - (i) **Raising awareness about the phenomenon of violence inside the education community and the importance of prevention and timely action against it;**
  - (ii) **Making available specialized technical and professional advice to students, educational staff and parents;**
  - (iii) **Promoting a training and educational approach, instead of a punitive approach, to address violent behaviours;**
  - (iv) **Monitoring the policies on coexistence in order to protect the exercise of other rights that may be affected by the punishment processes provided for in Act No. 20536 (2011);**
- (b) **Evaluate the work of existing structures to address violence against children and report on the results and measures taken in the next periodic report;**
- (c) **Continue to cooperate with UNICEF in this regard.**

#### **Torture and other cruel or degrading treatment or punishment**

42. The Committee recognizes the judicial efforts made by the State party to penalize cases of excessive use of force against students by security forces and welcomes the Supreme Court decision to consider such cases under civil and not military law. However, the Committee is concerned about the statute of limitation on cases of torture, the low enforceability of judicial orders by the Ministry of the Interior and the lack of standards, protocols and procedures specifying the maximum force that may be applied to adolescents in custody. The Committee is also concerned by the reticence of the police and the Prosecutor's Office to promptly and thoroughly investigate and prosecute all cases of torture, cruel or degrading treatment against children that have been perpetrated by police officers.

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

- (a) **Take into account the recommendation made by the Committee against Torture in 2009 (see CAT/C/CHL/CO/5, para. 10) and introduce a provision in the Criminal Code to establish that the crime of torture against children is not subject to any statute of limitation;**
- (b) **Ensure the enforcement of strict administrative control by the Ministry of the Interior on judicial decisions regarding officers of the police force;**
- (c) **Develop, implement and monitor the application of standards, protocols and procedures prescribed by the Supreme Court that specify the maximum use of force that can be applied to adolescents in custody;**
- (d) **Promptly and thoroughly investigate, prosecute and sanction all cases of torture, cruel or degrading treatment against children by police officers.**

**Corporal punishment**

44. The Committee notes the proposed law to modify article 234 of the Civil Code with a view to prohibiting corporal punishment against children. However, it is concerned that the proposed amendment appears to prohibit only corporal punishment perceived to cause injury and that, by recognizing parents' right to correct their children, article 234 may allow parents to take certain corrective measures that can affect the children's physical and mental integrity.

45. **In the light of its general comment No. 8 (2006) on corporal punishment, and reiterating its previous recommendation (CRC/C/CHL/CO/3, para. 41), the Committee recommends that the State party adopt a comprehensive law that explicitly prohibits corporal punishment against children in all settings and includes measures to raise awareness about positive, non-violent and participatory forms of child-rearing.**

**Sexual exploitation and abuse**

46. The Committee welcomes the creation, in 2010, of the National Observatory on Commercial Sexual Exploitation of Children, but is concerned about the high number of cases of sexual exploitation and sexual abuse, particularly of girls. The Committee is also concerned about the lack of prosecution of perpetrators of sexual offences, including when committed by members of the Catholic clergy. The Committee is further concerned about the insufficient and inadequate programmes and policies for the prevention, recovery and social reintegration of child victims.

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

(a) **Enact legislation to criminalize sexual offences, including sexual exploitation, against children, and define it as imprescriptible;**

(b) **Ensure that cases of sexual abuse of children, including by members of the Catholic clergy, are effectively investigated and prosecuted;**

(c) **Develop and implement a national plan for training the various stakeholders involved in the legal redress of child victims of sexual exploitation and abuse, including court staff and police officers, on the criteria and standards for the care of child victims and the handling of such cases, so as to ensure that all children subject to any form of sexual exploitation are treated as victims and are not subject to criminal sanctions and that perpetrators are duly prosecuted and punished;**

(d) **Take all necessary measures to effectively stop sexual exploitation and abuse of children, strengthen programmes for the prevention and early detection of cases of sexual abuse in kindergartens, schools and colleges, as well as strengthen mechanisms, procedures and guidelines to ensure mandatory reporting of cases of child sexual abuse and exploitation;**

