

NGO Complementary Report about the Rights of Children
UN Convention on the Rights of the Child
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INTRODUCTION

NGO Community and Justice is a non-profit corporation, domiciled and incorporated under the laws of the Republic of Chile, dedicated to the promotion and defense of human rights, with great experience in child rights. Since 2013, we are an organization recognized by the National Institute of Human Rights (Res. Exempt No. 327).

In this report we refer to *issues 8, 9 and 13 of the "List of Issues"* (CRC/C/CHL/Q/4-5) published by the Committee. In **chapter I** we will refer to “General principles” and “Disability, basic health and welfare”, especially considering Committee's recommendation to the State of Chile to review its legislation and decriminalize abortion in the case of therapeutic abortions and when the pregnancy has resulted from rape or incest (CRC/C/CHL/CO/3, p. 56). In **chapter II** we will refer to “Civil rights and freedoms”, especially on Committee's concern about transsexual child's rights. Finally, in **chapter III** we will refer to “Education, leisure and cultural activities” issues, especially on child's right to education and the serious situation of school riots ("*tomas*") that impede other children to receive education.

Chapter I.

“General principles” and “Disability, basic health and welfare”

THE RIGHT TO LIFE AND THE KILLING OF UNBORN CHILDREN

In 2011, politicians and scholars from all over the world came together to take a stand and publicly and internationally affirm the right to life of every human being, publishing the *San Jose Articles*¹, a declaration on the rights of the unborn child.

When analyzing the international framework, the emphasis on the protection of the right to life is explicit and clear. In this context, the right to life finds provision in various international treaties such

as the Universal Declaration on Human Rights (art. 3), the Convention on the Rights of the Child (preamble and art. 1), the American Convention on Human Rights (art. 4), the American Declaration of the Rights and Duties of Man (art. 1) and the International Covenant on Civil and Political Rights (art. 6), among others.

The right to life in its primary sense, i.e., to biological life, must be regarded as of the highest importance to every legal system, since without life no other right can be enjoyed by the individual. Biological life, therefore, constitutes the pre-condition to human experience of fruition of *any* other and *all* other rights. In light of this fact, whenever a treaty promotes the right to life, it must be interpreted to its most obvious meaning, that is, to grant life from its starting point: at conception. As a matter of fact, it is with this goal in mind that the American Convention on Human Rights establishes that “*every person has the right to have his life respected. This right shall be protected by law and, in general, from the moment of conception*” (art.4).

Moreover, by the same token, the Convention on the Rights of the Child (CRC) also protects the right to life of the unborn child since it states in art. 6 that “*States Parties recognize that every child has the inherent right to life*”, having previously said that “*the*

“...Chile is part of the group of 66 countries in the world which, in general, forbid abortion, allowing, notwithstanding, the necessary medical intervention to save the mother’s life...”

¹The content of *San Jose Articles* may be found on the site: http://www.sanjosearticles.com/?page_id=2

“...Chile is acting entirely in accordance with its international commitments and in true loyalty to the most fundamental human rights as, within the scope of its legitimate right to self-determination as a people, it chooses democratically to promote a culture of life, over a culture of death...”

child, [...] needs special safeguards and care, including appropriate legal protection, before [...] birth”. Thus, the CRC explicitly stands for the inherent right to life of the unborn child.

Finally, the International Covenant on Civil and Political Rights (ICCPR) is also worth of notice, since it weights the evidence in favor of the right to life of the child in the womb. In this sense, the Covenant affirms that “[e]very human being has the inherent right to life [...]” and that the “[s]entence of death [...] shall not be carried out on pregnant women”. Here, the ICCPR differentiates between the person of the mother, condemned to death

sentence, and the person of the child, who, being innocent of any misconduct, should not have the same lot, but must have her *inherent right to life* protected and granted.

