



Briefing submitted by the Global Initiative for Economic, Social and Cultural Rights (GI-ESCR) and Public Services International (PSI) on Children's Public Care Services

Presented to the United Nations Committee on the Rights of the Child at its 90th session for its consideration of its concluding observations on the sixth and seventh periodic reports of Chile

Submitted May 2022

In light of the Committee's Concluding observations on the combined fourth and fifth periodic reports of Chile, its Report on the Inquiry concerning Chile under article 13 of the Optional Protocol to the Convention on the Rights of the Child on a communications procedure and the List of issues prior to submission of the combined sixth and seventh periodic reports of Chile, **through this briefing we urge the Committee to suggest the following recommendations to the State Party in its concluding observations:**

- The inclusion of the concept of *Public Care Services* to address the challenges faced by the new Childhood Protection Service in terms of the provision of children care services and the guarantee of children's economic, social and cultural rights, and more broadly all human rights;
- The inclusion of the public service standards raised by the [Global Manifesto for Public Services](#) to Children's Public Care Services;
- The reclaim of the public nature of care services, restoring the duty and the primary responsibility of the State to provide public care services as stated in the [Care Manifesto](#) and thus reversing the commercialization of Public Care Services in Chile; and
- The use of the [Principles for Human Rights in Fiscal Policy](#) for the correct allocation of resources aimed at the fulfilment of children's rights under a human rights based approach.

I. CHILE AND THE CHILDREN CARE SYSTEM CRISIS

The residential system under control of the State of Chile –previously operated by the National Service of Minors– has been known for the grave and systematic human rights violations that affected thousands of children throughout the country¹.

This situation led to a series of recommendations made by the Committee in 2015 and 2020, specially by:

- The establishment of an adequate coordination mechanism², the adoption of a national policy and a plan of action on children and the allocation of sufficient resources for their effective implementation³;
- The assurance of periodic quality monitoring of children care, including by providing accessible and child-friendly channels for reporting, monitoring and remedying maltreatment of children⁴;
- The recognition and guarantee of children’s rights to directly participate in public administration matters⁵ and budgeting⁶;
- And the guarantee of access to all children to quality health services⁷, abortion and post-abortion care services⁸, free public education⁹ and the appropriate assistance to families in the fulfilment of parental responsibilities¹⁰.

It is worth noticing that this system also operates in a context of excessive privatisation, where – as the Committee has stated– “the State has left the care of vulnerable children and adolescents mostly in private hands, where it is traditionally provided by philanthropic institutions”¹¹; thus evading its primary and direct responsibility to provide Public Care Services and therefore its obligations to respect, protect and fulfil human rights.

¹ Committee on the Rights of the Child (2020) *Inquiry concerning Chile under article 13 of the Optional Protocol to the Convention on the Rights of the Child on a communications procedure. Report of the Committee*, par. 108 - 155. Document No. CRC/C/CHL/IR/1. Available at:

<https://docstore.ohchr.org/SelfServices/FilesHandler.ashx?enc=6QkG1d%2fPPRiCAqhKb7yhssK3M5T%2fDPYI5MHGhtMS6B5pHRwZzX7gX3P1v6CpvZt12Mfn7HUm5p3%2fD4kZi22iByP%2frNZmNrbEDKg3XPtY23vK7sw2HaPw7PBknw6VmkOe>.

² Committee on the Rights of the Child (2015) *Concluding observations on the combined fourth and fifth periodic reports of Chile*, par. 13 d). Document No. CRC/C/CHL/CO/4-5. Available at:

<https://docstore.ohchr.org/SelfServices/FilesHandler.ashx?enc=6QkG1d%2fPPRiCAqhKb7yhssK3M5T%2fDPYI5MHGhtMS6B4wdmjWcNAPsrS0KSJL8kAqr1bgXOwnr41neD%2fuDwW0SCZFVUScvcMRKqzD11JKeGciZAvhTPZCWygySsf01>.

³ *Ibid.*, para. 11.

⁴ *Ibid.*, para. 55 e).

⁵ *Ibid.*, para. 29 b).

⁶ *Ibid.*, para. 14 b).

⁷ *Ibid.*, para. 59 a).

