

The right to identity of children and adolescents in Chile

Fact sheet for the Committee on the Rights of the Child

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1

Creation of identity

32 years after having ratified the UNCRC, Chile enacted Law No. 21.430 on the safeguards and comprehensive protection of the rights of children and adolescents¹ on 6 March 2022. The latter includes a major focus on the right to identity of children and adolescents. It refers to the determination of the best interests, which will have to include *“the identity of the child or adolescents and the needs that result from the latter, whether they are physical, emotional, social, cultural or ethnic”*. Likewise, Article 26 focuses exclusively on the right to identity, by stating that *“every child or adolescent has the right, from birth, to a name, a nationality, a language of origin and to be registered before the Civil Registration and Identification Service, without delay. He or she will have the right to Chilean nationality when applicable, in accordance with the provisions of the domestic legal framework. No child or adolescent will be deprived arbitrarily from his or her nationality, nor from the right to change it. Public and private bodies will be obliged to recognise and respect the identity of children and adolescents, in compliance with the above provisions. Likewise, he or she has the right to know the identity of his or her father and/or mother, his or her biological origins, to preserve his or her family relations in accordance with the law, to know and exercise the culture of his or her place of origin and, in general, to preserve and develop his or her identity and idiosyncrasy, including his or her gender identity, in accordance with the legislation in force”*.

Birth registration:

- Chile is placed amongst the countries with the highest rates of birth registration in the Latin-American region and UNICEF considers that it has already reached universal coverage of birth registration² (children under five whose births are registered is estimated at 99%).³
- The Civil Registry and Identification Service regularly organises visits of mobile registration teams to conduct registration in hard-to-reach geographical areas. Registration is done by mobile registration equipment which may transfer registration data over mobile operator networks.⁴ As of 2019, all birth records created since 1940 have been digitised and entered in the central database.⁵
- Several public and private entities are interconnected with the Civil Registration and Identification Service’s database architecture. Before an organisation can establish interconnection and gain access to a specific set of personal data, it must undergo an assessment of its competencies, the type of information it needs, and why it needs it. This assessment determines the level of access and the specific data types that the organisation should be allowed to access. Once access is authorised, an inter-institutional agreement is signed to transfer the requested data.⁶
- In accordance with the new Law No. 21.430 of 2022, *“the Civil Registration and Identification Service will have simple and rapid procedures, which allow for the registration of the birth of newborns, their timely identification and that of their nationality, irrespective of their migratory status or that of their fathers and/or mothers. Should the latter’s identity be unknown, their Chilean nationality will be presumed. The child or adolescent will have to be registered with a name and two conventional surnames, with evidence registered on the relevant record, regardless of the right to subsequently claim the determination of their identity”* (Art. 26).

Parentage:

- Parentage is governed by the Civil Code, Law N° 19.585 (1998) and Law N° 19.968 (2004). Parentage may be biological, result from assisted human reproduction technologies or gained through adoption. The legislation recognises the right of every person to identity, to know one’s biological origin and to belong to a family. Parentage may be determined
 - by law on the basis of certain conditions, for example, the presumption of paternity of children born within the marriage;
 - the voluntary recognition of the father, mother or both in relation to the child; and
 - through judicial sentence, when a Family Court declares a paternity or maternity previously unknown or modifies a parentage that had already been determined.⁷
- It is worth mentioning that the Civil Registration and Identification Service may register a child or adolescent without maternal or paternal parentage until his or her parentage is evidenced; this must be requested to this Service via the Family Court.⁸

Abandonment:

- In accordance with Article 12 of Law No. 19.620, adoptability may be declared, among others, on the following grounds: relinquishment of the child in a public or private child protection institution with a view to being released from legal obligations. This cause includes the abandonment of children in public spaces, in a deserted area, in a hospital facility and a lack of visits to the child by his or her father and/or mother. It is worth mentioning that, in Chile, the procedure of declaration of adoptability may be initiated prior to the child’s birth, but must be supported by the authority or by an accredited body.⁹

Prevention of statelessness:

