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Promotion and protection of all human rights, civil, political, economic, social and cultural rights, including the right to development

Report of the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health, Tlaleng Mofokeng, on her visit to Chile

Comments by the State*

* The present document is being issued without formal editing.

Observations of the Republic of Chile

A. Terminology

1. In two opportunities (paragraph 65 and footnote 6), the Report refers to the "Ministry of Justice". However, the full name is Ministry of Justice and Human Rights.

B. Paragraph 13

2. "However, basic healthcare services for persons deprived of their liberty are provided by the Prison Service (Gendarmería), which is part of the Ministry of Justice and Human Rights."

Observations

3. As the State explained in its commentaries to the Draft Report, this information is not accurate. Healthcare for inmates is also under the Ministry of Health's umbrella, as people in prison have the right to access healthcare under the same conditions as the rest of the population.

4. Healthcare services are typically divided between those provided within the facility and those provided outside it. Prison health units can only provide care of low complexity and basic procedures. The quality of these services depends on the material conditions, the staffing and training of its personnel, and the existence or updating of the sanitary authorization issued by the Regional Office of the Ministry of Health (SEREMI). Hence, there are some medical facilities in prisons which depend on the Gendarmeria's health Department, but they only provide basic medical care.

5. When required, Gendarmería's officers will transport inmates to the public health network for healthcare, just as any other citizen would.

C. Paragraph 14

6. "However, the Special Rapporteur observed a worrying lack of progress on various bills related to the right to health, particularly women's health, such as a comprehensive bill on women's reproductive health, known as Adriana's Law (Bulletin No. 12148-11), and a bill on establishing liability for defective contraceptives (Bulletin No. 14094-11)".

Observations

7. As the State explained in its commentaries to the Draft Report, the Special Rapporteur should take into account that Law No. 21,675 of 2024 establishes measures to prevent, punish, and eradicate gender-based violence against women. Article 6 of this law defines the types of violence against women, including sexual violence; "*any conduct that violates, disturbs or threatens the freedom, integrity and sexual and reproductive autonomy of women; and their indemnity in the case of girls*". This norm modifies the Penal Code by including a definition of obstetric violence: "*Committing the crime in the framework of active behaviors constituting gynecobstetric violence, in their capacity as public or private health workers, during gestational, prepartum, delivery, postpartum and abortion care, in the grounds established by law in the framework of sexual and reproductive health care for women*".

D. Paragraph 14

8. "Similarly, there has been retrogression in positive initiatives, such as the "Grow with Pride" (Crece con Orgullo) programme on the health of transgender adolescents".

Observations

9. It must be noted that Chile has relevant protection for transgender adolescents.

10. Article 23 OF Law No. 21,120, which recognizes and protects the right to gender identity, states that "*Children and adolescents whose gender identity does not coincide with their sex and registered name and their families may have access to professional support programs*". Additionally, Article 8 of the Law on Guarantees and Comprehensive Protection of the Rights of Children and Adolescents (No. 21,430) establishes the principle of equality and non-discrimination, by providing that "*No child or adolescent may be arbitrarily discriminated against based on (...) sex, sexual orientation, gender identity, gender expression, sexual characteristics (...)*"

11. Similarly, Article 36 of the same law establishes the right to protection against violence, by stating: "*Children and adolescents shall be protected against any type of coercion, with discriminatory motives, for reasons of sexual orientation, gender identity or expression, among others. The organs of the Administration will create and promote programs on sexual rights and respect for the diversity of children and adolescents, including, where appropriate, social accompaniment to those who request it, without prejudice to the possibility of the service to offer them freely*".

E. Chapter V " Mental Health"

Observations

12. This section of the Report does not include a reference to the proposal for the comprehensive mental health bill (No. 17003-11), submitted by the President to Parliament on July 25, 2024, which addresses several important aspects.

13. Chile already has a Law (No. 21.331 of 2021) concerning the recognition and protection of the rights of people in mental health care. This law aimed to recognize and protect the fundamental rights of individuals with mental illness or psychic or intellectual disabilities, particularly their right to personal freedom, physical and psychological integrity, healthcare, and social and labor inclusion.

14. Considering that Law No. 21.331 focuses only on the rights of individuals accessing mental health services, it was deemed necessary to present a bill addressing mental health from a broader, more cross-sectoral perspective. Thus, in addition to promoting rights related to social inclusion and autonomous life, Bill No. 17003-11 aims to improve the mental health care model from a human rights perspective.

