# AMMENTU

## Bollettino Storico, Archivistico e Consolare del Mediterraneo (ABSAC)

# Sommario

# Child protection in Chile: towards a rights' perspective[1]

**Carolina MUÑOZ-GUZMÁN**
Pontificia Universidad Católica de Chile

**Abstract**
This article reviews main developments of Chilean social care services for children, with emphasis on the influences in Chile of the frameworks coming from developed countries. Especial attention is given to influences from American legal system, as well as European main developments of social protection. The analysis describe main changes through the time as well as main challenges brought by new emphasises in current Chilean social policy for children.
**Keywords**
Children's rights; family; social irregularity

**Resumen**
Este artículo revisa los principales hitos del desarrollo del sistema de protección a la infancia en Chile, enfatizando las influencias de perspectivas de países desarrollados. Especial atención es dada a las influencias del sistema legal Americano así como los principales desarrollos de la protección social de niños y niñas en Europa. El análisis describe los principales cambios en el tiempo en el sistema de protección así como los nuevos énfasis de la nueva política social Chilena para la infancia.
**Palabras clave**
Derechos de los niños; familia, irregularidad social

## 1. Introduction

This article reviews main developments of Chilean social care services for children, with emphasis on the influences in Chile of the frameworks coming from developed countries. The original inspirations for social policy for children in Chile were the ideologies and legal reforms in industrialised countries, in particular, the American Juvenile Court and Reformatory System, as well as similar trends in Europe, namely, a tutelary system with a strong role for the state, and an interest in protecting social order so that the social structure remains stable.

Today, the system of social care for children faces the discourse of children's rights, embraced in Chile from 1990 onwards by the new democratically elected government after the military dictatorship of General Augusto Pinochet. The same coalition of political parties governed the country for almost 20 years until the opposition won in 2009, and dominated policy definitions and public rhetoric. Yet its influence on services provided to children and families appears negligible when measured by direct observation[2].

The article presents, first, a contextual description of the country, to help the reader in understanding the historical and social context were social protection is studied; then the original frameworks guiding the development of the Chilean social care system is exposed, to describe then, the main components of the social policy for children, concluding with the challenges Chile faces today.

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[1] Artículo basado en investigación Fondecyt Número 1131128 JUICIO PROFESIONAL Y TOMA DE DECISIONES SOBRE FAMILIAS CON NECESIDADES COMPLEJAS.

[2] ANA MARÍA FARÍAS, *El difícil camino hacia la construcción del Niño como sujeto de derechos*, en «Revista de Derechos del Niño», 2, 2004.

## 2. Chile, the context of the policy for children

Chile is located in the Southern Cone of South America, bordering the South Pacific Ocean, South of Peru and West of Argentina. It has been commonly considered an archetype of privatisation and neoliberal economic and social policies as strategies for economic growth and social equity[3]. However, the neoliberal model of development has increased long-standing forms of social and economic stratification, negatively affecting the perception of economic and social security, equity and trust among Chilean[4][5]. According to Marcus[6] Chile's labour market is organised roughly in two segments: permanent, more skilled, and better paid employees, and temporary, less skilled and poorly paid workers. These differences underlie a persistence of inequity in access to social security and health insurance (services privatised in the 1980s) for a group of the population, since access is mediated by permanent and formal employment. The poorest segments in Chilean society, thus, are users of the lower cost and lower quality social services provided by the state.

Demographic data and information about governmental social spending is presented below with the aim of helping readers contextualise this research. The last census was carried out in Chile in 2012, but its final official results are not yet available. Official figures from the 2002 census indicate a population of 15,116,435 inhabitants, with a rate of population growth of 1.2 people for each hundred inhabitants (while in the 1982-1992 decade the average annual growth was 1.6). This figure puts Chile among of the countries with weakest population growth in Latin America, compared to a regional average for Latin America and the Caribbean of around 8 percent growth[7][8]. Most of the population (86%) lives in urban areas; a trend produced by population displacement as well as accelerated urbanisation. The population is greatly concentrated in the central region of the country, with 40% inhabiting the Metropolitan Region of the capital city, Santiago.