- According to a 2020 report, *“according to information provided by the Civil Registration and Identification Service, in the country, there are nearly 2,000 children or adolescents, who have not been able to gain Chilean nationality and who are registered as ‘children of foreigners with temporary stay’”*.¹⁰
- It has been mentioned that children, who were born in Chile, have not had their nationality recognised as these were not registered as Chilean residents due to their parents’ irregular migratory status. Indeed, there have been claims of nationality submitted to the Supreme Court, and the country’s highest Court has decided, in the majority of cases, in favour of the recognition of the nationality of these children, by taking into account the following criteria: intention to remain in the country and length of residence of the family group, the principle of *ius soli* and the application of international treaties.¹¹
- Despite the fact that the Department of Foreigners and Migration decided a change of criteria in relation to those persons falling in the category of *“foreigners with temporary stay”* and established that the only ones to be considered children of the latter are the children of tourists and crew members (Oficio N° 27.601, 14 August 2014), this decision started to apply as from the issuance of the document only, thereby still leaving thousands of children with this mention in their birth certificate. This hinders their access to Chilean nationality despite being born in the country. With this change in criteria, the administrative authorities express their agreement with the criteria having been applied by the Supreme Court for some time.¹²



- On the other hand, even though the Civil Registration and Identification Service adopted this new criterion and made it official (Resolución exenta 3.207, 10 October 2014), there is still a lack of awareness in relation to the latter, amongst the interested parties and civil servants; and cases continue to arise, in which children are registered as “children of foreigners with temporary stay”. In addition, the administrative procedure to eliminate this mention in the register is tedious in terms of required documents and waiting times.¹³

Potential considerations:

- ✓ *What is the country undertaking to ensure that the family origins of a child, who has been abandoned or relinquished, are fully investigated and registered?*
- ✓ *What efforts are being undertaken to ensure that children born in Chile of foreign persons may obtain Chilean nationality and do not remain stateless and to ensure that this element of their identity is restored?*
- ✓ *In order to fully comply with the children’s right to parentage and identity, what is being undertaken to ensure that all elements of their identity are accurately and promptly registered and preserved?*

2

Modification of identity

Conditions for the modification of names and surnames:

- Names and surnames may be amended, amongst other circumstances, to add a surname to children, whose parentage had not been determined or when both their surnames are the same, as well as when their names or surnames are ridiculous, laughable or entail moral or material harm; when the person has been known with other names for over five years; when these are not of Spanish origin in order to modify their pronunciation or spelling; when the applicant wishes to invert the order of the surnames on his or her birth records; or when the applicant wishes to use one or the other surname of an ancestor in direct line up to the grandparents.¹⁴

Surrogacy and assisted reproductive technologies:

- The issue of assisted reproductive technologies was first dealt with in Chilean legislation through Law No. 19.585 of 1998, which amended the Civil Code and other legal instruments on parentage, with a new article 182 in the Civil Code, whose objective was to regulate the parentage of a child conceived through assisted reproductive technologies. However, there is currently no law that regulates human reproduction procedures in Chile; thus, there is no law that regulates surrogacy agreements and their legal implications. There is only a *Resolución Exenta* of the Ministry of Health of the year 1985, which contains the norms applicable to IVF and embryo transfers, and *Norma General Técnica* No. 159 on Technical guidance for the management of low complexity infertility of 1993 of the same Ministry. However, throughout the years, six bills on the subject have been submitted – all as parliamentary initiatives.¹⁵

- It is worth clarifying that, in the cases of surrogacy processes on Chilean territory, the woman carrying the child would be considered the newborn’s mother, therefore making it impossible to register this child with the intentional mother’s identity, or even that of the father. Any process of relinquishment of that baby to another mother or father must be undertaken as an adoption.¹⁶

Migration:

- According to the former authority in charge of child protection, there are cases of foreign children who, in addition to not having their due residence visa in the country, do not hold documents, which prove their identity, either documents of their country of origin or national documents (i.e. documents provided once the child has been granted his or her residence visa); these children do not have any document that can prove their identity, parentage, date of birth, age, nationality, etc. Sometimes, the parents only have a proof of the birth without due legalisation, on which only the name of the newborn, the date of birth and the name of the mother are recorded. In these cases, the Civil Registration and Identification Service cannot grant them a Chilean ID card because it has no proof of their true identity; however, upon a request to the Family Courts, it may grant a Unique National Registration number (RUN). This does not entail the granting of Chilean nationality, nor a residence visa; nor does it imply the issuance of an ID card or documents, but it allows them to enjoy the rights offered by the Social Protection System, thereby complying with the order of the Courts.¹⁷