In what concerns the rules of interpretation of international treaties, the Vienna Convention on the Law of Treaties, when presenting the general rule of interpretation affirms in art 31.1 that a “*treaty shall be interpreted in good faith in accordance with the ordinary meaning to be given to the terms of the treaty in their context and in the light of its object and purpose*”. The word “abortion” is not present in any treaty within the United Nations or the Organization of American States. Additionally, it is not possible to infer a “right to abortion” from the *ordinary meaning* of any word in any of the international treaties that Chile is part of. In fact when all the treaties enlisted in the beginning of this section were being negotiated, many States forbade abortion and intended to leave their laws intact. That was the case of Chile.

This being said, Chile is acting entirely in accordance with its international commitments and in true loyalty to the most fundamental human rights as, within the scope of its legitimate right to self-determination as a people, it chooses democratically to promote a culture of life, over a culture of death.

Finally, we attach to the Committee many drawings of children from many ages that participated in a drawing competition. They are the best proof on how children want to protect life of the unborn.

ON THE DECRIMINALIZATION OF THERAPEUTIC ABORTION: INTERVENTIONS TO SAVE A MOTHER'S LIFE ARE NOT FORBIDDEN IN CHILE

Under Chilean legislation, whenever there is a risk to the life of the pregnant mother,

“...From 2003-2014, only nine final condemnatory judgments regarding abortion committed by doctors were issued. In these few cases, it became proved that the mothers' lives were not at risk at all. The physicians involved were criminally responsible, therefore, for maliciously taking away the life of an innocent human being in the womb...”

doctors are allowed to intervene in ways that may lead, as an indirect result, to the death of the fetus. Chile is part of the group of 66 countries in the world which, in general, forbid abortion, allowing, notwithstanding, the necessary medical intervention to save the mother's life.

Art. 119 of the Health Code (Código Sanitario) prohibits actions *aiming at promoting an abortion*; nonetheless, there are no prohibitions to medical treatments which may indirectly cause the death of the fetus when the goal is to save the mother's life. The Code of Ethics of the Medical College of Chile contemplates the same situations (art. 8 and 9). That is, whenever there is a risk to

the life of the pregnant mother, any public or private health institution is free to analyze with its committee of ethics whether or not a therapeutic measure which might result in the unborn child's death is necessary. Julio Montt, president of the advisory delegation on ethical matters of the Medical College of Chile, avers that *“in Chile, for many years already have the doctors been undertaking therapeutic abortion when the life of the mother is at stake; this has never been sanctioned nor has it generated criminal procedures. This falls within the scope of medical decision under critical circumstances”*

².

² Diario La Segunda, 26 de mayo del 2014.

National Law does not criminally sanction physicians who intervene to save the life of the pregnant mother if as an indirect and unwanted consequence the fetus comes to die. The Penal Code punishes abortion only when it is carried forth “maliciously” (art. 342); thus, in order that an abortion may be penalized, there must be a *direct intent* by the author in executing it. From 2003-2014, only 9 final condemnatory judgments regarding abortion committed by doctors were issued. In these few cases, it became proved that the mothers’ lives were not at risk at all. The physicians involved were criminally responsible, therefore, for *maliciously* taking away the life of an innocent human being in the womb, abusing of their medical profession.

The Committee’s recommendation, therefore, to decriminalize abortion when the mother’s life is at risk finds no ground under Chilean Law and seems to be only a matter of linguistic, since it is not possible to decriminalize something that is not established as a crime.

“...The Committee’s recommendation, therefore, to decriminalize abortion when the mother’s life is at risk finds no ground under Chilean Law and seems to be only a matter of linguistic, since it is not possible to decriminalize something that is not established as a crime...”

“...coercion to abort – which affects over 91% of women with a high abortion risk – constitutes an act of violence against the woman which puts her at risk of suffering severe psychological and physical injuries associated with induced abortion ...”