15. Among the key contents of the proposal, the following can be highlighted:

(a) Protection of the population's mental health: It establishes that the objective of the regulation is to promote and protect the mental health of all individuals throughout their lives.

(b) Cross-cutting principles of mental health protection: The bill recognizes the principles of cooperation, coordination, equality of rights and gender equity, participation and social dialogue, and equal treatment

(c) State actions and its agencies for promoting and protecting mental health: The Bill establishes general duties regarding health, as well as specific measures outlined for the Ministry of Health, Ministry of Education, Ministry of Labor, Ministry of Social Development and Family, Ministry of Justice and Human Rights, and Ministry of the Interior.

(d) Right to preferential assistance in Legal Assistance Corporations: The right to preferential assistance and free legal representation is established for individuals with psychic or intellectual disabilities who need to initiate legal proceedings related to the exercise of their rights, including the involuntary hospitalization procedure before the Family Courts.

(e) Sanitary and socio-sanitary mental health care: The bill acknowledges that mental health care can be either sanitary or socio-sanitary in nature. The former is provided through services in the National Health Service Network, while the latter is provided in socio-sanitary residences that offer mental health care. For these residences, minimum requirements are established for their installation and operation.

(f) New institutional framework to promote and protect mental health: A new institutional framework is created, composed of: (i) The National Health Policy, which will contain a diagnosis of the population and establish the objectives and guidelines of the State for promoting and protecting mental health; (ii) The Interministerial Mental Health Action Plan, which will outline specific actions that State agencies must undertake to implement the Policy; and (iii) The Interministerial Mental Health Committee, whose main function will be to develop the National Mental Health Policy and its Action Plan.

(g) Special attributes of mental health care services: The bill establishes that mental health care must be integrated with other health services at all levels of care, with special consideration given to the characteristics of each territory and its population. Furthermore, the National Health Service System will offer a range of services for mental health care throughout all stages of life.

(h) Strengthening the right of individuals to make their own decisions regarding mental Health: Amendments are introduced to other legal frameworks to reinforce the right of individuals with mental health conditions to make decisions about their health, particularly regarding informed consent and access to medical records.

(i) Deinstitutionalization plan: The bill establishes that the Ministry of Health and the Ministry of Social Development and Family will prepare a Deinstitutionalization Plan aimed at designing the closure or transformation of psychiatric institutions or segregated mental health care facilities, ensuring the right to autonomous living and community inclusion for individuals.

F. Paragraph 38

16. “The mental health of children and adolescents was cited as being particularly grave and had worsened since the pandemic. The Office of the Children’s Ombudsman said that 115,683 children had received mental healthcare in the country in 2024 and that there were concerns about suicide rates among adolescents. Parents shared information on their advocacy efforts regarding the bill on the mental health of students (Bulletin No. 16428-04); the Special Rapporteur urges Chile to adopt this bill without delay”.

Observations

17. The Ministry of Health could not verify the information provided by the Office of the Children’s Ombudsman.

18. In any case, it is worth noting that Chile has undergone substantial regulatory and institutional transformations since 2022, with the entry into force of Law 21,430 on Guarantees and Comprehensive Protection of the Rights of Children and Adolescents. This law establishes a new paradigm for the comprehensive protection of human rights, as recognized in the Constitution, the Convention on the Rights of the Child, other international human rights treaties ratified by Chile that are in force, and relevant laws.

19. Furthermore, comprehensive protection is achieved through an integrated, cross-sectoral network, implemented through policies, plans, programs, services, benefits, procedures, and measures that safeguard rights. This network is implemented by various state administrative bodies, properly coordinated among them, as well as by civil society actors.

20. In this context, the comprehensive protection of the rights of children and adolescents, including their right to health, is the responsibility of the Ministry of Social Development and Family, in coordination with the relevant ministries and state bodies, and is specifically executed at the national, regional, and municipal levels by the Undersecretariat for Children, Local Offices for Children, and the competent regional and municipal public agencies.

21. The main policies, plans, programs, and services that guarantee the right to health for children and adolescents in the country are the following:

(a) Mental health of children and adolescents as a priority: Chile has strengthened the *Chile Crece Más* network and the Strategic Plan “Building Mental Health” by the Ministry

of Health, within the framework of the family and community-based integrated care model across the life course.

