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Migration Policy and Development in Chile

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Abstract

Current and prospective migration law and policy in Chile does not adequately incorporate the causes, content, and consequences of international migration to and from Chile. We describe and examine migration in-flows, out-flows, and migration-related policies and how those policies drive, and are driven by, notions of development in Chile. We explore contradictions in Chilean nascent migration policy currently under legislative review. We argue that it is imperative that migration, migration policy, and their relationship to development be discussed inclusively and transparently and be explicitly incorporated into the Chilean government's nascent migration and development legal policies and frameworks.

Migration Policy and Development in Chile

Introduction

The migration/development nexus revolves around the impacts that migration has in both the countries of origin and destination (Mullan and Doña-Reveco, 2012). Conventionally, international migration occurs as a result of development imbalance between ‘rich’ and ‘poor’ countries and development assisting migrant remittances benefit sending areas while “brain gain” benefits receiving countries (Sorensen & Van Hear, 2003). These conventions apply mostly to migration flows from the ‘underdeveloped’ South to the ‘developed’ North. The migration and development nexus within southern middle- to high-income countries is much less studied and poorly understood (Gould, 2009; Sanderson, 2010).

Chile, recently transitioned to a high-income country, is also transitioning from a migrant sending country to a migrant-receiving nation. Official migration- and development-related policies are roiled by ideological tensions and contradictions arising between development and security concerns on the one hand and Chile’s new role as simultaneously a migrant-sending and a migrant-receiving nation on the other. In this article we explore and describe these tensions and contradictions and we analyse current attempts to develop formal migration laws and policies in Chile.

Beginning in the early 1990s, economic growth, political stability, and perceived social safety led to increased immigration in Chile. Early in the decade this immigration consisted of children and foreign spouses of former exiles who were considered foreigners both of extant citizenship laws and because they were born abroad were considered foreigners. Subsequently, in the second half of the decade, especially in the capital

Santiago, a growing number of Peruvian immigrants increased the previously small Peruvian community originally formed by Fujimori era refugees and older high-income Peruvian immigrants. While this migration was new in Santiago, it was an established trend in the north of the country where decades of cultural and socioeconomic integration have produced multiple-nation migratory exchanges since before the establishment of the South American nation-states (Pellegrino, 1995; Cano Christiny, et al. 2009).

The new millennium saw new migration to Chile mostly from Latin America, but increasingly also from Asia and Africa (Martínez, 2003). To date the state has not reacted proactively to this migration. Chile's current migration policy lacks coherence and is fundamentally based on a set of migration administrative laws created within a completely different historical context established during Pinochet's dictatorship (1973-1990). While the Chilean state has implemented important administrative policies and actions, such as equal access to public health and public education for immigrants and their children regardless of migratory status (Gobierno de Chile, 2008; Agar Corbinos, 2010), immigrants still encounter discrimination and difficulties preventing them from full and active participation in Chilean society. Survey data from 2007 showed Chile to be the third-most adverse country to the arrival of immigrants in Latin America (Corporación LatinoBarómetro, 2008). While receiving unprecedented immigration flows, the largest since the late nineteenth century, Chilean emigration *stock* continues to be larger than its immigration *stock*.¹ Since the return of democracy in 1990, despite Chilean state efforts to develop connections with Chileans living abroad, the country does not have a comprehensive policy to deal with its "diaspora."

Like most law in Chile, migration laws are designed by the executive branch of the government and sent to the bicameral Congress for discussion, modification, and approval.