(e) **Ensure expeditious and timely access to coordinated programmes and policies for the prevention, recovery and social reintegration of child victims, at national, regional and local levels;**

(f) **Conduct awareness-raising activities to combat stigmatization of victims of sexual exploitation and abuse, including incest, ensure accessible, confidential, child-friendly and effective reporting channels for such violations and take all necessary measures to immediately stop that practice.**

### **Harmful practices**

48. While noting the proposed development of a protocol on the health care of intersex babies and children, the Committee is seriously concerned about cases of medically unnecessary and irreversible surgery and other treatment on intersex children, without their informed consent, which can cause severe suffering, and the lack of redress and compensation in such cases.

49. **In the light of its general comment No. 18 (2014) on harmful practices, adopted jointly with the Committee on the Elimination of Discrimination against Women, the Committee recommends that the State party expedite the development and implementation of a rights-based health-care protocol for intersex children that sets the procedures and steps to be followed by health teams in order to ensure that no one is subjected to unnecessary surgery or treatment during infancy or childhood, protect the rights of the children concerned to physical and mental integrity, autonomy and self-determination, provide intersex children and their families with adequate counselling and support, including from peers, and ensure effective remedy for victims, including redress and compensation.**

### **Helplines**

50. The Committee welcomes the measures taken by the State party to create and make available professional helpline services to children. However, it is concerned that the helplines are not available on a permanent basis, that they are not well known by children, in particular in rural areas and that the data collected is not standardized and does not inform policy and programme decisions.

51. **The Committee recommends that the State party make helpline services for children available 24 hours a day, seven days a week, increase awareness of their existence, particularly in rural areas, and use the information collected to standardize procedures and duly inform policy and programmes.**

## **F. Family environment and alternative care (arts. 5, 9-11, 18 (1) and (2), 20-21, 25 and 27 (4))**

### **Family environment**

52. The Committee welcomes the measures taken by the State party to promote parental responsibilities, but is concerned about the limited participation of fathers in the upbringing of their children. The Committee is also concerned about the insufficient support to working mothers, in particular women heads of households, in fulfilling their parental responsibilities.

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

(a) **Ensure that mothers and fathers share their parental responsibilities equally, by promoting an active fatherhood approach;**

(b) **Review and adapt labour policies and regulations to promote a better balance between professional and private life, by legally determining working hours and annual leave in order to safeguard personal time;**

(c) **Take the measures necessary to guarantee the availability of support services outside of working hours and expand access to public programmes and services for all families.**

**Children deprived of a family environment**

54. The Committee is concerned about the still very high number of children placed in non-family residential care in contrast with the number of children in other types of care. It is also concerned about the quality of care provided and the reported incidents of violence against children in those settings.

55. **The Committee recalls its previous recommendation (CRC/C/CHL/CO/3, para. 45) and recommends that the State party:**

(a) **Promote foster care as a form of alternative care and ensure that institutionalization is used only as a measure of last resort, taking into account the best interests of the child;**

(b) **Ensure adequate safeguards and clear criteria, based on the needs as well as best interests of the child, for determining whether a child should be placed in alternative care;**

(c) **Provide adequate assistance to parents while their child is in care, with a view to enabling them to resume the care of their child, when it is in the child's best interests;**

(d) **Ensure that children can have contact with their parents while in care, unless it is not in their best interests to do so;**

(e) **Ensure periodic review of the placement of children in foster care and institutions, and monitor the quality of care therein, including by providing accessible and child-friendly channels for reporting, monitoring and remedying maltreatment of children;**

(f) **Take the measures necessary to prevent violence against children in foster care and institutions and stop its recurrence;**

(g) **Ensure that adequate human, technical and financial resources are allocated to alternative-care centres and relevant child-protection services, in order to facilitate the rehabilitation and social reintegration of children residing therein to the greatest extent possible;**

(h) **Take into account the Guidelines for the Alternative Care of Children (General Assembly resolution 64/142, annex).**

**G. Disability, basic health and welfare (arts. 6, 18 (3), 23-24, 26, 27 (1)-(3) and 33)****Children with disabilities**

56. The Committee welcomes the measures taken by the State party to promote the rights of persons with disabilities. However, it is concerned that public policy still favours the assistance approach and that the National Plan on Disabilities only vaguely mentions children. It is also concerned about the lack of updated and disaggregated data on children with disabilities, the limited availability of inclusive education and occupational training and the insufficient provision of appropriate rehabilitation services for children with disabilities, including mental health care for them and their caregivers. The Committee is further concerned about the cases of mentally disabled and deaf girls being sterilized, despite its prohibition, which affects their reproductive and sexual rights.