This high concentration reflects a tradition of strong centralisation: the main political and business decisions are made in Santiago. The neo-liberal economic model put in place since the late 1970s led to a concentration of production, investment, and consumption in the Metropolitan Region of Santiago, further pressing towards the demographic concentration of the metropolis. The "Assessment of Decentralisation Processes", commissioned by the Chilean government in 2000, pointed to political factors influencing the tendency to centralisation: the unitarian (as opposed to federal) form of the State favours national policies over regional variation. The regional authorities are designated by the central government, instead of being elected by universal suffrage within the region, and are primarily responsible for managing national programs and services in their jurisdictions, follow central government guidelines and instructions.

A second political factor buttressing centralisation is the presidential (as opposed to parliamentarian) character of the political regime. The president is elected directly by the electorate, to an office endowed with the executive power, and to legislative

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[3] BENNY CHARLES MARCUS, *Growth without equity: inequality, social citizenship, and the neoliberal model of development in Chile*, Dissertation Presented to the Faculty of the Graduate School of the University of Texas at Austin (United States) 2004, p. 337.

[4] Íbid.

[5] UNDP, *Desarrollo Humano en Chile. El poder: ¿Para qué y para quién?*, Programa de Naciones Unidas para el desarrollo, Santiago (Chile) 2004.

[6] MARCUS, *Growth without equity*, cit.

[7] INE, Censo 2002, Síntesis de resultados, INE, Santiago (Chile) 2003.

[8] PRB, *2011 World population data sheet*, PRB, Washington (United States) 2011; JEFFREY L. PRESSMAN, AARON WILDAVSKY, *Implementation*, University of California Press, California (United States) 1973.

functions that equal in importance those of Congress. Political parties and all national and highly centralised as well. From a legal point of view, the Chilean Constitution (1980) distinguishes between government and administration. Only the latter is legally susceptible of decentralisation.

Turning now to quality of life indices, measures of economic growth show large and sustained progress for the past 30 years, way above the Latin American average. The increase in the size of Chile's economy has helped reduce poverty. The estimation of the magnitude of poverty in Chile, as in most of Latin American countries, is based on identifying poor households whose income is lower than a certain poverty line. The poverty line is set at the monetary value of the goods and services needed to satisfy essential needs. In Chile, economic growth and social policy in the period from 1990 to 2009 reduced poverty from 38.6% of the population to 15.7%[9]. This figures put 2.5 million Chileans in situation of poverty, and over 600 thousand in extreme poverty.

Social indices generally show systematic advances: elementary education has almost universal coverage, high school reached in 2000 coverage of 90%, and access to higher education has increased steadily through time to current levels of close to 50% of the college-going age group. There is almost universal access to medical care during and after pregnancy[10]. Housing programs for medium and low income groups have almost eradicated shanty towns, and electricity, clean water, and sanitation are universal, increasing the living standards of most of the population during the last decades[11] and putting life expectancy at par with developed countries.

The advances in measures of quality of life are explained by a combination of economic growth, social policies and focalised assistance programs, and the reduction of the birth rate. Yet households under the line of poverty remain a concern for social policy.

According to UNICEF[12], by 2003 poverty and extreme poverty affected children and adolescents more than the rest of the Chilean population by 43% and 55%, respectively. Poverty and extreme poverty were higher among households headed by women, a fraction of households that has been in the rise in the last decade, reaching now almost one-third of all homes.

Children are especially affected by a territorial concentration of poverty, based on large economic disparities across the regions of the country[13].

Income distribution in Chile is among the most unequal in the world and has not much changed since 1990. The Gini coefficient was 0.58 in 1990 and 0.57 in 2003, placing Chile among the ten most unequal countries of planet[14]. Similarly, inequality in the share of a country's wealth captured by the richest quintile relative to the poorest quintile (Index 20/20) is practically unchanged: it was 14 times in 1990 and 14.3 times in 2003.