⁸ *Ibid.*, para. 61 c).

⁹ *Ibid.*, para. 68 a), b) and c).

¹⁰ *Op. Cit.*, Committee on the Rights of the Child, 2020, para. 122 c).

¹¹ *Ibid.*, para. 123.

II. AN ALTERNATIVE FRAMEWORK: QUALITY PUBLIC CARE SERVICES

In light of the situation described in the previous section, and facing the challenge of implementing the new Childhood Protection Service, we offer the Committee a new approach to frame the issue of granting children's rights through State-led services: the concept of **Quality Public Care Services**.

Since 2020, nine international organizations¹² began building a collective vision to mobilize a strong broad-based movement to demand public services. The result was a document called the **Global Manifesto for Public Services**; the text to date has been signed by more than 184 organizations worldwide¹³.

The core of the Manifesto states that quality public services are the foundation of a fair and just society, constituting a social pact that implements the core values of solidarity, equality and human dignity. They are also an effective way to pool resources to confront collective challenges and meet shared needs¹⁴. In this sense, public services encompass a range of services that are vital and necessary to live a dignified life and to realise human, individual and collective rights, explicitly including **care services**¹⁵.

As a normative standard, the Manifesto considers that States have the main or ultimate responsibility and obligations for the provision of public services¹⁶, setting out a number of principles to what constitutes quality public services¹⁷. These include:

1. The universality and accessibility of public services for all, both on economic and physical grounds;
2. The participation of all members of the community in the design, organization, governance, financing, delivery and monitoring of public services, as well as its transparency and accountability to the public, which makes them socially trustworthy;
3. Public services' ability to improve, adapt, respond and transform along with the needs of the people they serve;
4. A solid long-term financial foundation primarily based on progressive taxation;
5. Public services' commitment to equality (including gender) and social justice, through the constant work to recognize and actively challenge power imbalances, structural and systemic discrimination and systems of oppression;

¹² ActionAid, the East African Centre for Human Rights, Eurodad, the Global Initiative for Economic, Social and Cultural Rights, the Initiative for Social and Economic Rights, Oxfam, Public Services International, the Society for International Development, and the Transnational Institute.

¹³ See all the organisations here: <https://futureispublic.org/global-manifesto/#about>.

¹⁴ *Global Manifesto for Public Services* (2020) Section I.1. Available at: <https://futureispublic.org/wp-content/uploads/2021/10/Future-is-Public-Global-Manifesto-for-public-services.pdf>.

¹⁵ *Ibid.*, section I.3.

¹⁶ *Ibid.*, section I.4.

¹⁷ *Ibid.*, section I.8.

6. Their environmental and ecological consciousness, which translates in how all the aspects of their management (including governance mechanisms, cost structure and the organisation of their operations) decisively contribute to addressing the ecological crisis;
7. Public services' proximity to those they serve, making them locally accessible, as well as managed, delivered and monitored at their closest point of use;
8. Their justice, security and safety, both for the people that use them and the people who operate them; and
9. Their protection against market economy, commercialisation and financialization.

As can be seen, all of these principles can be useful to operationalise and bring forward renewed quality public care services that respect, protect and fulfil children's rights both under State or foster care, through the incorporation of children's views in the design, implementation, monitoring and evaluation of public care services and the availability of resources to cover them. The principles can also provide a comprehensive framework to encompass several of the Committee's preoccupations included on the List of Issues prior to reporting (LoIPR) such as the business sector's role in the protection of children's rights, the respect for the views of the child, the support of parents with children under alternative care, the permanent monitoring of the quality of care and the service standards on different sectors such as education, health and social security, among others.

On the one hand, this framework requires the promotion and universalisation of the concept of *quality public care services*, and on the other, it demands the reclaiming of their public nature, thus restoring the duty and primary responsibility of the State to provide them¹⁸.

Fulfilling this responsibility also demands to ensure that sufficient resources are available to cover for these quality care services, as the Committee has already made visible on the LoIPR regarding allocation of resources. To meet this requirement, the Principles for Human Rights in Fiscal Policy¹⁹ can provide useful tools to budgeting with a human rights based approach. This document –steered by several organisations from Latin America– propose 15 principles to direct State's fiscal policies to the guarantee of human rights, including the strengthening of State's capacity to provide public services in their entire territory²⁰ and ensuring that fiscal policy decision-making processes are open to informed public debate, through inclusive, broad, transparent and deliberative social dialogue processes²¹.