COERCION TO ABORT: VIOLENCE AGAINST TEENAGE GIRLS

There is a consensus at international level that abortion must be prevented. Nevertheless, little is known on the causes of abortion and how to effectively prevent it. A recent research of MELISA Institute analyzed the case of 3.134 women who were unexpectedly pregnant. These women were divided in two groups with different patterns of risk and vulnerability according to whether they: (i) explicitly manifested their decision to terminate the

pregnancy (n= 486 in a high risk group); or (ii) did not verbally manifested their intention (n= 2.648 in a low to moderate risk group). The study took into account distinct factors related to the vulnerability of the pregnancy in both risk groups, which could lead to the decision to abort. Among other things, the research concluded that the situations of vulnerability of the abortion in Chile could be classified in: (i) *psicosocial factors*, such as abandonment, coercion, violence, life expectations, home expulsion, among others; and (ii) *pregnancy related vulnerability factors*, such as the death risk to the mother's life or congenital lethal mal formations of the fetus³.

| Women group with a high risk to abortion (n=486) | | Women group with a low to moderate risk to abortion (n=2648) | |
|--|--|--|--|
| 44,4% | Coerced to abort by the parents (one or both) or by the partner, both under and free of domestic violence | 36,9% | need of psychological or emotional support |
| 22,8% | Due to factor associated to life expectations such as continuing education, project of life, social economic circumstances and fear of being a single mother | 20,1% | Abandonment situation with loss of home (either by expulsion or abandonment) |
| 20,4% | To occult pregnancy due to fear of either parents' or partner' reaction | 12,9% | To occult pregnancy due to fear of either parents' or partner' reaction |
| 2,1% | Due to sexual abuse (rape, incest or continuing violation) | 9,1% | Possibility of giving away to adoption |
| 1,9% | Due to partner's abandonment | 7,9% | Due to partner's abandonment |
| Total: 91,6% of cases | | 3,7% | Due to domestic violence |
| | | 1,8% | Due to sexual abuse |
| | | Total: 92,4% of cases | |

In reviewing the factors which cause abortion in Chile, it negatively surprises that over 91% of women with *high risk* to abort suffer coercion to abort: be it directly, if it comes from the partner or the parents (44,4%); be it indirectly, due to factor associated to life expectations (22,8%), or if the coercion is caused by the fear of the reaction of her partner

³ Cfr. Elard Koch, "Impact of Reproductive Laws on Maternal Mortality: Recent Scientific Evidence from Natural Experiments On Different Populations. Lecture at the Life & Family event in the United Nations", The Linacre Quarterly, 2013; 80 (2): 151-60.

or parents (20,4%), or by the fear of abandonment by the partner and the family (1,9%), etc. The coercion, under these circumstances, means that there exists a pressure over the pregnant woman to force their will or behavior towards abortion. The United Nations defines violence against woman as “*every act of violence based [...]*. It is, therefore, evident that the coercion to abort – which affects over 91% of women with a high abortion risk – constitutes an act of violence against the woman which puts her at risk of suffering severe psychological⁴ and physical injuries⁵ associated with induced abortion.

THE RISKS OF BAD USE OF MISOPROSTOL TO TEENAGE WOMEN'S HEALTH

Misoprostol is a medicine commonly used in gastric ulcer treatment. In Chile, that is the only authorized use of this drug. Nevertheless, together with other drugs or by itself, Misoprostol is currently being clandestinely used in Chile to induce abortions. In light of this fact, the Public Health Institute of Chile (ISP), in the year 2000, published a sanitarian resolution which affirms that “*there are antecedents of mal use and a considerable risk of fetal and maternal death due to the use of Misoprostol under non authorized prescriptions*”; considering the previously stated, ISP has only been allowing the public selling of the

medicament under strictly controlled medical prescriptions, and, moreover, demands the following inscription on the label of the product: “*there have been reports of serious*

“...Notwithstanding the fact that the selling of Misoprostol in Chile is limited by strong sanitarian reasons, there is a known “black market” on Misoprostol to abortive ends. We think it important to present to the Committee that it worries us that in Chile there is no clear policy of sanitarian prevention or criminal persecution for the bad use of Misoprostol as an abortive ...”

⁴ American Psychological Association (2008), “Mental Health and Abortion”; Priscila Coleman, "Abortion and mental health: quantitative synthesis and analysis of research published 1995-2009", BJP., 199:168, Reino Unido; GISSLER M., (2005), et. al., “Injury deaths, suicides and homicides associated with pregnancy, Findald 1987-2000”.