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[9] UNDP, *Informe Desarrollo Humano. La manera de hacer las cosas*, Programa de Naciones Unidas para el desarrollo, Santiago (Chile) 2010.

[10] Dagmar Raczynski, *Chile: Progress, Problems, and Prospects*, in Daniel A. Morales-Gomez, Necla Tschirgi and Jennifer L. Moher, *Reforming Social Policy. Changing perspectives on Sustainable Human Development*, International Development Research Center, Ottawa (Canada) 2000, pp. 45-82.

[11] Íbid.

[12] UNICEF, *Desinternación en Chile. Algunas Lecciones Aprendidas* (Series reflexiones: Infancia y Adolescencia, N° 4), Chile 2005.

[13] Íbid.

[14] Íbid.

To mitigate these acute social inequalities, in the past decades governments have increased social spending, from 12.6% of GDP in 1990 to 14.7% of GDP in 2003[15]. Additionally, there has been an effort to improve the targeting of such spending, to make it an effective tool of wealth redistribution.

The structure and organisation of Chilean families has also undergone major transformations. According to 2002 population census, the number of households increased by 26% between 1992 and 2002 and their average size was reduced from 4 to 3.6 people. In 2002, although the most common familial organisation was still the nuclear two-parent household with children, this configuration represents only 38.1% of households. In the decade covered by the 2002 census households without children increased by 20.9%, and single-parent households with children, by 9.7%. Thus, in 2002 approximately 1 in 6 children under the age of six was living in a single parent home. Marriages have decreased from 67% of households in 1992 to 58% in 2002, whilst unmarried cohabitation has increased from 6% to 10% in the same period. In 2002, 1 out of 3 children under the age of six was living in a household whose head of household was not married (in 1992, it was 1 in 4). Half of children are born outside a marriage relationship.

In sum, the Chilean population has benefited from modernisation, as attested by the country's age structure, improvements of social indices, and several socio-demographics changes produced by increases in schooling, female labour, and changes in family conformations, among others. We have also seen that poverty in Chilean families is rooted in structural, unequal social factors, so that even though their quality of life has improved, there remains the challenge of transforming the life conditions of the poorest families. Advances in improving the living conditions of these groups require not only the design of good policy ideas, but also the successful implementation of those ideas. The following section describes major models of policy implementation, analyses their contributions and their weakness, and finally offers a comprehensive model of implementation including the main dimensions that any process of policy implementation should consider in order to improve its chances of success. The model constitutes a guide for the analysis of the implementation of a rights-based approach in Chilean policy for children.

## 3. Original frameworks of social care for children in Chile 1928-1970

In the third decade of the twentieth century a special legal status for children emerged in Chile. This early stage of development reflects what had happened in developed countries during the late nineteenth century. There, as summarised by Donzelot[16], the state could not intervene inside the family without the authorisation of the parents, because the privacy and autonomy of families was sacrosanct. Pinchbeck and Hewitt[17] (1969) point out that in England the statutory protection of children only becomes a subject of serious concern in the nineteenth century. During most of that century child labour existed under harsh conditions, education was rudimentary, there was no specific statutory protection against cruelty by adults (until 1889) and child criminals over the age of seven still tended to be treated in a similar way as adult offenders.

European laws at the time, particularly the French Civil Code, were framed in a manner that was echoed in Chile. Before 1928, Chile did not have legislation

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[15] Íbid.
[16] Jacques Donzelot, *La policia de las familias*, Pre-textos, Valencia (España) 1979.
[17] Ivy Pinchbeck, & Margaret Hewitt, *Children in English Society*, Vol. I, *From Tudor Times to the Eighteenth Century*, "Study in Social History", 1989.

especially aimed at children. In this period, childhood was considered an exceptional state in relation to the only status that was relevant: that of adulthood. Hence, the legal status of children in Chile carried the early European conception of children as lacking legal status, subject to their father under all circumstances, and, most important of all, lacking a statutory protection system.