57. **In the light of its general comment No. 9 (2006) on the rights of children with disabilities, the Committee urges the State party to:**

- (a) **Develop a rights-based public policy approach that includes all children with disabilities;**
- (b) **Develop goals, indicators and monitoring mechanisms to assess the effectiveness of Act No. 20422 in promoting the social inclusion of children with disabilities;**
- (c) **Collect and analyse data on the situation of all children with disabilities, disaggregated by, inter alia, age, sex, type of disability, ethnic and national origin, geographic location and socioeconomic background;**
- (d) **Step up its efforts to ensure inclusive education and occupational training for children with disabilities, without discrimination, including through the allocation of the necessary resources, adequate training of professionals and improvement of mobility infrastructure;**
- (e) **Expand the provision of appropriate health-care services for all children with disabilities, including mental health care for them and their caregivers;**
- (f) **Take all necessary measures to enforce the prohibition on sterilization and respect the reproductive and sexual rights of girls with disabilities;**
- (g) **Develop advocacy activities at the national and local levels to promote the effective participation of children with disabilities in matters that affect them.**

#### **Health and health services**

58. The Committee is still concerned about the lack of an integral system of health care for all children up to age 18, the difference in quality between public and private health-care services, the increased medication of children diagnosed with attention deficit hyperactivity disorder (ADHD) and both the undernourishment and obesity levels among children.

59. The Committee reiterates some of its previous recommendations (see CRC/C/CHL/CO/3) and draws the State party's attention to its general comment No. 15 (2013) on the right of the child to the enjoyment of the highest attainable standard of health, and recommends that the State party:

- (a) **Ensure that all children have access to quality health services, whether public or private, until they are 18 years of age;**
- (b) **Make use of available knowledge on diagnosis and non-drug approaches to the treatment of ADHD, improve the diagnosis of mental health problems among children, ensure that the relevant health authorities determine the root causes of ADHD in children and take the necessary measures to prevent pressure on children and parents to accept treatment with psychostimulant drugs;**
- (c) **Strengthen measures to address underweight and overweight among children, promote a healthy lifestyle that includes physical activity and take the necessary measures to reduce the pressure of food marketing on children, in particular with regard to food high in fat, sugar and salt;**
- (d) **Seek financial and technical assistance from UNICEF, World Health Organization and Pan-American Health Organization, among others, in this regard.**

#### **Adolescent health**

60. The Committee notes as positive the initiatives to strengthen sexual and reproductive health education in the school curriculum, expand the availability of contraceptive methods and the draft law to decriminalize abortion in certain situations. However, the Committee is

concerned about the high rate of adolescent pregnancy, the low quality of sexual education programmes and the lack of adherence to protocols by health professionals, which restrict adolescents' effective access to information and contraceptives. While noting the establishment of the national programme to prevent suicide (2013), the Committee is still concerned at the high suicide rate among adolescents.

**61. In the light of its general comment No. 4 (2003) on adolescent health, the Committee recommends that the State party:**

**(a) Adopt a comprehensive sexual and reproductive health policy for adolescents, which respects confidentiality and privacy, with special attention on preventing child pregnancy, and raise awareness of and foster responsible parenthood and sexual behaviour, with equal attention to boys and men;**

**(b) Improve the quality of sexual education programmes for children and professional training for health professionals;**

**(c) Decriminalize abortion and review its legislation with a view to guaranteeing the best interests of pregnant teenage girls and ensure, by law and in practice, children's access to safe abortion and post-abortion care services and that the views of the child are always heard and respected in abortion decisions;**

**(d) Adopt all necessary measures to prevent, identify and address the root causes of suicide in children as opposed to suicide generally, establish free 24-hour suicide helplines manned by qualified personnel, specifically for young persons and adolescents and conduct appropriate public-awareness programmes on suicide.**

#### **Drug and substance abuse**

62. The Committee is concerned about the increase in alcohol abuse in rural areas and drug abuse in urban areas among children. It is also concerned about the lack of studies and research on drug abuse, treatment and comprehensive rehabilitation of children.