Additionally, strengthening the mental health of children and adolescents is one of the strategic objectives of the National Policy for Children and Adolescents and its 2024-2032 Action Plan, which includes four areas of action:

(i) Early detection of biopsychosocial risk factors;

(ii) Promotion, prevention, early detection, and timely treatment;

(iii) Prevention and early detection of alcohol and drug consumption;

(iv) Timely, quality, and relevant care for children and adolescents who require enhanced protection.

In addition to the above, mental health is also a priority for the National School Coexistence Policy, as outlined by the Ministry of Education. This concern led to the creation of the Mental Health Strategy in Educational Communities, which is part of the "Coexistence and Mental Health" axis, integrating it as a constitutive aspect of the comprehensive development of children and adolescents.

(b) The Undersecretariat for Children, as the entity responsible for designing, coordinating, and implementing policies, plans, and programs to promote and protect the rights of children and adolescents, aims to strengthen key actions in supporting the developmental trajectory and comprehensive mental health treatment for children during early childhood.

To achieve this, the Undersecretariat has the Child Mental Health Support Program (PASMI), which is part of the *Chile Crece Más* network. PASMI aims to improve the mental health of children at risk of mental health disorders, and seeks to close the current gap in mental health care access for children between 0 and 9 years old, allowing more children to access treatment, increase the number of sessions per child, provide comprehensive care benefits, and strengthen cross-sectoral coordination.

The PASMI implementation strategy allocates approximately 95% of funding to hiring professionals for the comprehensive care of children aged 3 to 9 with mental health issues, and about 5% for support materials, training, and program management.

PASMI includes the following services: a comprehensive diagnostic evaluation by a doctor, psychologist, and/or social worker; additional mental health consultations by a psychologist, social worker, or other professional; a group parenting skills workshop for parents and/or caregivers of children with behavioral problems; and home visits or visits to educational establishments.

PASMI is present in all regions of the country, and the selection of the municipalities where the program is implemented is based on various criteria, including the Municipal Vulnerability Index generated by the Ministry of Health, which incorporates variables such as incidence of child abuse, income poverty, multidimensional poverty, and low concentration of child mental health check-ups.

(c) Other existing mental health programs in Primary Health Care: PASMI is part of the "Reinforcement Programs for Primary Health Care" (PRAPS), which strengthens services in primary health centers operated by the Ministry of Health.

Among the PRAPS is the Mental Health in Primary Health Care program, which focuses on promotion and prevention for the population aged 0-64 years, and the Psychosocial Support Program for APS, which aims to reconnect children, adolescents, and young people (ages 0-24) with high psychosocial risk and adherence issues to mental health treatments in Primary Health Care.

The Mental Health in Primary Health Care program includes comprehensive home visits, phone follow-up and messaging, collaboration in comprehensive evaluations at admission/discharge, cross-sectoral coordination meetings with the National Service for Specialized Protection of Children and Adolescents, the National Service for Minors, and the

National Service for the Prevention and Rehabilitation of Drug and Alcohol Consumption, as well as coordination with local services.

The Psychosocial Support Program for Primary Health Care includes a comprehensive diagnostic evaluation by a doctor, psychologist, and/or social worker; additional mental health consultations (9 sessions) by a psychologist, social worker, or other professional; a group relational parenting skills workshop for parents and/or caregivers; and visits to educational establishments.

In this way, mental health care services cover the various areas linked to the protection network in the territory, including local offices for Children, local health centers, and educational institutions. These services provide diagnosis, health check-ups, referrals, integrated care, early detection, counseling, and assisted referrals.

(d) Finally, regarding children under state custody, significant advances have also been made since 2018:

(i) In 2022, Law No. 21,430 on Guarantees and Comprehensive Protection of the Rights of Children and Adolescents, in its Article No. 16, titled "Priority"; states that "*State bodies must give due priority to children and adolescents, particularly those under State care*". The law also introduces the "Principle of Intersectorality" requiring State institutions to coordinate their actions within their respective competencies and activities.

(ii) In 2021, Law No. 21,302 was enacted, establishing the National Service for Specialized Child and Adolescent Protection, under the Ministry of Social Development and Family. One of the Service's key functions is to "*coordinate, within its competencies, the relevant State Administration bodies with the cross-sectoral and community network*"; and to ensure that children and adolescents under the care of the Specialized Protection Service are prioritized in the services provided by different State agencies and communities (Law No. 20,084, Adolescent Criminal Responsibility Law).