Chilean social services for children find their first milestone in 1928, with the passing of the first "Ley de Menores" (Law on Minors, henceforth LM), which created a special legal status for children. Its main impact was on the social and judicial practices around child-related issues, as a consequence of the creation of a Court of Minors, where the government, through the Court, acted as a surrogate father, when the family father was missing, or was deemed unfit. Thus, the Court received the ultimate power to decide about a child's future[18].

The new Law was mainly concerned with "social deviation", i.e. children who were outside the social norm: beggars, children affected by sexual exploitation, abandoned children, delinquents, drug users, the mentally ill, or children from families with social problems. These conditions or behaviours were named "situations of moral or material risk" or "irregular situations", under the framework of what is called in most of the Latin American countries the "Doctrine of Social Irregularity"[19].

This doctrine is heir to the Special Judicial and Correctional System implemented in United States. This system consisted of special courts created to adjudicate on the legal status of children and adolescents, under the notion of "parent patrie", which allowed a court to decide under its authority about junior citizens in trouble[20]. Equal legal treatment was given to young offenders and neglected children[21]. This reform was heavily influenced by the child-saving movement, which promoted the idea that criminals were conditioned by heritage and precarious living conditions[22]. Thus the American new system was characterised, first, by decreasing parental authority, especially among the working class, in order to adjust the behaviours of children and families to what was considered normal and moral, and second, by a criminal justice perspective that formalised the status of children as disenfranchised dependents of others[23]. One consequence of this doctrine is that due process guarantees in a criminal procedure were not recognised to children under the argument that juvenile proceedings were not criminal in nature, but defined by statute as civil-law[24].

Donzelot records similar trends in France at the end of the eighteenth century. Philanthropic French societies (akin to the Child Savers movement) influenced legal transformations to intervene in "families in risk". These societies faced barriers –based on parental authority—to intervene in families, until their lobby helped pass legislation in 1889, 1898, and 1912, to expedite the lockstep cession of dominion from the "morally deficient" family to the community of philanthropic actors[25]. In general, these laws postulated a causal link between incompetent families and problematic youth, the consequence of which was the withdrawal of family authority.

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[18] Congreso de Chile, *Informe de la comisión de Constitución, Legislación, Justicia y Reglamento*, sobre Boletín 3.792-07. (10), año 2005.

[19] Íbid.

[20] Anthony Platt, *The Child Saver. The Invention of delinquency*, The University of Chicago Press, Chicago (United States) 1969.

[21] Joel Handler, *The Juvenile Court and the Adversary System: Problems of Function and Form*, in «Wisconsin Law Review», 56 (5), 1965, pp. 7-51.

[22] Platt, *The Child Saver*, cit.

[23] Íbid.

[24] Íbid.

[25] Donzelot, *La policia de las familias*, cit.

Analogous legal arrangements for children occurred in England through the Act of 1908, which created juvenile courts. This reform in the judicial system for children was heralded at the time as pioneering in the field: the new courts were concerned more with treatment and rehabilitation, than with control and punishment, and imprisonment for children and young people was abolished[26]. With the Children and Young Persons Act of 1933 a step was taken to overcome the distinction between Industrial Schools for neglected children, and Reformatories for young offenders. From these changes followed a loosening of the distinction between children who were viewed as "depraved", because they were being anti-social by choice, and those who were viewed as deprived, innocent victims of social ills[27].

One can track the repercussions of all these developments in the process of elaboration of the LM in Chile. Like in the United States, England, and France, all the strategies implemented under the LM were applied to children and adolescents who either had been neglected or were law offenders. The fusing of services for neglected children and young offenders under the same system introduced a sort of criminalisation of poverty and marginalisation. The next section describes in detail the actions implemented in Chile.