Since the return to democracy in 1991, different executives have developed migration laws in 1993, 2002, and 2013. After almost three years of discussion, the law of 1993 was shelved. The draft of the 2002 law was never sent to Congress, although some of its components became the source for the *Instructivo Presidencial No. 9*, a policy definition document but not in any way legally binding (Gobierno de Chile, 2008). The draft of the 2013 law was prepared in very different political and social contexts. It was prepared under a centre-right government and, unlike the 1993 and 2002 attempts, it was drafted in an era when migration was significant both numerically and, as important, as part of the national consciousness. Moreover, in 1993 Chile was emerging from 17 years of dictatorship, and in 2002 the country was recuperating from the most severe economic crisis since 1982, whereas the 2013 law was prepared when Chile was growing economically, and unemployment was low even though charges of social inequalities in education, access to health, and other social services were still being levied against the government. As of very late 2013, the draft migration legislation has neither been approved, nor been thoroughly discussed by Congress. While we acknowledge that this nascent migration legislation may change during current congressional discussions or may even be shelved (unlikely), we posit that exploring, describing, and explaining this legislative draft in its current form permits us to dissect its ideological underpinnings and its relationship to and impact on migration flows and development.

Using the latest available draft of the future Chilean migration policy (República de Chile. Cámara de Diputados, 2013a: 155-204), we review changes in Chilean international migration trends, patterns, and associated policies since the early 1990s. We discuss how proposed new migration policies relate to Chilean concepts of development, emphasizing policy contradictions arising from a state-centred view of migrants as both the object and

subject of human rights and security concerns. Following Mármora (2002), we conclude with a call for Chilean policymakers and state officials to discuss migration policy more openly and transparently and to disseminate priorities, rationale, recommendations, and results widely.

Migration policies and contemporary migration patterns in Chile

By the early twentieth-first century there were more foreign-born people in Chile than during any previous historical period. At only 2.1 per cent, however, the proportion of foreign-born among the total population in 2009 was lower than in other historical periods. Even at its highest, in 1907, only 4.1 per cent of the Chilean population was born abroad; a much smaller proportion compared to the 30 per cent foreign born residing in Argentina at about the same time (Benencia, 2012). Comparatively globally and cross-nationally, the current percentage of foreign born in Chile is also lower than the world average (3%), lower than that of other countries such as the United States (12%), and is extremely small when compared to the over 90 per cent of countries such as United Arab Emirates (Cano Christiny, 2010; Gobierno de Chile, 2012). Media reports emphasize the seeming ubiquity of the foreign born population in Chile, especially in a country not accustomed to significant foreign-born populations. This apparent ubiquity has given rise to public reaction, especially in the printed press, that ranges from negative commentary on the “waves” of migrants coming to the country, on overt cases of discrimination against the foreign born, and on the formation of groups to “defend” Chilean culture against invasions from other countries (Cano Christy et al. 2009; Doña-Reveco and Levinson, 2012).

International migration flows changed after 1990. After 40 years of continuous decrease, the 1982 census had recorded the lowest percentage ever of foreign-born in Chile (0.75%), attributable to the mortality of older European migrants and the appeal of

Argentina and other Latin American nations (Doña-Reveco and Levinson, 2012). However, after 1992 the foreign-born population grew by over one third and by 2002 Chile had the largest absolute number of foreign-born ever recorded. According to the estimates of the *Departamento de Extranjería y Migración* (colloquially known as *Extranjería*), by 2009 this population almost doubled again, growing 91% in seven years (see table 1 and Doña-Reveco and Levinson, 2012).² Most of this growth came from immigrants to Chile from Latin American countries.

INSERT TABLE 1 ABOUT HERE

The immigrant population has continued to grow apace during the last three years. Data from the *Permanencias Definitivas* (Residence Permits, equivalent to United States Green Cards) show 70% to 75% of newcomers are from neighbouring Argentina, Peru, and Bolivia, plus others from Colombia and Ecuador. All in all, 90% of those granted residence permits are from only 14 countries; all of the South American nations, the United States, Spain, Cuba, Mexico, and China. Unlike “immigrants” with other types of visas, resident visa holders are immigrants committed to living in Chile for more than two years. According to *Extranjería*, the number of resident permits issued increased by 45% between 2011 and 2012, fuelled by the growth in the Peruvian, Bolivian, and Colombian communities. Apart from immigrants from the Americas, Spain contributes most to immigrant growth between 2011 and 2012; easily explained by the economic crisis in Spain (El Mercurio 2012c; 2013).