- According to the same source, these cases must be subject to judicial procedures and the professionals in charge of the case must request the birth certificate or the legalisation or apostille of the latter to the Consulate of the child’s country of birth. Initially, the Family Judge usually orders that the Forensic Medical Service undertake a DNA test to ascertain the child’s parentage with the presumed parent as well as a physiological examination of identity to determine his or her age. On the basis of the results of the tests undertaken, the Judge may order that the Department of Foreigners of the Civil Registration and Identification Service undertake the registration on the Civil Register.¹⁸

- However, it is worth emphasising that the new Law 21.430 of 2022 mentions explicitly that the rights to identity “*will not be affected or limited in any way by the irregular migratory status of his or her fathers and/or mothers, representatives or carers*” (Art. 26).

Alternative care:

- In 2016, SENAME, together with Fundación San Carlos de Maipo, drafted a methodology to implement “life books” for children placed in residential children’s homes.¹⁹ Subsequently, a Guide to use the life books with children placed in the alternative care system was developed (SENAME, 2017).
- However, a local contact mentioned that this practice needs to be further strengthened in order to ensure continuity in the information recorded about the child, his or her background, in particular when moved from one alternative care placement to another.

Potential considerations:

- ✓ *When undertaking a change of name or surnames, what is taken into consideration to ensure that it is in the child’s best interests?*
- ✓ *In cases of intercountry surrogacy arrangements, what is being undertaken to ensure that the child’s full identity is registered?*
- ✓ *For children born in Chile from foreign parents, what are the authorities undertaking to ensure that all interested parties have access to the procedure in place to obtain ID documents, which will enable them to access services and other rights?*
- ✓ *Finally, what efforts and initiatives are being undertaken to ensure that children placed in alternative care have their identity and family relations duly recorded and that these are not changed or lost as they move from one placement to another?*



3

Falsification of identity

Child marriage:

- The Observatory of Rights of the Defensoría de la Niñez has expressed its concern at child marriages and the need to eradicate this practice. Indeed, Law No. 19.947 on Civil marriage states that “minors under the age of 16” are not able to marry, therefore allowing adolescents of 16 and 17 years old to conclude a civil marriage. However, the Civil Code states that persons under the age of 18 will not be able to marry without the consent of their parents. Between 2015 and 2020, 457 marriages, of which at least one of the parties was an adolescent, were concluded. In addition, it is worth highlighting that the adolescent party in these marriages is mainly the girl. Thus, the Defensoría has called for a reform of the legislation in force.²⁰ Indeed, child marriages may have significant implications for the identity of children and adolescents; in particular, severance in their family relations, falsification of documents proving their age, etc..

Exploitation:

- As for child labour, a legislative initiative approved in 2020 adapted the Labour Code in terms of protection of children and adolescents in employment, by intending to eradicate child labour and to regulate protected adolescent labour.²¹ By updating the requirements for the recruitment of adolescents and establishing the requirements that must be complied with, as well as incorporating new sanctions for employers, who repeatedly violate the law, it is hoped that children will benefit from greater protection, including their family life and family relations, who could suffer from situations of exploitation and falsification of documents allowing them to work.

Past irregular adoptions:

- In the past, there have been serious violations of the right to identity in Chile, which included “child appropriations” during dictatorships as well as “irregular adoptions”.²²
- In November 2018, the first special commission was created in the Chilean Congress to clarify the reality of irregular adoption in Chile and determine state policies of justice and reparation. The final report of this commission established the need to create a Commission of Truth and Reparation to elucidate these cases, create a public DNA bank of genetic fingerprints, endow greater funding to related processes of legal investigation, and strengthen coordination between public and private organisations.²³
- As of February 2019, there were already 20,000 adoption records under investigation. Among other practices, there have been reports of certificates that had uncommon (e.g. fathers not having appeared at the registration) or obvious irregular characteristics (e.g. children with the surname of the adoptive father and of the biological mother; in others, the places of residence were repeated and referred to hotels in the centre of Santiago where the adoptive parents used to stay or to informal nurseries, which operated in the suburbs). It has been mentioned that the individuals involved included doctors, midwives, social workers, religious members and children’s judges, some of whom have already been reported. In addition, information on the background of these cases mentions high amounts of money being involved.²⁴

Surrogacy and assisted reproductive technologies:

- As previously mentioned, altruistic and commercial surrogacy are both impossible in Chile as the legislation does not allow it (see “Modification of identity” above), but Chilean couples have been travelling to other countries to undertake surrogacy arrangements (Peru, Argentina, Ukraine...),²⁵ with implications for the right and recognition of the identity of these children and the parentage that this practice entails.