## 4. Main developments in social care for children in Chile: 1970-1990

The development of a framework for social care for childhood has been a long process in Chilean social policy. Children have not had a public space as social actors with fundamental rights assured by the state, as free and equal citizens. What happened, instead, is that throughout the twentieth century children appeared as a specific category of public policy only as part of problems in the private familial space, such as physical or sexual abuse, issues previously invisible to public policy, which later became social problems demanding state intervention"[28].

Children were defined by the state as *objects of intervention*. State responsibility to children was activated only in the presence of social risk. Since social risk indices have been generally associated with precarious social contexts, the intersection between state and childhood involved children of the lower social classes. This explains why in Chile the social concern for children is focused on children in poverty. Thus, the objective of public action has been not to guarantee their rights, but to improve their social condition.

The system serving children in Chile up to 1990 was a tutelary one, as organised originally by Act 4.447, LM, in 1928, which aimed to deal with infractions of the law, abandonment, need for protection and, generally, "irregular social situations" affecting children[29]. This system was reinforced by Act 16.618 of 1967, which focused on irregular family relationships and children's behaviour. During this period, children and families facing social problems were understood in terms of this notion of social irregularity.

The concept of "irregular" families and children, as Donzelot[30] explains, was convenient because although not strictly medical, it did suggest a deficit of

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[26] CAROL HAYDEN, JIM GODDARD, SARA GORIN & NIKI VAN DER SPEK, *State Child Care Looking after Children?*, Jessica Kingsley Publisher, Portsmouth (UK) 1999.

[27] Íbid.

[28] FRANCISCO PILOTTI, *Globalización y Convención sobre los Derechos del NIño: El contexto del texto*, Organización de los Estados Americanos, Washington (DC) 2000.

[29] CRISTÓBAL TELLO, *Sistema Chile Solidario: ¿una oportunidad para constituir un nuevo actor estratégico de las políticas públicas en Chile?*, en «Revista de los Derechos del Niño», N° 2, 2003, pp. 9-52.

[30] DONZELOT, *La policia de las familias*, cit.

socialisation, with moral connotations. Of course, all of this required an idea of the "regular", which coincided with the characteristics of middle class families. The irregular, then, would be the pattern of behaviour of poor families and children.

Together with this labelling of some children and their families as deviant, there was a reformulation of the role of the state, which incorporated a protective *parens patriae* responsibility to children, in the place of parents, as it were[31], whereby the state has a duty to supervise the discharge of parental responsibilities and other tasks associated with the satisfaction of basic needs of children.

This vigilant role over children's lives derived from social control practices exerted upon children and their families, justified by the families' alleged failure to properly raise their children. From this followed the policy of separating children from their families, and segregating them for long periods in out-of-home care institutions, which were to act as substitute parents.

The medical model underlying the understanding of these social processes, typical of early twentieth century social intervention, led to a classification of parental roles as dysfunctional when they affected the system, legitimating state intervention and affecting families' self-perception.

Chile's evolution is not unlike that of England at roughly the same time. Hayden *et al.*[32] recount that around the 1960s the responsibility of the English government was asserted for dealing with child care problems. The conception of the problem was focused more on social deprivation than on psychological factors. The same broad analysis, emphasising the influence of various forms of deprivation, was evident in the 1969 Children and Young Persons Act. Hayden et al.[33] remark that

the most significant –and contentious— feature of this Act was the replacement of the specific sentencing powers of magistrates with the power of the issue of Care Order, placing the child in the care of a local authority, who was then to provide the most appropriate (that is, beneficial for the child) placement. In a direct, practical sense, this was an attempt to funnel young offenders away from the juvenile justice system and into the child care system[34].