INSERT TABLE 2 ABOUT HERE

The Chilean state has responded to these recent migration flows and associated public concern with interest and a determination to discuss the development and implementation of a migration policy. Specifically, the state developed in 2002, through the *Extranjería*, a

document specifying the intentions that the state had with regards to immigration. The last time the state designed a migration policy was in the 1950s (Vodanovic, 1985) and what has guided state actions and “policy” on migration in the last thirty years have been two decree-laws enacted during Pinochet’s dictatorship that really simply define the acts of *Extranjería* and does not really constitute a formal migration policy.

The document constructed by *Extranjería* and the Government was, for the time of its publication, fairly advanced. At its core was the principle of the protection of the Human Rights of migrants, which in turn led Chile to ratify the United Nations’ International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families in 2005.³ A framework of sorts was proposed to manage migration flows in order to improve “governability” and control over migrants. It also introduced the idea of immigrant incorporation, respecting the immigrants’ culture of origin and not forcing the immigrants to acculturate to Chilean culture. Although never formally legislatively implemented, some components—in particular those not requiring parliamentary approval—have been applied with mixed results by different agencies of the Chilean state. These components were brought together in the *Instructivo Presidencial No. 9* defining the Chilean state’s involvement in migration across four axes centred on respect and protection of human rights: Chile as a welcoming country, immigrant integration, international agreements on migration themes, and regulation and administration of migration flows (Gobierno de Chile, 2008). This policy “proto-document” also included a set of “good practices” that the State committed to follow in its relationship with migrants regardless of their migratory status: to provide equal access in the public system to health, education, housing and crime protection.⁴ This reaffirmed the participation of Chile in the South American Conference on Migration⁵ and the Ibero-American Forum on Migration and

Development.⁶ These two regional consultative bodies/processes have as their objective the airing and discussion of informal and non-binding dialogue on international migration.

Compared with the increase in immigration to Chile and its emergence as a topic of public debate and interest, Chilean communities abroad—proportionally and numerically more relevant than immigration to Chile—received scant coverage in the media or in official public policy statements. According to most recent estimates, in 2005 more than 850,000 Chileans lived abroad; about half of them in Argentina (Chile. MINREL. DICOEX, 2005). Other relevant receiving countries are the US (110,000), Sweden (42,000), Canada (37,000) and Australia (33,000). Beside those living in Argentina, there are about 100,000 Chileans living throughout South America. Grouping the foreign-born together, these Chileans would constitute the sixth most populous region out of the fifteen internal regions of Chile (Chile. MINREL. DICOEX, 2005). A significant number of these emigrants are former exiles from Pinochet’s dictatorship. Although it is difficult to definitively estimate the number of Pinochet-era exiles, the most accepted estimates range between 300,000 and 500,000 (Norambuena, 2000). Similarly, there are no good estimates of the number of exiles who did not return to Chile after the restoration of democracy in 1990. The best estimates are that less than half of the total number of exiles had returned by the mid-1990s (Wright and Oñate, 2007). After 1990 Chilean emigration continued and indeed increased. Currently, it is composed mostly of business people who have achieved success with the still current economic model, developed during Pinochet’s dictatorship, economically displaced workers (due to the same economic model), and young professionals who have left the country to continue their studies and who often stay in the country of reception after completing their studies (Doña-Reveco, 2011; Doña-Reveco and Levinson, 2012).