Potential considerations

- ✓ *What is being undertaken to ensure that adolescents’, in particular girls’, identities are not falsified in order for them to marry? What additional efforts are being considered to ensure the eradication of child marriage?*
- ✓ *What is the country planning to ensure that the new legislation on child and adolescent labour is fully implemented and that adolescents engaged in labour are not subject to exploitation and that their identities are not falsified?*
- ✓ *In response to past irregular adoptions, the country has initiated a lengthy process; what is being planned to fully implement the recommendations of the Congress’s commission on this issue and to respond to falsifications of identity?*
- ✓ *With regards to surrogacy arrangements entered into abroad by Chilean citizens, what is being undertaken to ensure that the child born from such arrangements does not have his or her identity falsified?*

4

Preservation of identity and access to origins

In accordance with Law No. 21.430, every child or adolescent “has the right to know the identity of his or her father and/or mother, his or her biological origins, to preserve his or her family relations in accordance with the law, to know and exercise the culture of his or her place of origin and, in general, to preserve and develop his or her identity and idiosyncrasy, including his or her gender identity, in accordance with the legislation in force” (Art. 26).

Search for origins:

- In particular in relation to adoption, the new Law No. 21.430 states that “adoptees will have the right to search and know their origins. The service in charge of adoptions will take timely measures to preserve the documentation relating to the origins of children or adolescents. Likewise, it will provide counselling, confidential mediation and timely help to implement the right to know one’s origins in accordance with the law” (Art. 26).
- Currently, in order to initiate a search for origins, there is a Search for Origins Programme within the National Service for the Special Protection of Children and Adolescents (Mejor Niñez), through which the adoptee may have access to the background of his or her adoption process, to locate his or her family of origin and contact the latter, only when both parties agree to it.²⁶ The latest Technical Norm of the Search for Origins Sub-programme was approved in 2018 and details the search and access to origins procedure.
- According to scientific investigations, “the narratives of the participants show that, in spite of legislative changes, a series of barriers and contradictions continue to exist, which make it difficult to guarantee the right to know one’s origins. The legal and technical frameworks and practices analysed show how difficult it is to dismantle the “clean break” principle. They also highlight the persistence of the image of adoptees as “minors” who need the “protection” of their parents or professionals”.²⁷
- In the case of underage individuals (between the ages of 16 and 18), their adoptive parents – or guardian – will represent the adolescent in subsequent administrative and legal actions as part of this programme. Persons, who currently reside abroad, may initiate the various proceedings of this Sub-programme directly in their country of residence, with potential in-person or remote meetings, which will be led by the professional in charge of his or her case.²⁸



- It is worth mentioning that the legislation in force at the time of the adoption will have an impact on the process of search for origins: (a) the principle of secrecy of adoption governed procedures between 1964 and 1988; (b) the principle of reserve between 1988 and 1999, which means that the background of adoption procedures are kept by the Civil Registration and Identification Service and that the adoption finalised abroad preserved the identity of origin of the adoptee in Chile; and (c) the right of the adoptee to know his or her origins since Law No. 19.620 of 1990, meaning that information about him or her being an adoptee and about the circumstances of his or her adoption may be provided.²⁹

- A bill to reform the legislation on adoption is currently undergoing the last phase of parliamentary debates. The latest elements to have been debated intend to strengthen, in a cross-cutting manner, the right to identity in the legislation on adoption, in terms of communication of origins, reduction of the age for searches of origins to 14 years and post-adoption contact with significant persons for the child or adolescent, together with more participation of the child or adolescent during the adoption process.³⁰

Potential considerations:

- ✓ **Whilst recognising that the new Law No. 21.430 of 2022 strongly promotes the right to identity and to search and access one's origins, what is being undertaken to ensure its full implementation in practice through the search of origins programme?**
- ✓ **What is the progress made on ensuring that this specific right is duly incorporated into the legal reforms relating to adoption by ensuring that adoptees are being appropriately supported and may participate effectively in all adoption proceedings?**

5

Restoration of identity

In accordance with the new Law No. 21.430 of 2022, “when a child or adolescent is illegally deprived of some or all of the elements of his or her identity, appropriate assistance and protection will have to be provided with a view to restore it promptly” (Art. 26).