The previous description constitutes the ideological basis for a state paternalistic perspective in children services. Between 1949 and 1970 the number of children in care had risen from 55,000 to 100,000[35]. During the 1970s a shift occurred in England, away from "permanency" in children services, towards reuniting children with their families, or the arrangement closest to that[36]. The 1975 Children Act is a milestone in this evolution, which gave greater roles to local authorities, foster parents, and adoption[37]. The sole focus on welfare began to be complemented with an acknowledgment of rights[38]. But still, under the paternalistic perspective, the overarching right was the child's right to suitable development and protection, not self-determination[39].

The consequences of institutionalised views of children and families as deviant were particularly acute in Chile between 1973 and 1990, a period characterised by an

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[31] Pilotti, *Globalización y Convención*, cit.
[32] Hayden, Goddard, Gorin & Van Der Spek, *State Child Care*, cit.
[33] Ibíd.
[34] Ibíd.
[35] Ibíd.
[36] Ibíd.
[37] Lorraine Fox Harding, *Perspectives in Child Care Policy*, Longman Group, London (UK) 1997.
[38] Hayden, Goddard, Gorin & Van Der Spek, *State Child Care*, cit.
[39] Fox Harding, *Perspectives in Child Care Policy*, cit.

authoritarian government and its systematic violation of human rights. The National Service for Minors (SENAME) was established early in this period (1979), with the mission of stimulating, guiding, co-ordinating and technically supervising public and private institutions sharing its objectives[40].

SENAME was to carry on with the work done until then by a National Council of Minors, and to transfer some of its programmes to private organisations. SENAME was created as public service under the authority of the Ministry of Justice. Both SENAME and its predecessor organisation worked under the sway of the Doctrine of Social Irregularity, and saw their role as one of providing assistance to children by taking charge of them in substitution of the natural family, when that family was deemed dysfunctional for their developmental process[41].

The model implemented by SENAME had characteristics that, later on, would affect the context for the reforms introduced by the democratic governments[42]. Specifically, these features are a) the ample powers given to Minors Tutelary Judges, b) jurisdiction over issues ranging from social protection to juvenile law infractions under the same social service, and c) outsourcing of some social care programmes to the private sector through agencies appointed as collaborative organisms.

These characteristics, reminiscent of the history of child care services in the industrialised world[43], form the basic constitutive elements of the Doctrine of Social Irregularity. Under a functionalistic model, with the influence of the paternalistic perspective, state services defined some children's environments as poor and inadequate, and marked some social and familial configurations as risky. One of the main characteristic of this period was the increasing numbers of children living in residential care.

At the end of the 1980s, SENAME had increased its coverage of children in care by 55% compared to 1970. By the end of the 1990s, 45.1% of the children in SENAME's care were in residential care[44]. This large proportion was in part a result of a perverse incentive carried by the funding mechanism for private agencies collaborating with SENAME, which paid four times as much for a child living in residential care than for home based or agency based services. Not surprisingly, a 1989 evaluation carried out by SENAME found that 40% of the children living in out-of-home care services did not need such services, that more than the 20% had been institutionalised for more than 5 years, and that close to 40% stayed for more than a year, developing institutional patterns of replacement of the parental role[45].

We can see Chile following in the steps of twentieth century child welfare policy in developed countries: beneficent state action to protect children's welfare, courts and social workers as key decision makers on what would be best for the child, disregard of likely negative effects of state surveillance and intervention in child rearing, compared

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[40] MIDEPLAN (Ministerio de Planificación y Cooperación), *Diagnóstico sobre el Sistema de Protección Simple del SENAME*, Gobierno de Chile, Santiago (Chile) 1997.

[41] SENAME, *Efectos de los Programas del SENAME en la integraciòn de niños y niñas*, Santiago (Chile): Gobierno de Chile, 2005.

[42] TELLO, *Sistema Chile Solidario*, cit.

[43] DONZELOT, *La policia de las familias*, cit.

[44] MIDEPLAN (Ministerio de Planificación y Cooperación), *Diagnóstico sobre el Sistema de Protección Simple del SENAME*, Gobierno de Chile, Santiago (Chile) 1989, p. 19.