**63. The Committee recommends that the State party address the incidence of alcohol abuse and drug abuse by children by, inter alia, providing them with accurate and objective information and life skills education on preventing substance abuse, including tobacco and alcohol abuse, and develop accessible and youth-friendly drug-dependence treatment and harm-reduction services.**

#### **Children's rights and the environment**

64. The Committee commends the State party on the measures taken to respond to the 2015 earthquakes, whose human and material losses were limited owing to alert protocols and anti-seismic architecture. The Committee recommends that the State party:

**(a) Continue to develop and implement a national plan for disaster prevention and risk management, creating the decentralized structures necessary to promptly and effectively respond to emergencies and disasters, recognize the special vulnerabilities and needs of children and promote coordination between public and private actors;**

**(b) Increase children's awareness and preparedness for climate change and natural disasters by incorporating the topic into the school curriculum and teachers' training programmes.**

### Standard of living

65. The Committee welcomes the willingness of the State party to expand the Chile Grows With You (*Chile Crece Contigo*) system until age 9, but is concerned that the system does not include all children up to age 18. The Committee is also concerned about the disparities in the standard of living between rural and urban areas and the number of children living in poverty, in particular indigenous children, despite the overall economic growth registered in the State party. The Committee is further concerned about the differences in access to sanitation between rural and urban areas.

**66. The Committee encourages the State party to progressively include all children up to the age of 18 years in the Chile Grows With You system. The Committee recalls its previous recommendation (CRC/C/CHL/CO/3, para. 60) and recommends that the State party prioritize measures to reduce inequality between urban and rural areas, in particular areas with a large indigenous population, effectively reduce the disparities in the standard of living between rich and poor and expedite measures to ensure that all children living in rural areas have access to sanitation. The Committee further recommends that the State party continue to seek the technical assistance of UNICEF in this regard.**

## H. Education, leisure and cultural activities (arts. 28-31)

### Education, including vocational training and guidance

67. The Committee takes note of Act No. 20845 on school inclusion, which regulates the admission of students, eliminates shared funding and prohibits educational institutions receiving State funding from earning a profit. However, the Committee is concerned about:

- (a) The high level of segregation in the school system, the differences in the quality of education, the still limited coverage in rural areas and the deterioration of the material conditions in public educational institutions;
- (b) Discrimination in access to education faced by pregnant girls and adolescent mothers and the levels of school dropouts;
- (c) Children resorting to violence to address divergent political opinions;
- (d) The absence of a regulatory and monitoring framework regarding private educational establishments.

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

- (a) **Promptly take measures to decrease segregation and to promote an egalitarian and inclusive education system, prohibiting all schools, independently of their source of funding, whether public or private, from selecting students on arbitrary criteria or based on their socioeconomic background;**
- (b) **Emphasize the quality of education and accelerate the allocation of increased targeted resources to education, in particular in free public schools;**
- (c) **Provide quality training for teachers and dedicate resources to improving adequate and accessible infrastructure;**
- (d) **Increase efforts to improve conditions in schools in remote and rural areas and eliminate disparities in access to quality education between urban and rural areas;**
- (e) **Ensure that pregnant teenagers and adolescent mothers and fathers are supported and assisted in continuing their education in mainstream schools;**

(f) **Develop and promote quality vocational training to enhance the skills of children and young people, especially those who drop out of school;**

(g) **Promote the development of competencies, instances and procedures, aimed at children in school, for the peaceful resolution of conflicts, in particular those of a political nature;**

(h) **Develop and implement a regulatory and monitoring framework for the private education sector ensuring respect for the principle of non-discrimination and promoting inclusion and respect for diversity;**

(i) **Seek technical assistance from UNICEF and United Nations Educational, Scientific and Cultural Organization in this regard.**

#### **Aims of education**

69. The Committee is concerned about education being strictly evaluated according to instrumental and cognitive standards and indicators, excluding values and attitudes such as equality of rights between men and women, development of empathy, respecting commitments, participation in democratic life and respect for the environment.