Irregular adoptions:

- In 2018, Chile started to investigate the irregular adoption of thousands of children, who were sent abroad. The Special Human Rights Judge, Mario Carroza, has been undertaking since January of that year, an extensive investigation into the abduction during the dictatorship period, although this has been expanded until 2000 due to new complaints and reports.³¹ As previously mentioned, there may be up to 20,000 registered cases under investigation. Furthermore, the media has drawn attention to this issue and several civil society organisations, which focus on past irregular or unethical adoptions, are playing an important role in drawing attention to these cases.³² The special commission mentioned above recommended the creation of a database of fingerprints, with participation of the Forensic Medical Service, which will have the mission to develop “a database of genetic fingerprints of persons having been adopted irregularly, which enables the parentage process”.³³ The implementation of this recommendation remains pending to date. Some receiving countries have also started similar processes, including Sweden.³⁴ This is an essential process to offer visibility to the violations of the right to identity of these persons and their potential restoration.

Statelessness:

- Prior to the publication of the change of criteria of the Department of Foreigners and Migration in the year 2014, the action to claim one's nationality on grounds of lack of knowledge before the Supreme Court was the legal tool resorted to to restore the right of children born in Chile. However, many children have not been able to have their right to nationality restored, as nobody submitted such a claim to nationality on their behalf: “between January 2008 and July 2013, only 13 cases claiming nationality were ruled on”. This is due to several reasons, such as a lack of information and counselling, as well as the fear to put the family group at risk before the authorities on grounds of incompliance with migratory rules when trying to legalise the children's situation.³⁵

- In this regard, it is worth mentioning that “whilst the change of criteria decided by the authority in 2014 is positive, the latter has not assumed its duty to redress the violation of the right that affected thousands of children, some of whom are not adults, and are already registered as children of foreigners with temporary stay due to the previous administrative interpretation”. It has been argued that, in most cases, these children have no bond with the nationality of another State, as the Chilean State did not take measures to ascertain whether these children had a right to another nationality, or whether, due to economic and geographical limitations, they could not access the nationality of their parents. In the context of the submission of claims for nationality, the Supreme Court requested reports to the involved State bodies (such as the Ministry of Foreign Affairs, the Ministry of the Interior and the National Directorate of the Civil Registration and Identification Service). In its response, the latter mentioned that it would proceed to correct the records of those persons involved in claims for nationality and to eliminate the mention of “child of foreigners with temporary stay”.³⁶ This is a promising initiative to restore the right to identity of these persons.

- The new legal framework is promising insofar as it addresses the right to identity of children born from parents with an irregular migratory status (Art. 26).

Potential considerations:

- ✓ **With regards to past irregular adoptions, what additional measures is the country planning to implement to ensure the restoration of the right to identity of victims?**
- ✓ **In terms of migration, what is the country planning to undertake to ensure that all children – and adults – whose identity was not fully respected due to the migratory status of their parents have elements of their identity restored, even when they have not submitted legal claims for nationality?**

¹ [Ley No. 21.430 sobre garantías y protección integral de los derechos de la niñez y adolescencia](#), enacted on 6 March 2022.

² UNICEF (2016). *Registro de nacimiento en América Latina y el Caribe : Cerrando la brecha*.

³ Centre of Excellence for Civil Registration and Vital Statistics (CRVS) Systems. [Country Profile: Chile](#), n.d.

⁴ *Ibid.*

⁵ *Ibid.*

⁶ *Ibid.*

⁷ Biblioteca del Congreso Nacional de Chile, [Guía legal sobre: Filiación](#), 2009.

⁸ SENAME (December 2019), [Política y procedimientos de SENAME para la gestión de casos de niños, niñas y adolescentes extranjeros](#). In *Revista Señales*, Year 12 / No. 21.

⁹ SENAME, [Objetivo Departamento de adopción](#), n.d.