[45] CONSUELO CONTRERAS, *El Sistema de Protección a los derechos de los Niños, Niñas y Adolescentes. Las Oficinas de Protección de Derechos: Un servicio del Nivel Local*, en «Revista de los Derechos del Niño», *(Programa de derechos del niño Centro de Investigacion Juridicas de la Universidad Diego Portales)*, N° 2, 2003.

to the benefits of "saving" children in distress by transferring them to better homes[46][47].

Political changes in Chilean society, following the recovery of democracy in 1990, created an opportunity for renovation of this longstanding framework. The new aims of social care for children were framed under international agreements and more elaborated technical approaches to social policy. These are reviewed next.

## 5. Current Chilean Social Policy for Children

After Chile signed the United Nations Convention on the Rights of the Child (UNCRC) in 1990, a new policy for children was developed. I describe in this section the core principles of the new Chilean social policy for children, the legal structure sustaining this policy, and the policy guidelines for the services[48], all of which will serve as a basis for me to develop a framework for assessment, which will be precisely defined for each of the programmes being studied in this research: the Local Rights Protection Office and the Juvenile Imprisonment Services.

This effort is quite unique in the analysis of Chilean social policy in general, let alone in the field of social policy for children. In part this is an effect of the insufficient follow-up and evaluation of new laws, through targets and objective metrics of achievement. To compensate for this deficit, I shall use international instruments to develop a frame for assessment, which will base my detection of obstacles and facilitators in the implementation of a rights perspective in social policy for children in Chile.

### Core Principles

In the course of the late twentieth century society underwent a deep process of legalisation and recognition of children's rights, whose landmark was the ratification of the United Nations Convention on the Rights of the Child (UNCRC) in 1989, by the United Nations General Assembly. The UNCRC reflects the most progressive and universal approach to the guarantee and protection of human rights, through the adoption of legal instruments that benefit from representative power and universal consensus.

We have seen that Chile endured 17 years of dictatorship, after which roles and ideas about social actors were transformed under the principles of citizenship and human rights. This process included an ample debate about the conception Chileans had about children and the services provided for neglected children and young offenders. After Chile subscribed in 1990 the UNCRC, the reform of national child care began[49].

The reform entailed a departure from the prior perspectives framing children services towards promotional ones, where children's rights as human beings are at the core of children development, and where a rights perspective becomes the framework for social services for children. Children are thus seen today as bearers of multiple needs and potentials, able to participate and contribute to solving their own problems, according to their development stage (National Policy for Children and

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[46] Fox Harding, *Perspectives in Child Care Policy*, cit.

[47] Michael Freeman, *The rigths and wrong of children*, Frances Printer, London 1983.

[48] Neal Ryan, *A comparison of three approaches to programme Implementation International*, in «Journal of public sector management», 9 (4), 1996, pp. 34-41.

[49] This reform took notice of similar developments elsewhere: the *Estatuto del Niño y Adolescente del Brasil* (Law N° 8.069, 1990); the *Ley Orgánica para la Protección del Niño y del Adolescente de Venezuela* (1998), and, at later stages, the Ley Orgánica de Protección Jurídica del Menor from Spain, 1996.

Adolescents 2000). The rights perspective underpinning the new paradigm proposes a new conception of childhood, and its relations with family, society and state, leaving behind the predominant idea of a child defined on the basis of his or her needs.

Abramovich[50] has noted that once the rights perspective is adopted in public policies, the starting point is no longer the existence of social sectors with unmet needs, but the existence of people who are rights holders, who can claim those rights, and are entitled to enforceable obligations onto third parties, through the corresponding guarantee mechanisms. This brings a change in the relationship between state –or social services providers—and the policy's beneficiaries, who now hold a quantum of power to equilibrate the previous scenario of disparity. To make this effective –the direct relation between a right, its obligation, and a guarantee—there is a need of monitoring mechanisms to ensure government accountability.