⁵ Makhlof, M., et al., (2003) “Adverse Pregnancy Outcomes among Women with Prior Spontaneous or Induced Abortions”. Am J. Perinatol. 2013 Dec 17; Whiteman, V., et. al., (2014), “Preterm birth in th first pregnancy and risk of neonatal death in the second pregnancy: A propensity core-weighted matching approach”, J ObstetGynaecol, 24:1-7.

adverse effects, which include uterus perforation, uterus hyper-stimulation, severe vaginal hemorrhage, maternal and/or fetal death, when using this product to induce birth or abortion” (Med Watch, FDA, August 2000)”.

It is well known that induced abortion causes grave psychological injuries to women – though this information is occulted by the promoters of the illegal use of Misoprostol to ends of abortion. In what concerns women’s physical health, induced abortion may contribute to premature pregnancy risk, prevailing problems of premature placenta, rise in spontaneous abortion and premature rupture of the membrane.

The illegal and clandestine use of Misoprostol as an abortive in Chile is the cause of serious problems to teenage women’s public health. Amidst the total number of cases related to consented abortion with the use of Misoprostol judged, 68% ended up presenting grave sequels to the pregnant woman’s personal health. Most of the women involved in this cases where teenage girls.

Notwithstanding the fact that the selling of Misoprostol in Chile is limited by strong sanitarian reasons, there is a known “black market” on Misoprostol to abortive ends. We think it important to present to the Committee that it worries us that in Chile there is no clear policy of sanitarian prevention or criminal persecution for the bad use of Misoprostol as an abortive. We call the attention of the Committee to the fact that art. 24.1 affirms that States Parties *recognize the right of the child to the enjoyment of the highest attainable standard of health*, what justifies our request bellow.

RECOMMENDATIONS OF THIS CHAPTER

In light of all that was previously stated, we request the Committee to make the following recommendations to the State of Chile:

1. The State of Chile must adopt all necessary measures, be it sanitarian, criminal or any other nature, to prevent the mal use of the drug Misoprostol to induce abortion, and sanction whoever illegally promotes, sells or distributes the drug, in light of the risks to the health of women and teenage girls;
2. The State of Chile must adopt all necessary measures to prevent or sanction all direct and indirect coercion or any form of violence against pregnant women

- aimed at forcing her will or behavior towards abortion, specially violence against teenage pregnant girls;
3. The State of Chile must adopt programs of assistance to give support to teenage pregnancy and prevent abortion amidst this group;
 4. Considering that the word “child”, in accordance with the preamble of the CRC, is used in this convention without distinction as to whether the child is “inside” or “outside” of the mother’s womb, the Committee must modify its recommendation concerning the legalization of abortion and request, instead, that the State do not legalize abortion in the case of rape or incest since that would constitute an arbitrary discrimination against the unborn which violates art. 2.2 of the CRC.
 5. Considering that medical interventions to save women’s lives that might cause the unborn child’s death are not prohibited nor criminalized in Chile, we request the Committee to acknowledge that women’s right to life is already protected in Chilean Law.

Chapter II.

“Civil rights and freedoms”

ANTECEDENTS ON TRANSGENDERISM

“...Most (80-95%) prepuberal children reporting they feel transsexual will feel otherwise in adolescence. Moreover, several findings have suggested that, in addition to secondary sexual characteristics, cognitive and behavioral functions are also formed in adolescence. Altering the appearance and physiological development of the events of this stage by bringing forward hormonal and surgical treatment in transsexuals could adversely affect these functions...”

There are three conceptions regarding the connection between *sex* and *gender*. Firstly, there is a **biological conception**, according to which gender and sex mean the same: the roles attributed to men and women would be permanent, static and necessary consequences of their biological difference, which are unchangeable through time and space. Secondly, and in a completely opposite perspective, there is the **constructivist interpretation**, commonly known as the *gender theory*, wherein the gender would be a set of contingent roles that each society attributes to men as specific and distinct from women, and vice-versa, turning gender into a category culturally constructed, entirely disconnected to the biological sex. To this theory, the behaviors traditionally associated with masculine or feminine are historical constructs, which may be modified by society and one’s surroundings; there would be no real masculine or feminine being from an objective

stand point, but these would merely constitute a classification of the actions of a person to the extent that he or she follows what is conventionally established as proper of men or women. Lastly, there is an **intermediate conception** that defines gender as the cultural expression of the naturally masculine and feminine, which may vary in time and place, but is not in disagreement with the natural genetic, hormonal, biological, physical and psychological differences between men and women.