¹⁰ Facultad de Ciencias Sociales de la Pontificia Universidad Católica de Chile, Centro de Estudios Justicia & Sociedad, COLUNGA, World Vision and UNICEF (September 2020), [Informe Final : Estudio exploratorio de caracterización de niños, niñas y adolescentes migrantes de América Latina y el Caribe y sus familias en Chile](#).

¹¹ Fuenzalida Fuenzalida, D. C. (2017), [Niños, niñas y adolescentes migrantes en Chile : Derecho y Justicia](#), Tesis para optar al grado de Magíster en Derecho de Familia, Infancia y Adolescencia, Universidad de Chile, Facultad de Derecho Escuela de Postgrado.

¹² *Ibid.*



¹³ *Ibid.*

¹⁴ [Decreto con Fuerza de Ley No. 1](#) que fija Texto refundido, coordinado y sistematizado del Código Civil, de la Ley No. 4.808 sobre Registro Civil, de la Ley No. 17.344 que autoriza cambio de nombres y apellidos, de la Ley No. 16.618 Ley de Menores, de la Ley No. 14.908 sobre abandono de familia y pago de pensiones alimenticias y de la Ley No. 16.271 de impuesto a las herencias, asignaciones y donaciones.

¹⁵ Cifuentes V., P. and Guerra, P. (September 2019), [Gestación por sustitución o maternidad subrogada. Chile y la legislación comparada](#), Biblioteca del Congreso Nacional de Chile, Asesoría Técnica Parlamentaria.

¹⁶ See: [Maternidad Subrogada](#), n.d.

¹⁷ *Supra* 8.

¹⁸ *Ibid.*

¹⁹ Fundación San Carlos de Maipo, [Libro de Vida](#), n.d.

²⁰ Observatorio de Derechos – Defensoría de la Niñez (2021), [Policy Brief No. 1 : Matrimonio adolescente en Chile: una realidad a erradicar](#).

²¹ Subsecretaría de Trabajo, [Chile sin Trabajo Infantil: Congreso aprueba Ley para proteger los derechos de los niños, niñas y adolescentes](#), 23 September 2020.

²² Gesteira, S., Salvo Agoglia, I., Villalta, C. and Alfaro, K. (2021). Child Appropriations and Irregular Adoptions: Activism for the “Right to Identity”, Justice, and Reparation in Argentina and Chile. In *Childhood*.

²³ *Ibid.*

²⁴ Sepúlveda, N., [Adopciones ilegales: 141 madres ya se han reencontrado con los hijos que les arrebataron al nacer](#), *Ciper*, 5 June 2019.

²⁵ Paz Campuzano, O., [Vientre de alquiler: caso de pareja de chilenos muestra un vacío legal](#), *El Comercio*, 3 September 2019 ; [Vittoria Vita](#), 2020.

²⁶ Servicio Nacional de Protección Especializada a la Niñez y Adolescencia, [Adopción](#), n.d.

²⁷ Salvo Agoglia, I. and Marre, D. (February 2020), [Children forever: The search for origins among Chilean adults who were adopted](#). In *Child and Family Social Work*, Vol. 25, Issue 1.

²⁸ SENAME, [Normativa técnica del Subprograma de Búsqueda de Orígenes](#), 2018 ; SENAME, [Programa Búsqueda de Orígenes](#), n.d.

²⁹ *Ibid.*

³⁰ Senado de la República de Chile, [Reforma al sistema de adopción: Comisión aprueba idea de legislar](#), 30 August 2021.

³¹ [Chile comienza a investigar miles de adopciones irregulares durante la dictadura de Pinochet](#), *France 24*, 28 June 2018.

³² Salvo Agoglia, I. and Alfaro Monsalve, K. (2019). “Irregular Adoptions” in Chile: New Political Narratives About The Right To Know One’s Origins. In *Children & Society* 33(3), 201-212 ; see also, e.g. Hijos y Madres del Silencio, Nos Buscamos, Chilean Adoptees Worldwide, etc.

³³ [Plan piloto busca agilizar la ubicación de víctimas de adopción ilegal en dictadura](#), *CNN Chile*, 11 January 2022.

³⁴ *Ibid.*

³⁵ *Supra* 11.

³⁶ *Ibid.*

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