70. **In the light of its general comment No. 1 (2001) on the aims of education, the Committee recommends that the State party ensure, in all free, semi-private and private schools, that education contributes to the development of the fullest potential of every child, development of respect for human rights, preparation of the child to live responsibly in a free society and development of respect for the natural environment.**

#### **Human rights education**

71. The Committee is concerned about the insufficient incorporation of human rights and the rights of the child in the training of education professionals, in school curricula and in the activities of educational establishments.

72. **The Committee recommends that the State party develop and implement a national plan of action for human rights education, as recommended in the framework of the World Programme for Human Rights Education.**

#### **Rest, leisure, recreation and cultural and artistic activities**

73. The Committee regrets the insufficiency of recreational spaces for children and families and that the existing spaces are often used by adults and for the consumption of alcohol and other substances.

74. **The Committee draws the State party's attention to its general comment No. 17 (2013) on the right of the child to rest, leisure, play, recreational activities, cultural life and the arts and recommends that the State party increase the availability of inclusive recreational spaces for children, in particular in free educational establishments, and to ensure that they serve their purpose.**

### **I. Special protection measures (arts. 22, 30, 32-33, 35-36, 37 (b)-(d) and 38-40)**

#### **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 procedures for determining refugee status 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 in the State party and expressly include those groups in planning activities, 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 a migration situation**

77. The Committee notes the steps taken by the State party to increase the regularization of children in a migration situation 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) **Adopt its new migration legislation and ensure that it makes direct reference to the rights of and guarantees for 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 the social inclusion of migrants, including conducting awareness-raising campaigns to promote respect and inclusion.**

#### **Children belonging to minority or indigenous groups**

79. The Committee remains deeply concerned with the enduring situation of inequality, discrimination and violence against indigenous children, in particular Mapuche children.

80. **Taking into account its general comment No. 11 (2009) on indigenous children and their rights under the Convention and recalling its previous recommendation (CRC/C/CHL/CO/3, para. 74), the Committee urges the State party to:**

(a) **Recognize indigenous people and their rights in the new Constitution;**

(b) **Integrate an intercultural approach in policies and standards relating to children;**

(c) **Step up its efforts to ensure that all indigenous children have access to health, education and basic social services, without discrimination;**

(d) **Take immediate steps to stop all violence by the police against indigenous children and their families, including in the context of development activities;**

(e) **Ensure full compliance with article 1 (2) of the Anti-terrorism Act No. 20519, which prohibits its application to acts carried out by children;**

(f) **Promptly investigate and prosecute all cases of violence against indigenous children perpetrated by police officers.**

#### **Economic exploitation, including child labour**

81. The Committee welcomes the creation of the Observatory against Child Labour and the new National Strategy for the Prevention and Eradication of Child Labour and Protection of Child Workers 2015-2025. However, it is concerned that child labour is not explicitly prohibited in law, and about the increase in child labour and the number of children exposed to dangerous work, in particular children from the poorest parts of society. The Committee is also concerned about the limitations of the intersectoral registration system relating to the worst forms of child labour and the lack of integrated and comprehensive responses to children in such situations.

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

(a) **Enact legislation prohibiting child labour, including domestic labour;**

(b) **Improve the data collection and input into the intersectoral registration system relating to the worst forms of child labour and utilize that information to develop targeted interventions;**

(c) **Develop, adopt and implement protocols defining the role of each institution within a coherent and comprehensive system so as to provide timely and adequate support to victims of child labour;**

(d) **Seek technical assistance from the International Labour Organization, International Programme on the Elimination of Child Labour and implement its Transition from the Informal to the Formal Economy Recommendation, 2015 (No. 204).**

#### **Children in street situations**

83. The Committee welcomes the programmes developed by the State party to support children in street situations, but is concerned about:

(a) Insufficient disaggregated and updated information on children in street situations;

(b) The lack of a national policy and regulatory framework and insufficient specialized intervention programmes to provide adequate and timely care protection, recovery and reintegration of children in street situations;

(c) Deficiencies in the health, education and social protection systems that prevent addressing the specific needs of children in street situations.