The concept of *gender identity* corresponds to the constructivist notion of gender. Under this perspective, since gender is disconnected from sex, the individual can determine by him or herself his or her own gender. Gender identity is, hence, defined as “*each person’s deeply felt internal and individual experience of gender, which may or may not correspond with the sex assigned at birth, including the personal sense of the body (which may involve, if freely chosen, modification of bodily appearance or function by medical, surgical or other means) and other expressions of gender, including dress, speech and mannerisms*”⁶.

“...Considering the international legal framework, there is no international treaty that makes explicit reference to a ‘right to gender identity’ except the Inter-American Convention Against all Forms of Discrimination and Intolerance, which has never being signed by Chile...”

From the previously mentioned version of gender identity multiple classifications, distinct from the heterosexual and beyond the ordinary masculine-feminine pattern, arise: transsexual, intersexual, transgender, transvestite, pansexual, poliamory, omnisexual, two spirits, among others (generally grouped under the “LGBT” logo). Here, the border line between gender identity and *sexual orientation* is not always clear.

In what transsexuality is concerned, from a medical perspective, **transsexuality is defined by the World Health Organization (WHO) as a ‘mental and behavioral disorder’ (ICD-10, F.64)**. In the

same way, the American Psychiatric Association (APA) published the Diagnostic and Statistical Manual of Mental Disorders (DSM-V), which classifies transsexuality as *gender dysphoria*, establishing many criteria for the diagnostic on the gender identity disorder in childhood.

In regard with gender dysphoria in childhood is important to remark that is not possible to have an accurate diagnosis before puberty. Most (80-95%) prepuberal children reporting they feel transsexual will feel otherwise in adolescence. Moreover, several findings have suggested that, in addition to secondary sexual characteristics, cognitive

⁶ Definición doctrinaria contenida en un manifiesto conocido como Principios de Yogyakarta, adoptada el 2007 en Yogyakarta, Indonesia (documento que, como se explicará, no tiene valor jurídico). Preamble.

and behavioral functions are also formed in adolescence. Altering the appearance and physiological development of the events of this stage by bringing forward hormonal and surgical treatment in transsexuals could adversely affect these functions⁷.

RIGHT TO IDENTITY VS. RIGHT TO ‘GENDER IDENTITY’

Considering the international legal framework, there is no international treaty that makes explicit reference to a right to *gender identity*, except the Inter-American Convention Against all Forms of Discrimination and Intolerance, which has never been signed by Chile⁸.

Moreover, it is important to understand the difference between right to identity and right to *gender identity*. In this context, when **art. 8 of the CRC refers to identity, it makes reference to the right of the child to know who she is and who are her parents, or which is her original name and nationality.**

It refers mainly to situations such as the one analyzed by the Inter-American Court on *Gelman Case*. In this case, a pregnant woman was arrested and forced to disappear together with her husband during the Argentinean dictatorship. The woman was taken to Uruguay, where her baby girl was born. This baby was, then, given to adoption to a Uruguayan couple. The little girl was separated from her mother, given to a different family and taken away from her country of origin. This is a case clearly sheltered by the Convention on the Rights of the Child.

“...it is clear that Chile has no obligation under international law to promote to promote a constructivist view of sexuality that entirely disassociates sex and gender, nor to legally acquiesce to some requests of allowing transsexuals to change their sex on their birth certificates, particularly in what pertains to children...”