INSERT TABLE 3 ABOUT HERE

The Chilean state has developed several initiatives with regards to emigration in the last twenty years, but even taken together they do not constitute an emigration policy. First, Chile has signed and ratified more than 23 social security agreements with countries that send and that received emigrants to and from Chile (Gobierno de Chile, 2012). Second, like other Latin American nations, in the mid-1990s Chile formed the *Dirección para las Comunidades Chilenas en el Exterior* (DICOEX: Department for the Chilean Communities Abroad). This department, part of the Ministry of Foreign Affairs, seeks as its main objective to establish and maintain connections between the Chilean state and its emigrants. Third, in 2002 and 2003 the Chilean state organized a “census” of Chileans abroad in order to establish the minimum number of Chileans living in other countries and to gather statistical information on their socio-demographic characteristics. Fourth, an important change in the constitution went into effect in 2005 regarding nationality law. This addendum eliminated the requirement of residence in Chile for a year for the Chilean born abroad in order to be eligible to obtain nationality; representing a change from a *jus solis* to a *jus sanguinis* policy. Also it eliminated the requirement to relinquish Chilean nationality in cases where a Chilean had obtained another nationality. There are still some citizenship rights that require living in the country, for example running for political office. Finally, during the last twenty years and particularly since 2005, there has been debate at governmental level, media level and within some civil society organizations with regard to giving voting rights to Chileans abroad (similar to policies adopted by the Mexican government towards Mexican migrants living in the United States). In Chile, this debate has centred on whether someone living abroad has permanent connections and enough knowledge of Chile’s internal current affairs to earn the right to vote and on how best to “measure” and evaluate the strength of those ties (Doña-Reveco and Levinson, 2013).

Discourse on developing a comprehensive Chilean migration policy was almost completely absent during the presidential campaign of 2009 (Doña-Reveco, 2010) in general, and in particular among the governmental programme coalition that won the elections in 2010 (Piñera, 2009). In 2010 the government of Sebastian Piñera—the first president in a centre right coalition to win the presidency in Chile since 1958—began a media and newspaper public campaign to announce that it was preparing migration reform legislation that included a comprehensive migration policy. In October of 2010, *El Mercurio*—the leading conservative newspaper—editorialized that the government was preparing a comprehensive migration policy, and that “...good legislation (on migration) and a thorough understanding (on behalf of the country) of the benefit of immigration” would avoid the problems that migration has brought to developed countries (El Mercurio, 2010). Finally, in 2012, the same newspaper reported that the government was working on a new migration law (El Mercurio, 2012a; 2012b). This law, however, has not included the participation of the civil society or of scholars/policy-makers, academics, and other experts and interested parties with knowledge of international migration (Jimenez, 2013). The government was to submit this new migration legislation to parliament in August of 2012, but it entered parliamentary discussion only in June of 2013. This legislation supposedly will incorporate the government’s political and ideological intentions with regards to migration and reportedly will not be a direct continuation of the perceived progress achieved on migration “policies” in the last 10 years (El Mercurio, 2012b; Bellolio et al. 2012). We turn now to an analysis of this migration policy draft with a particular focus on the intersections between migration and development.

Development for whom?

As far as international migration and development are concerned Chile has an intrinsic ‘personality’ problem, perhaps even a “disorder.” Within a world systems analogy (Wallerstein, 2004), it is currently a semi-peripheral country yet with the highest per capita income in Latin America, the highest socio-economic inequality rates, a large emigrant stock, and an increasing immigrant flow (<http://data.worldbank.org/country/chile>; Cano Christiny, 2009). Chile is a high class country that has only recently left its lower class origins; a *petite bourgeois* country. This impacts how the state considers migrants both in the context of development and in the context of reception and policies of migrant incorporation.

Conventionally, although notions of sustainability are rewiring this, the notion of national development is teleological in that development is an end-of-state situation to which nation-states aspire after following a set of particular “recipes,” mostly economic and often defined by international organizations (Payne and Phillips, 2010; McMichael, 2012). After the end of the Cold War, “less-developed” nations had two very similar options: to follow the neoliberal development approach exemplified by the United States or to follow the, receding, social democratic example of northern European nations. While the concept of development has had numerous definitions and a complicated epistemological history (see for example Nederveen Pieterse, 2010; Payne and Phillips, 2010), most common constructions are associated with the notion of economic development wherein countries achieve development by reaching a particular amount of per capita income. Overreliance on such a one-dimensional indicator underlay the creation of the United Nations Development Programme’s (UNDP) Human Development Index (HDI), first proposed in 1990 (UNDP, 1990). HDI goes beyond stark economic accumulative measures

to include measures of life expectancy, literacy, and infant and child mortality to assess human well being. Almost ten years later, the UNDP proposed eight “millennium development” goals that would define development by 2015 (McMichael, 2012). These goals aim to end poverty and hunger, achieving universal primary education, promoting gender equality and empowering women, reduce child mortality, improve maternal health, combat HIV, malaria and other diseases, ensure environmental sustainability and developing a global partnership for development (UNDP Website). In its 2011 annual report UNDP incorporated an ecological and environmental component into HDI measurement and assessment, formally recognizing for the first time that sustainable ecosystems are vital for human development.