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

(a) **Intensify its efforts to collect disaggregated and updated data on children in street situations, conduct studies to better understand this phenomenon and make the information publicly available;**

(b) **Develop a national policy and regulatory framework and allocate sufficient resources for the development of sustainable, intersectoral and coordinated actions for the prevention, protection, recovery and reintegration of all children in street situations;**

(c) **Take the measures necessary to adapt the health, education and social protection systems to the specific situation and needs of children in street situations so as to guarantee full respect for their rights to education, health and a minimum standard of living;**

(d) **Reunite children with their families when it is in their best interests.**

#### **Administration of juvenile justice**

85. The Committee notes that Act No. 20084 (2007) provides a special juvenile justice criminal system and incorporates the principles of the best interests of the child, proportionality of punitive interventions by the State and the adolescent's responsibility for crimes committed. However, the Committee is concerned that:

(a) Act No. 20084 does not establish a duly dedicated judicial system, with specialized judges, prosecutors and defence attorneys;

(b) Despite legal alternatives to deprivation of liberty, these are not considered by prosecutors and judges to the extent possible, resulting in high numbers of imprisonment convictions. In addition, existing precautionary measures in the first stage of the process expose children to lengthy pretrial periods;

(c) Detention centres are often operated as juvenile prisons, lack programmes specially designed for the rehabilitation and reintegration of children in conflict with the law and do not have the necessary resources to provide basic health care, education and professional training.

(d) There is a lack of adequate mechanisms for children to report human rights abuses, in particular when deprived of liberty.

86. **In the light of its general comment No. 10 (2007) on children's rights in juvenile justice, the Committee urges the State party to bring its juvenile justice system fully into line with the Convention and other relevant standards. In particular, the Committee urges the State party to:**

(a) **Establish a separate juvenile justice system with specialized judges, prosecutors and defence attorneys and ensure that all law officials receive appropriate education and training, and develop and implement protocols and orientation criteria to law officials to ensure consistency in the application of punitive measures;**

(b) **Ensure that prosecutors and judges duly take into consideration alternative measures to detention, such as diversion, probation, mediation, counselling or community service, and only consider detention as a last resort and for the shortest possible period of time that it is reviewed on a regular basis with a view to withdrawing it;**

(c) **Review existing pretrial precautionary measures to ensure that children are not exposed to a lengthy period of pretrial detention and ensure that reduced sentences do not constitute a measure of pressure for children to recognize their responsibility to avoid burdensome judicial processes;**

(d) **Improve the infrastructure of detention centres to ensure adequate security, dignity and privacy to children and access to health services, education and professional training, taking into account their particular needs based on gender;**

(e) **Establish independent, confidential, child-friendly and child-sensitive mechanisms for children to report human rights violations, in particular when deprived of their liberty;**

(f) To that effect, the Committee recommends that the State party make use of the technical assistance tools developed by the Interagency Panel on Juvenile Justice and its members, including the United Nations Office on Drugs and Crime, UNICEF, OHCHR and non-governmental organizations, and seek technical assistance in the area of juvenile justice from members of the Panel.

#### **Child victims and witnesses of crimes**

87. The Committee welcomes the State party's Serious Abuse Reparative Programme to attend to children who have been victims of violent crimes. However, it is concerned about its limited capacity. The Committee is also concerned about the lack of appropriate mechanisms to prevent revictimization of children during judicial proceedings as well as the low rate of convictions, in particular regarding sexual crimes.

88. The Committee recommends that the State party ensure, through adequate legal provisions and regulations, that all child victims, for example of abuse, domestic violence, sexual and economic exploitation, abduction and trafficking, and child witnesses of such crimes are provided with the protection provided for under the Convention, and that it take fully into account the Guidelines on Justice in Matters involving Child Victims and Witnesses of Crime (see Economic and Social Council resolution 2005/20, annex).