⁷ Antonio Becerra-Fernández, M. Jesús Lucio-Pérez, José Miguel Rodríguez-Molina, Nuria Asenjo-Araque, Gilberto Pérez-López, María Frenzi Rabito, Miriam Menacho Román, *Transexualidad y Adolescencia*, Revista Internacional de Andrología, Vol. 08. Núm. 04. Octubre - Diciembre 2010, Link: <http://www.elsevier.es/es-revista-revista-internacional-andrologia-262-sumario-vol-08-num-04-13009938>

⁸ Cf. http://www.oas.org/en/sla/dil/inter_american_treaties_A-69_discrimination_intolerance_signatories.asp

This convention aims at protecting the most basic and objective identity of the child, and not the right to gender identity. This is particularly made evident by the location of article 8, between articles 7 and nine which talk respectively about the right of the child to know her parents and to be registered as her parents' child, and that a child must not be separated from her parents.

Thus explained, it is very important to differentiate between two absolutely different concepts: (a) The right to identity, that is, to a biological, social and family truth concerning a person, which is consecrated and protected internationally; and (b) The right to *gender* identity, which has never been established internationally in any binding instrument to Chile.

In light of all that has been said, it is clear that Chile has no obligation under international law to promote to promote a constructivist view of sexuality that entirely disassociates sex and gender, nor to legally acquiesce to some requests of allowing transsexuals to change their sex on their birth certificates, particularly in what pertains to children.

CHILDREN WITH GENDER DYSPHORIA ON TV: EXPOSING PRIVACY OF THE CHILD FOR POLITICAL PURPOSES

“... We are very concern about taking advantage from children's health situations (eg. gender dysphoria) for political ends. Child's right to privacy should not be put at stake even if there is a legitimate political motivation because this could promote using children as a 'mean' instead of looking for their superior interest...”

Within the context of all that has hitherto been presented, it is important to analyze Baltazar's story. In May 18th, 2015, the private Chilean TV station “Canal 13”, forecasted in its program “Contacto” a documentary which nationally exposed and took advantage of the identity and privacy of Baltazar, a five years old child, who has ‘gender dysphoria’ (Link: <http://www.13.cl/programas/contacto-t25/capitulos/mi-hija-es-transgenero>).

Baltazar is only five years old and the program exposed aspects of his intimate and personal life which are extremely sensitive and, therefore, should not have been exposed to public opinion, but

the child should have been protected. Moreover, the **directors of the program did not even attend to the most basic requirement of prudence, which is the diligence of hiding the minor's name and face, to protect his intimacy and integrity.**

Considering the need of protection and guidance in this stage of life, taking into account the principle of the **best interest of the child (art. 3)**, the child's **right to privacy (art. 16)**, and considering still that later in life, once B.E.E. reach puberty and start producing the masculine hormones biologically related to his sexuality, he might find himself assured of his sexual identity as a man, the public exposure of his and his family's identities constitute a violation of articles 3 (best interest of the child) and 16 (right to privacy) of the CRC.

We are very concern about taking advantage from children's health situations (eg. gender dysphoria) for political ends. Child's right to privacy should not be put at stake even if there is a legitimate political motivation because this could promote using children as a 'mean' instead of looking for their superior interest.

RECOMMENDATIONS OF THIS CHAPTER

In light of all that was previously stated, we request the Committee to:

1. Since there is no international convention in regard to "right to gender identity", the Committee should abstain from including the subject in its recommendations because of incompetence; and
2. Recommend the State of Chile to adopt all necessary measures to ensure that children's identity will not be publicly exposed in the media, especially taking into account the high possibility of overcoming the gender dysphoria later in life, or at least, ensure the protection of the right to privacy of the child.

Chapter III.

“Education, leisure and cultural activities”

SITUATION IN CHILE REGARDING FREEDOM OF EXPRESSION AND THE RIGHT TO EDUCATION

Starting in 2011 and currently persisting, many student riots have been happening in Chile (college and high school). These riots include marches, public declarations, the violent invasion of educational buildings, among other things, with the objective of demanding from the government good quality and free education, without any lucrative end⁹.

“...The reason of strongest concern, though, is that many politicians and authorities validate the imposition of the “tomas” to students who do not wish to participate in them, but want to continue their studies and have not been able to, losing, thereby, an unaccountable number of classes, never to be recovered...”