Problematically, the Chilean state and the government of Sebastián Piñera continue to construct national development in terms of more conventional pre-1990s understandings of economic development. In its governmental programme of 2009, Piñera states that the goal of his government is to return to the road to development through “entrepreneurship and innovation...to regain a high rate of economic growth, that is sustained and sustainable, that will allow to create more and better jobs” (Piñera, 2009: 15). By 2018 Chile aims to have a per capita income of US\$22,000 per year; equal to the countries of Southern Europe. As recently as May 2012, the Chilean Secretary of the Treasury argued in *El Mercurio* that to achieve development the country needed to strengthen its institutions. Two institutions were singled out: the Council of Financial Stability and the System of Public Companies (Larraín, 2013). Both are centred on economic aspects of development. Such editorializing in Chile’s most official and established newspaper is tantamount to a definition of future policy.

Although the migration law draft asks directly “How can international migration collaborate in the road to development, on widest sense of the term?” (Gobierno de Chile, 2012: 8 and 28), definitions and arguments as presented condition migration with economic development. Compounding this, the Chilean government has not yet proposed a national development policy in any area. The sole idea of migration’s contribution to development is to focus on what high income or highly educated migrants might contribute. Low-income migrant workers, the bulk of the current migration flow to Chile, are considered only as replacement for more productive populations to be redeployed elsewhere.

In formulating a migration policy Chile’s current leadership seek to position the country as one in continuous growth with a significant migration policy development leadership role in the larger region. This fails to adequately consider the differences in macroeconomic indices and migration histories experienced by countries across the southern cone region and beyond. The document also argues that since most migrants migrate for labour reasons, Chile will continue to attract migrants due to its economic prosperity and socio-political tranquillity, ignoring the fact that most migrations are border-area migrations and that Argentina, not Chile, has been historically the first choice for regional migrations (Massey, et al. 1998; Pellegrino, 1998). Chile is not likely to become the first choice for many regional migrants. Finally, migration intentions and propensities are connected to the development of projects in the mining sector, in the northern part of Chile, although there is no accurate information or data on the characteristics of international and internal flow to this area (El Mostrador, 2013).

The policy draft criticizes the argument that migrants would reduce the income of nationals in particular economic sectors, but also states that the opportunities provided by immigration are far more numerous (Gobierno de Chile, 2012: 8-10). These opportunities

are mostly available to highly qualified migrants or to lower, manual-labour and service sector migrants that would liberate highly qualified migrants from home work. There is acknowledgement: that receiving and incorporating migrants with high qualifications can solve “local market deficits” (op. cit 9); of the innovation role of migrants; of the replacement of local workers in “markets that national are not willing to participate” (op. cit 9); and of the role that “some migrants [who] provide domestic services that allow the incorporation to the labour market of people with high levels of productivity” (op. cit 9). Also recognized are the higher capacity of migrants for internal migration and the entrepreneurial capacities of migrants, who therefore have “the potential to vitalize the entrepreneurial environment” (op cit 10).

The connections drawn between development and migration are strongly focused on the economic aspects of migration, with particular strength given to the argument that migrants must acculturate to Chilean society (see below). The document does not problematise the key divisive characteristic of migration flows into Chile by differentiating between those who come to work as professionals and those who will replace lower level workers. Furthermore, while there is mention of the re-creation of a gendered labour market and of migrants’ right to repatriate their incomes, there is no discussion of Chilean state involvement or role in this.