(iii) In 2023, Law No. 21,527 was enacted, creating the National Service for Juvenile Social Reintegration, under the Ministry of Justice and Human Rights. Regarding healthcare, Article 48 bis establishes that all individuals subject to this law "have the right to effective healthcare, including mental health services and programs related to addiction treatment".

(iv) Since 2023, funding has been allocated to implement the Intersectoral Comprehensive Health System in all Health Services across the country, with a focus on mental health for children and adolescents experiencing rights violations and/or under the Adolescent Criminal Responsibility Law.

G. Paragraph 41

22. "In addition, there is the lack of progress on the aforementioned Adriana's Law, a comprehensive bill rooted in dignity in treatment that provides for a comprehensive framework on women's sexual and reproductive healthcare, guarantees women's right to make medical decisions about their own bodies, ensures the provision of information and deals with gynaecological-obstetric violence and accountability".

Observations

23. As noted above (see observations in paragraph 14), Law No. 21.765 of 202 already establishes the concept of gynecological-obstetric violence.

H. Paragraph 42

24. "The Special Rapporteur was deeply concerned to learn that there is no comprehensive sexual education curriculum in schools".

Observations

25. This information is inaccurate. Article 1 of Law No. 20.418 states that: “Everyone has the right to receive education, information and guidance on fertility regulation, in a clear, understandable, complete and, where appropriate, confidential manner”.

26. Educational establishments recognized by the State must include a sex education program in the secondary education cycle, which, according to its principles and values, includes content that promotes responsible sexuality and provides complete information on the various existing and authorized contraceptive methods, In the same line, the Ministry of Health has guides for the development of adolescence, with contents on sexual health, pregnancy, STIs, gender. These guides help health teams implement promotion and prevention activities within educational institutions.

I. Paragraph 46

27. “On 23 September 2017, Act No. 21.030 came into force, decriminalizing abortion on three grounds, namely when the woman’s life is at risk, the fetus is not viable or pregnancy resulting from rape up to 12 weeks of gestation, extended to 14 weeks for girls under 14 years of age. This law, which amends article 119 of the Health Code, and its accompanying regulations, comprise the current abortion framework in the country.”

Observations

28. The current guiding and regulatory framework for abortion also includes: (1) technical guidelines for the comprehensive care and accompaniment of women under any of the three grounds regulated by Law 21.030 (2018); (2) technical guidelines for psychosocial care and accompaniment; (3) technical guidelines for the comprehensive care of women who have an abortion and other reproductive losses; (4) Manual of supervision of the law 21.030: considerations for health inspection and checklist.

29. Additionally, on 27 May 2025, the government presented a bill to legalize abortion up to 14 weeks.

J. Paragraph 54

30. “The relevant law prohibits advertisement of the provision of abortion services”.

Observations

31. Although advertising by establishments is prohibited, the Ministry of Health provided a downloadable and accessible information brochure for the public and health teams in 2024 (available at http://diprece.minsal.cl).

K. Paragraph 55

32. “The lack of data collection and oversight in the implementation of Act No. 21.030 must also be urgently remedied”

Observations

33. This is inaccurate. Chile grants public access, through the Department of Statistics and Health Information of the Ministry of Health, to a digital dashboard on the implementation of Law No. 21,030 (available on the website https://deis.minsal.cl/#tableros).

34. This website presents aggregated data by abortion cases, categorized by cause, the woman's decision according to cause, cases by month, cases by region, accompanying decision, accompanying care, woman’s age, gestational age of the constitution of the causes, and gestational age of interruption.

L. Paragraph 59

35. “Healthcare in the Chilean prison system is complex, with some healthcare services depending on the Ministry of Justice and Human Rights, through the Health Department of the Prison Service (Gendarmería), and other services on the Ministry of Health. These structural elements are at the root of the unequal access to healthcare for persons deprived of their liberty in Chile; the fact that access to primary healthcare in prisons falls under the purview of the Prison Service (Gendarmería), and not the Ministry of Health, creates administrative inefficiencies”.

Observations

36. As mentioned before (see observations in paragraph 13), this information is not accurate. Healthcare for inmates is also under the Ministry of Health's umbrella, as people in prison have the right to access healthcare under the same conditions as the rest of the population. There are medical facilities in prisons depending on the Gendarmeria (under the responsibility of the Ministry of Justice and Human Rights), but they only provide basic medical care. When required, the Gendarmería's officers will transport inmates to the public health network for healthcare, just as any other citizen would.

M. Paragraph 66

37. “The Special Rapporteur urges the State to take all measures to prevent such obstetric violence from occurring in the future”.