The problem of these massive manifestations are the violent invasion of educational building (in Chile they are called “tomas”). In its natural and obvious meaning, the word “toma” is defined by the Spanish Royal Academy Dictionary as “*the subduing or occupation by force of a city or public square*”. In Chile, these “tomas” have been evolving in a violent manner, with educational establishments being set on fire, their materials being destructed, among other vicious actions. The reason of strongest concern, though, is that many politicians and authorities validate the imposition of the “tomas” to students who do not wish to participate in them, but want to continue their

studies and have not been able to, losing, thereby, an unaccountable number of classes, never to be recovered. As the ex-president of the National Institute, Jorge Toro, has said: “*the classes which are not promptly delivered, are irrecoverable*” (El Mercurio daily newspaper, July 5th, 2014).

Here we have, then, a situation in which the rights to education and to freedom of expression come in conflict.

⁹ Source: <http://www.latercera.com/noticia/mundo/bbc-mundo/2012/08/1433-480413-9-bbc-por-que-tiene-tanta-fuerza-el-movimiento-estudiantil-chileno.shtml>

Notwithstanding the possibility that the “tomas” may be a legitimate means of manifestation, once carried out in a violent fashion, as has been the case in Chile¹⁰, they lose all their legitimacy. The arbitrariness of the “tomas” is due to the fact that they affect the rights of third parties, such as the right of students to access to a continuing education, and the rights of their parents to have the establishment hired to impart lectures to their children actually doing it and effectively complying with its educational functions and goals.

The violation such rights is supported by the multiple letters sent by students from the National Institute –the most important public school in Chile- who were affected by the “tomas” of their school. In some of them it is stressed that *“the ‘tomas’ beyond causing the loss of classes, do not add anything good and are a burden to education, since it is not possible to study at peace and to normally go to classes”* (National Institute, 8°N, 23 de junio de 2015). Another letter avers that *“the ‘tomas’ harm students and bring no positive change at all”* (National Institute, 8°Ñ, Ignacio Avendaño). In sum, all letters allude to the fact that the “tomas” injure children’s the right to education.

“TOMAS” OF THE NATIONAL INSTITUTE DURING 2014 AND SUPREME COURT DECISION

In 2014, as an human rights NGO, we petitioned a writ before the Court of Appeals of Santiago (initially inscribed under n° 39022-2014), representing a group of parents from the National Institute (IN), one of the most prestigious in our country. The parents were arguing for protection to their minor children, against the students who kept the “toma” of the IN and against the Municipality

“...The Supreme Court affirmed that the “tomas” are, by definition, an act of violence which do not constitute a legitimate means to expose an opinion (...) the “tomas” violate the students’ rights to receive education...”

¹⁰ Source: <http://www.lanacion.cl/noticias/pais/educacion/asi-quedo-el-dario-salas-tras-toma-estudiantil-municipio-anuncia-querella/2015-05-31/150319.html>
<http://www.latercera.com/noticia/nacional/2014/06/680-580710-9-inba-se-suma-a-toma-del-nacional-y-otros-emblematicos-definen-movilizaciones.shtml>

of Santiago, due to the violent tomas that had taken place.¹¹

These “tomas” caused over a month and a half loss of classes, which were never recovered by the teachers, violating, thereafter, the children’s right to education, who wanted to have classes, but could not, since the space had been violently occupied through the “tomas”. The Court of Appeals of Santiago, in August 18th, 2014, decided favorably to the writ interposed, declaring categorically in its decision that *“in a State of Law such as Chile, the right to freedom of expression is granted, but like every right it has limits, and therefore its exercise may not impose itself through violent measures but must be carried forth through other means and guarantees allowed by the institutional order”* (c. 3). This decision was appealed to the Supreme Court (registered under nº 23.540-2014). The Supreme Court confirmed the first instance sentence and categorically affirmed that the “tomas” are, by definition, an act of violence which do not constitute a legitimate means to expose an opinion and are not sheltered by the right of manifestation. In fact, they constitute an anti-juridical behavior which disrespects the rights of third parties: the “tomas” violate the students’ rights to receive education, as well as the rights of the parents of having their children being taught. (c. 6^o). Hence, the **Supreme Court declared that the director of National Institute –a public employee under direction of the City Council- should take measures to prevent any “toma” and guarantee right to education of the children.**

The aforementioned decision of the Supreme Court established a historical precedent in Chile in confirming that the “tomas” are not part of the freedom of expression, since this freedom has limits.