The draft document is explicit on the need for the state to create incentives for the construction of connections between Chile and its emigrants (Gobierno de Chile, 2012: 6). However, there is little or no acknowledgment of the current knowledge and research on states’ interaction with their emigrant populations and diaspora (see for example, Fitzgerald, 2006, 2009; Moses, 2011; 2012). Within a scant four articles of discussion, there is allusion to migrant return promotion, international reciprocity in terms of access to

rights, availability of information at consular offices and the development of a registry of Chileans abroad (Gobierno de Chile, 2012: 65-66). Ignored are any programmes to support effective return at all ages and educational levels. In an era of wide ‘brain circulation,’ there is no discussion of how the state might make lasting connections with emigrants who do not want to return but only to maintain sporadic contacts, or to even to send remittances, or to invest in newly emerging financial vehicles like diaspora bonds (Kathar and Ratha, 2009, 2011). Lastly, especially important given why Chileans have left the country in the last fifty years, there is no systematic attempt to address how the state will stimulate activities and interest within and among Chileans overseas populations so as to reconnect with the nation.

In sum, this migration policy draft document envisions the migration-development nexus solely as an economic connection, does not deal adequately with the different aspects of economic development, nor does it address the changing conditions that influence migration flows or the reception contexts that migrants might encounter. Nor does it develop mechanisms to engage with Chilean emigrants and involve them in development, economic or other. Since there is an acknowledgement that development is multifaceted, we turn now to a discussion of how this proposed legislation, presents immigration from a security perspective and what this means for the incorporation of migrants into Chile’s social and cultural development.

Ideological contradictions in Chile’s Migration Policy

The actions of the Piñera’s government on migration policy seem to be largely ideologically driven. The comments of the Undersecretary of Interior and other actions regarding foreigners (El Mercurio, 2012a; 2012b;) indicate something of a Janus-faced approach to migration legislation. On the one hand, language redolent of a ‘national security’ component, very similar to the laws of 1975 and to the 1953 migration policy,

does not correspond to a country respectful of differences and open to the world as Chile has been presented internationally. On the other hand, it seems that the project will continue to uphold the UN Convention on the rights of migrant workers and their families, facilitating migration reunification—with conditions—and providing access to the same conditions as Chileans with regard to health care, social security, and education access for migrants, regardless of their migratory status.

As always, the devil is in the details. The policy draft assures that the state will provide health access to any migrant regardless of migratory condition, in particular to minors, (in cases of pregnancy, and urgent care) and will do so only in state-owned hospitals and health centres. In any other case the access to health will be only for permanent residents (Gobierno de Chile, 2013: 32). This contravenes the United Nations' *International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families*, which does not differentiate between documented and undocumented workers (United Nations, n.d). A similar situation occurs with the access to social security and with regards to expulsion or deportation. The current draft also goes against the Chilean Constitution and the American Convention on Human Rights, as the Chilean Supreme Court stated in its comments to the policy draft in July of 2013 (República de Chile. Cámara de Diputados, 2013B: 288).

Such contradictions bode ill for the application of the law. This 'dual personality' of nascent Chilean migration policy is very evident in the relationship between the state and the migrant. The Chilean state requests that its emigrants be welcomed yet it promotes a rather coercive immigration policy in that a 'national security' ideology permeates the entire document. Stating directly that "a regime open to immigration opportunities only makes sense it is possible, within due process, to promptly expel from [the country] those

who have been accredited of acting against common welfare” (Gobierno de Chile, 2012: 5) without any clarification of what is ‘common welfare’ is foreboding.

Further emphasis on the security component is evident in such statements as “regular migration allows having an adequate control, maintaining *national security* as the informing criteria of every piece of legislation on migration” (Gobierno de Chile, 2012: 13 emphasis added). This is reinforced in the definition of a National Migration Policy, which states that any migration policy must include the “politics of internal and external security, and the maintenance of law and order, especially on what refers to prevention and control of transnational organized crime, drug trafficking, terrorism and migrant trafficking” (Gobierno de Chile, 2012: 30). Similarly, the policy states that Chile must consider migration in relation to its international relations and its foreign policy. There is also mention of public safety within the context that every national migration policy should have in accordance with the (inexistent) “policies of national development”. And, when referring to reasons why an individual should not be allowed to be in Chile, there is twice mention of individuals that alter the social order of their country of origin and who might have done acts that could disturb the bilateral Chilean relations with other countries (Gobierno de Chile, 2012: 34). Considering the importance of the right of asylum in Latin American International Law, this allows the Chilean government to ideologically define if a open dissenters/opponents of their native country’s regime has the right to enter Chile if being persecuted.