#### **Follow-up to the concluding observations on the State party's initial report under the Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography (CRC/C/OPSC/CHL/CO/1)**

89. While welcoming the establishment of the intersectoral panel on trafficking in persons, in 2008, the Committee remains concerned that the sale of children is not yet fully covered under Chilean criminal law and about the lack of a comprehensive data collection system, including information on criminal processes for offences under the Optional Protocol.

90. Recalling its previous recommendations, (CRC/C/OPSC/CHL/CO/1, paras. 8, 10, 14 and 26), the Committee recommends that the State party:

- (a) Ensure that the sale of children is fully covered in the State party's criminal law and prohibited in all cases listed under article 3 (1) (a) of the Protocol;
- (b) Establish a comprehensive data collection system, with information disaggregated by nature of the offence, age, sex, ethnic group, nationality, socioeconomic background and geographical area. It should also include information on the number of investigations, prosecutions and convictions;
- (c) Strengthen systematic education and training for all relevant professional groups, reinforce dissemination of the Optional Protocol among the population at large, with particular focus on children and parents;
- (d) Redouble its efforts to promptly investigate, prosecute and judge all allegations of offences under the Optional Protocol and provide adequate support and redress to child victims.

#### **Follow-up to the concluding observations on the State party's initial report under the Optional Protocol to the the Convention on the Rights of the Child on the involvement of children in armed conflict (CRC/C/OPAC/CHL/CO/1)**

91. Recalling its previous recommendations (CRC/C/OPAC/CHL/CO/1, paras. 11, 18, 22 and 27), the Committee recommends that the State party:

- (a) Add the age requirement of 18 years to the existing requirements for entry into military academies;
- (b) Consider establishing extraterritorial jurisdiction for crimes under the Optional Protocol;
- (c) Identify the situation of children entering Chile who may have been victim of crimes under the Optional Protocol and provide them with the appropriate assistance for their physical and psychological recovery and social reintegration;
- (d) Consider prohibiting the sales of arms to countries where children have been known to, or may potentially, participate in hostilities.

#### **J. Ratification of international human rights instruments**

92. The Committee recommends that, in order to further strengthen the fulfilment of children's rights, the State party ratify the core human rights instruments to which it is not yet a party, namely the Optional Protocol to the International Covenant on Economic, Social and Cultural Rights and the Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women.

#### **K. Cooperation with regional bodies**

93. The Committee recommends that the State party cooperate with the Organization of American States for the implementation of the Convention on the Rights of the Child and other human rights instruments, both in the State party and in other member States of the Organization.

### **IV. Implementation and reporting**

#### **A. Follow-up and dissemination**

94. The Committee recommends that the State party take all appropriate measures to ensure that the recommendations contained in the present concluding observations are fully implemented. The Committee also recommends that the combined fourth and fifth periodic reports, the written replies to the list of issues of the State party and the present concluding observations be made widely available in the languages of the country.

#### **B. Next report**

95. The Committee invites the State party to submit its combined sixth and seventh periodic reports by 11 March 2021 and to include therein information on the follow-up to the present concluding observations. The report should be in compliance with the Committee's harmonized treaty-specific reporting guidelines adopted on 31 January 2014 (CRC/C/58/Rev.3) and should not exceed 21,200 words (see General Assembly resolution 68/268, para. 16). In the event that a report exceeding the established word limit is submitted, the State party will be asked to shorten the report in accordance with the above-mentioned resolution. If the State party is not in a position to review and resubmit the report, translation thereof for the purposes of consideration by the treaty body cannot be guaranteed.

96. The Committee also invites the State party to submit an updated core document, not exceeding 42,400 words, prepared in accordance with the requirements for the common core document in the harmonized guidelines on reporting under the international human rights treaties, including guidelines on a common core document and treaty-specific documents (HRI/GEN/2/Rev.6, chap. I) and General Assembly resolution 68/268 (para. 16).

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