RECOMMENDATIONS OF THIS CHAPTER

In light of all that was previously stated, we request the Committee to make the following recommendations to the State of Chile:

1. The State of Chile must adopt all necessary measures to ensure that educational services will be uninterrupted and continuously delivered, and sanction every

¹¹ Source: <http://noticias.terra.cl/chile/alcaldesa-toha-critica-nueva-toma-del-instituto-nacional,0a23c00bb6046410VgnVCM10000098cceb0aRCRD.html>

- educational institution, under public or private law, or every person responsible for any illegitimate interruption;
2. The State of Chile must adopt all necessary measures to prevent or sanction the violent “tomas” in all public and private educational institutions that may threaten the right to education, both of the students and of their parents.
 3. The State of Chile must adopt all necessary measures to promote and incentive the peaceful resolution of student conflicts, through means respectful of third parties’ right to education;
 4. The State of Chile must adopt all necessary measures, be it legislative, administrative or any other nature, to implement an educational state system of programs that encourages students to attend classes, fulfilling thereby its obligation under art. 28.1(e) of the Convention on the Rights of the Child, when it avers that States must *take measures to encourage regular attendance at schools and the reduction of drop-out rates.*

LIST OF KEY RECOMMENDATIONS

In regard with “**General principles**” and “**Disability, basic health and welfare**” we ask the Committee to recommend that:

1. The State of Chile must adopt all necessary measures, be it sanitarian, criminal or any other nature, to prevent the mal use of the drug Misoprostol to induce abortion, and sanction whoever illegally promotes, sells or distributes the drug, in light of the risks to the health of women and teenage girls;
2. The State of Chile must adopt all necessary measures to prevent or sanction all direct and indirect coercion or any form of violence against pregnant women aimed at forcing her will or behavior towards abortion, specially violence against teenage pregnant girls;
3. The State of Chile must adopt programs of assistance to give support to teenage pregnancy and prevent abortion amidst this group;
4. Considering that the word “child”, in accordance with the preamble of the CRC, is used in this convention without distinction as to whether the child is “inside” or “outside” of the mother’s womb, the Committee must modify its recommendation concerning the legalization of abortion and request, instead, that the State do not legalize abortion in the case of rape or incest since that would constitute an arbitrary discrimination against the unborn which violates art. 2.2 of the CRC.
5. Considering that medical interventions to save women’s lives that might cause the unborn child’s death are not prohibited nor criminalized in Chile, we request the Committee to acknowledge that women’s right to life is already protected in Chilean Law.

In regard with “**Civil rights and freedoms**” we ask the Committee to:

6. Since there is no international convention in regard to “right to gender identity”, the Committee should abstain from including the subject in its recommendations to the State of Chile because of incompetence; and
7. Recommend the State of Chile to adopt all necessary measures to ensure that children’s identity will not be publicly exposed in the media, especially taking into account the high possibility of overcoming the gender dysphoria later in life, or at least, ensure the protection of the right to privacy of the child.

In regard with “**Education, leisure and cultural activities**” we ask the Committee to recommend that:

8. The State of Chile must adopt all necessary measures to ensure that educational services will be uninterruptedly and continuously delivered, and sanction every educational institution, under public or private law, or every person responsible for any illegitimate interruption;
9. The State of Chile must adopt all necessary measures to prevent or sanction the violent “tomas” in all public and private educational institutions that may threaten the right to education, both of the students and of their parents.
10. The State of Chile must adopt all necessary measures to promote and incentive the peaceful resolution of student conflicts, through means respectful of third parties’ right to education;
11. The State of Chile must adopt all necessary measures, be it legislative, administrative or any other nature, to implement an educational state system of programs that encourages students to attend classes, fulfilling thereby its obligation under art. 28.1(e) of the Convention on the Rights of the Child, when it avers that States must *take measures to encourage regular attendance at schools and the reduction of drop-out rates.*