Observations

38. As noted above (see observations in paragraphs 14 and 41), Law No. 21.765 of 202 already establishes the concept of gynecological-obstetric violence.

N. Chapter VIII “Environmental health and business and human rights”

Observations

39. Both the Draft Report and the final report only consider information provided by civil society actors, as the Special Rapporteur did not meet with representatives from the Ministry of Environment during her visit, which would have provided a more comprehensive perspective on the situation. After receiving the Draft Report, Chile provided a document detailing the measures taken to address these concerns; however, they were not considered in the final version of the Report. They are included at the end of this document.

O. Paragraph 76

40. “However, she is concerned at the reported levels of mental health challenges faced by children and adolescents”.

Observations

41. See observations in paragraph 38.

P. Paragraph 76

42. “In the area of child nutritional health, the State has taken positive measures, such as the adoption of the Food Labelling Act (Act No. 20.060) and its “Choose a Healthy Life” programme. However nutritional maps demonstrate that there has been a 35 per cent increase in malnutrition due to excess weight in secondary school in recent years”

Observations

43. In addition to the initiatives contained in the Report, Chile has also developed the following initiatives:

(a) The update of the feeding guide for children under two years of age.

(b) Efforts to uphold the right to breastfeeding by implementing the Strategies Initiative for the Humanization of Birth and Breastfeeding Assistance, and maintaining breastfeeding support in kindergartens.

(c) The operational plan for implementing the strategy to combat overweight and obesity in children and adolescents.

(d) The reformulation of products within the national complementary feeding program.

(e) The incorporation of a starter formula for infants under 12 months of age

Q. Paragraph 78

44. "Act No. 21.331 prohibits sterilization without consent; and yet, the Special Rapporteur heard information about interference in decision-making, including by families of women with disabilities, including with regard to women with disabilities being sterilized without their consent".

Observations

45. The National Service for Disabilities (SENADIS) has not received any complaints in this regard since at least 2019, from the public, the Ministry of Health, or the health network. Therefore, the State has no information on these claims, and we cannot verify their accuracy.

R. Paragraph 87

46. "Chile has made progress, through participatory processes, towards ensuring equal access to health for Indigenous Peoples, including through the adoption of Act No. 20.584 and implementation of the Health and Indigenous Peoples Programme. It has made notable efforts to introduce Indigenous health into its public system, including through the adoption, in 2023, of regulations on the right to culturally appropriate healthcare (Ministry of Health Decree No. 21), which established an obligation for public health institutions to provide culturally relevant care to Indigenous persons. The Special Rapporteur also noted efforts to raise awareness of these initiatives, including through obvious signage at hospitals".

Observations

47. It is worth noting that the Intercultural Health Regulation (Decree No. 21) underwent a participatory process and an indigenous consultation process.

48. This regulation establishes the elements that public institutional health providers must ensure to comply with the right of Indigenous peoples to receive culturally appropriate healthcare. It proposes a set of definitions that explain Article 7 of Law No. 20,584 and the guidelines for implementing the intercultural health model, specifically regarding indigenous participation in this model, cultural relevance in care, recognition of indigenous health systems, the existence and role of intercultural facilitators, infrastructure and spatial adjustments in health facilities, spiritual assistance, and technical and organizational adjustments.

49. The indigenous consultation process to which this regulation was subjected was announced by the Government in 2015. Before that, in 2014, the Ministry of Health developed a participatory process for formulating the conceptual definitions, involving indigenous people and health officials. Additionally, a preliminary stage of institutional strengthening was initiated, involving the establishment of Regional Executive Secretariats (SER) in the 15 regions of the country, as well as in Rapa Nui. These entities are responsible

at the regional level for the technical, political, and administrative management of the process. Ultimately, it was a decentralized and open process that called on all indigenous peoples recognized by law, through their representative institutions, associations, organizations, and communities.

50. The indigenous consultation process began in October 2015. It ended in April 2017 (18 months), with participation exceeding nine thousand representatives of indigenous peoples and around one thousand five hundred fifty indigenous organizations nationwide.

S. Paragraph 98 (h)

51. "In this regard, the Special Rapporteur makes the following recommendations to the Government:

(h) Increase interministerial coordination on matters related to the right to health and bring access to healthcare services for persons deprived of their liberty under the responsibility of the Ministry of Health".

Observations

52. See comments above on paragraphs 13 and 59, as this recommendation derives from inaccurate information.