At an institutional level there is a proposal to create a Migration Policy Council— which in theory has existed since 1975 but has never been enacted—whose role is to propose and update Chilean migration policy, to assist the Chilean president on migration topics, and the development and dissemination of technical reports. The Council is to be comprised

of the Ministers of Interior, Foreign Affairs, and Finance, reinforcing the connection between development and fiscal policy.⁹ Noticeably absent is the involvement of other important ministries that have come to be closely involved with immigrant populations, in areas such as Health, Education, and Housing. On the institutional level, the former Department of *Extranjería* becomes a Division within the Ministry of Interior, giving it greater relevance within the overall Chilean governmental structure.

This policy draft prohibits the immigration of people who “suffer diseases that the health authorities have deemed they constitute a reason to impede the entrance to Chile” (Gobierno de Chile, 2012: 34). Nowhere are those diseases described or categorized, opening the way to charges of discrimination and arbitrariness. This is a very similar position also presented in the law that created the *Extranjería*, which prohibited entrance to Chile to people that through oral or written methods destroy the Chilean social order and that suffer “an incurable organic defect such as being deaf-mute, blindness, dementia, idiocy...or any that would prevent them from working to make a living” (Gobierno de Chile, 1953). The current document also focuses on national security as a main component, although it does accept the UN Convention on the rights of migrant workers and their families as the principal framework for the future law. The law will facilitate family reunification—with conditions—and will provide access in the same conditions as Chileans to health care and education to migrants regardless of their migratory status. This disconnect may undermine the effectiveness of the law since it seems to both protect and criminalize migrants.

The draft of the Chilean migration policy proposes a “positive integration” of migrants to Chilean culture with respect of the migrant cultural differences. It accepts the relevance of including new cultures to Chile but warns of the potential negative effects to a

society that “is not used to social heterogeneity” (Gobierno de Chile, 2012: 11). This is a rather grandiose historical myth. The attempted construction of such a dichotomous social group based Chilean identity (Larraín, 2001) has been a constant for most governments in Chile in the twentieth century. Originally the dichotomy was between the colonizers and the ‘natives’, and later between the land based aristocracy and the *peones*, now continued during the last century within the context of a stratified society based mostly on one’s belonging to a particular social class.

The policy draft also proposes that the goal of this law is the integration of these migrants to Chilean society while they maintain linkages to the societies of origin. The policy “recognizes the value of preserving the connections [with the home nation]” (Gobierno de Chile, 2012: 12) just as the government expects its own emigrants to keep linkages with Chile. At the same time, however, “it demands from migrants to know and respect the codes of conduct, the culture and the language of the country that has decided to receive them...it encourages to refrain from their own cultural expressions...the reform discourages multiculturalism, the conformation of enclaves composed by hermetic and homogeneous communities” (Gobierno de Chile, 2012:12). Later the draft stipulates that the state will encourage integration while taking cultural differences into consideration (Gobierno de Chile, 2012:28). In sum, the proposed draft legislation conceives migrant integration as social development but falls short of including it as part of the migration and development nexus.

Conclusion

The state is a key component and vital actor within overall national and sub national migration processes. All migrants at some point, by definition, cross at least one administrative border between states. In light of this, scholars of migration have given the

role of the state inadequate attention. This, we argue, is because the economic theories that until recently were the core of migration studies had at their basic premise that the migrant was free, had complete information, and freely decided the place and moment of his or her migration. More recent theories, originating in post-modern intellectual approaches also minimize and relativize the role of the state on migration. In general, they argue that to study and comprehend international migrations the state has become fairly irrelevant, since globalization, transnationalism and other contemporary phenomena have made physical and cultural borders porous and the states no longer have control over the spaces they govern. The state, however, is connected to migration both as a sender and as a receiver of population. Above all the state has the responsibility to protect the human rights of all migrants regardless of their place or origin, destination or migratory condition.