Facing the imminent challenge of implementing a new constitution that shall include not only children's rights but also the right to care and to be cared for, the quality public care services framework can help to set the first stepping stone for a longer process of children's participation

¹⁸ *Care Manifesto: Rebuilding the social organisation of care* (no date) Available at: <https://peopleoverprof.it/campaigns/care-manifesto-rebuilding-the-social-organisation-of-care?id=11655&lang=en>.

¹⁹ *Principles for Human Rights in Fiscal Policy* (2021) Available at: https://derechosy politicafiscal.org/images/ASSETS/Principles_for_Human_Rights_in_Fiscal_Policy-ENG-VF-1.pdf.

²⁰ *Ibíd.*, p. 19.

²¹ *Ibíd.*, p. 34.

in the implementation of their own rights, and therefore, in the continuous improvement of their own living conditions.

III. LEGAL OBLIGATIONS

The alternative legal **framework related to quality public care services described above is grounded in several obligations arising from the Convention on the Rights of the Child (CRC)** including the right to health (article 24), the right to an adequate standard of living (article 27) and the right to education (article 28). Particularly relevant is also the right to social protection (article 26), the prohibition of discrimination of any kind (article 2) and the obligation of State parties to take all appropriate measures to ensure that children are protected against all forms of discrimination.

Moreover, ensuring quality public care services is essential to comply with the CRC's guiding principle of the best interests of the child. According to this principle, children must be the primary concern in making decisions that may affect them. This principle must be respected at all stages of adopting laws, policies, strategies, programmes, plans, budgets, legislative and budgetary initiatives, and guidelines concerning children in general or as a specific group. Thus, it is particularly important in regard to social protection policies.

Another key principle is the respect for the views of the child. Children are entitled to have a say in matters affecting their social, economic, religious, cultural and political life (article 12). Thus, State parties must involve children, when they wish, in designing, implementing and evaluating the social protection policies and programmes that affect them²². The views of children should be given due consideration in accordance with their age and maturity. This obligation must be understood in conjunction with their rights to express their opinions and be heard, to access to information and to freedom of association. Compliance with the Convention rights and corresponding obligations within social protection systems and programmes requires, *inter alia*, ensuring that their design and implementation (a) address children's vulnerabilities in a lifecycle approach, recognizing that risks and vulnerabilities are different for children depending on their age and gender, from early childhood to adolescence; (b) have an intergenerational approach, recognizing the critical role of caregivers in children's lives; (c) take special measures to reach children who are particularly vulnerable and excluded, including children without parental care and those who are marginalized within their families or communities due to their gender, disability, ethnicity, HIV/AIDS status or other factors; and (d) include the voices and opinions of children and their caregivers in designing, implementing and evaluating programmes.

²² UN Committee on the Rights of the Child (CRC): *General comment No. 14 (2013) on the right of the child to have his or her best interests taken as a primary consideration (Art. 3 of the Covenant)*, 29 May 2013, CRC/C/GC/14, para. 1.

IV. SUGGESTIONS FOR RECOMMENDATIONS TO THE STATE PARTY

Against the background briefly outlined above, we respectfully ask the Committee to consider including the following recommendations in its concluding observations addressed to the State Party.

The State Party should:

- 1) **Consider to include** the concept of *Public Care Services* to address the challenges faced by the new Childhood Protection Service in terms of the provision of child care services and the guarantee of children’s economic, social and cultural rights, and more broadly all human rights;
- 2) **Consider to include** the public service standards reflected in the [Global Manifesto for Public Services](#) to Children’s Public Care Services;
- 3) **Restore** its own duty and its primary responsibility to provide public care services as stated in the [Care Manifesto](#) and thus reverse the commercialization of Public Care Services in Chile;
- 4) **Use** the [Principles for Human Rights in Fiscal Policy](#) for the correct allocation of resources aimed at the **fulfilment** of children’s rights in line with a human rights based approach.

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