The new policy perspective considers that children must count with an integral and special protection system, configuring a new kind of social relation and culture that recognises, values, and promotes children's rights. This requires a stronger support of families so that they can fulfil their protective role, and the regulation of the mechanisms used by the state when facing neglected rights of children. It also defines a role for the community, which should strengthen a culture of rights (National Policy for Children and Adolescents 2000).

The Chilean reform shares with the experience of the UK in the 1980s the centrality of the family as a foundation of social policy for children. The British "pro birth family view" defended the rights of the birth parents and the birth family, emphasising the importance for both children and their parents of maintaining the family as a goal of social policy and intervention[51].

Under this framework, family is seen as the best provider of care for children, even when in need of external support, while the role of the state is defined as *preventing children from entering state care* through monitoring and supportive intervention, rather than coercive, punitive or intrusive ones[52].

These common understandings between the Chilean reform and its precedents elsewhere lie not only in the roles of family and state in children's care, but also in the causal theories underlying families' deprivation. Explanations about how families com to need external support are far from based on cause-effect rationalities, like those prevailing in the former perspectives. Poor parenting is seen as a consequence of environmental conditions such as unemployment, single parenthood, social disadvantage, deprived neighbourhood, among others, all of which influences parenting behaviour and child rearing methods. In sum, multi-causal conditions are make families unable to meet the essential norms for child care expected by society[53]. Further, with the children's rights and child liberation perspective, the Chilean policy shares the idea that children should have participation in defining what happens to them[54], but Chile's stance would still defer to the adult's viewpoint over what is best for the child.

In sum, the Chilean reform rests on three core principles enfolding the already discussed conceptualisation of childhood: children's centrality, family as main

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[50] Victor Abramovich, *Una aproximación al enfoque de derechos en las estrategias y políticas de desarrollo*, en «Revista CEPAL», (88), 2006, pp. 33-50.

[51] Fox Harding, *Perspectives in Child Care Policy*, cit.

[52] Ibíd.

[53] Robert Holman, *Putting families first: prevention and child care: a study of prevention by statutory and voluntary agencies*, Macmillan Education, London (UK) 1988.

[54] Fox Harding, *Perspectives in Child Care Policy*, cit.

responsible in children's care, and a support role of state and community in ensuring children's (and families') rights. These principles imply a new configuration of children's world: the children themselves go from being seen as "objects" of interventions to rights holders, in a position of centrality, protected by the principles of non-discrimination and the gender perspective[55]. Children's families are defined as the most important and natural group for children's upbringing, so that social services must strive for the child and family to stay together or reunify, or, when appropriate, find support in other close family members. Regarding the role of state and social services, states should grant support for families, respecting always the child's view, but considering his/her developmental stage and the access of information he/she has. Interventions should take place only when the family, even with suitable backing, is unable to care for its children by itself. In this case, alternative care ought to be provided by authorities at the local level, or by duly authorised organisations of civil society. Finally, the role of communities is defining and achieving rights-based environments[56].

## 6. Conclusions

From what has been presented until now, it follows that a new discourse has been put in place for state intervention over the Chilean family, and that changes have been made in the design of social programmes to protect and reintegrate children to society. It seems that, after a system meant to keep children in need separated from society, the government has set forth a kind of revolution in the understanding and serving of children whose rights have been affected.

Policy implementation requires that Chilean society be permeated by the new perspective, which can be difficult when there is a long history of seeing children in need as "minors" and irregular people that only need to be disciplined and normalised towards middle class standards of behaviour[57].

Ensuring advances in the new policy for children depends on having a formal framework for assessment: failures in policy evaluation in Chile usually stem from a deficient design of policies. This is a core challenge to be successful in achieving the goals of the new policy.

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[55] UN, *Guidelines for alternative care of children*, 2009.
[56] Ibíd.
[57] EMILIO GARCIA MENDEZ, *Derecho de la infancia-adolescencia en América Latina: de la situación irregular a la protección integral*, Forum Pacis, Bogotá (Colombia) 1997.