While it is imperative that Chile has a new and comprehensive migration policy, the project that the Chilean government has under development is built on state ideologies from an earlier time. The notions of ‘national security,’ ‘morals,’ and ‘diseases’ resonate with and are very similar to the tone and wordings of the laws from 1975 and to the 1953 migration policy and do not correspond to a contemporary country respectful of differences and open to the world as Chile has presented itself internationally. The nascent migration policy posits that “the national migration policy should have in consideration the contribution of migrants to the social, cultural, and economic development that migrants provide to the country” (Gobierno de Chile, 2012). However, the Chilean government has not recently proposed a comprehensive national development policy in any of these areas.

Chile sees most problems arising from the lack of a proper legal framework to govern migration flows. Outdated laws do not comply with recommendations of human rights organizations, nor are they in accordance with the new realities of a democratic country

deeply immersed in a globalized world. While the development of a holistic migration policy would benefit both migrants and nationals alike, this process must take place in a context that considers the needs of both and educates Chileans on the benefits of moving toward a more inclusive and culturally rich society. In order to succeed, any migration policy must incorporate not only the participation of the state, but also of migrants, relevant NGOs, policy scholars and academics, and civil society in general. So far this has not been the case. Let us hope that this will happen in the parliamentary discussion.

Epilogue

On December 15, 2013 Michelle Bachelet won the Chilean presidential elections signalling the return of the centre-left to government after a four year hiatus. Her strong showing in this election, despite 55% voters not participating, and the support of her coalition in the parliamentary elections assures her the necessary votes to approve almost any migration law. International migration, however, represented a very small component of her government program (Bachelet, 2013). In a very brief manifesto statement, the president-elect proposes to frame any policy development within the context of the broad human rights international agreements and migrant's rights agreements signed by the country. Chile will also continue to play an active role as a country of refuge, protection to victims of traffic, and to migrant development. This last component presents a striking change to Piñera's migration law, from migration associated with economic development to a focus on the human development of migrants. While the incoming government alleges its commitment to inclusion, regional integration, and the rights of migrant workers, there is no information of how this will be done. With regards to Chileans abroad, there is a call to promote emigrant citizenship, although it is centred on voting rights, the development of connections between the Chilean state and communities abroad, and of civic participation.

These last two ‘rights’ are not defined in the document, as it is also not defined the participation of the civil society in this process. The limited relevance of this topic, the higher importance of a major constitutional change, a reformulation of public education at all levels, and of social security had during the campaign and in the government program suggests that the status-quo with regards to migration will be unlikely to change. The migration law promoted by the Piñera Government most likely continue its transit in Congress or be modified by a new draft developed by Bachelet’s government.

Endnotes

¹According to the Centro Latino Americano y Caribeño de Demografía (CELADE), Chile had negative net migration until the 1990s. During that decade the net migration turned positive and it is projected that should continue to be positive for the next 40 years (CELADE, 2012).

² The *Departamento de Extranjería y Migración* (equivalent to the US Citizenship and Immigration Services) is the governmental office in charge of administrative actions regarding foreign citizens in Chile. It is part of the Ministry of the Interior.

³ Signed by Chile in 24 September 1993, ratified in 12 April 2005, in effect since 1 July 2005.

⁴ Presentation of the former Undersecretary of the Interior, Felipe Harboe to the “Coloquio sobre Migraciones”, 11 August 2009. Available at http://www.interior.gob.cl/filesapp/Presentacion_Sub_Interior.pdf (accessed October 3, 2012).

⁵ Information about the South American Conference on Migration available at <http://iom.int/jahia/Jahia/policy-research/regional-consultative-processes/rcps-by-region/sacm> (English) and at <http://www.oimconosur.org/varios/index.php?url=conferencia> (Spanish).

⁶ Information about this Forum at <http://segib.org/actividades/2010/05/25/ii-foro-iberoamericano-sobre-migracion-y-desarrollo/>.

⁷ The last version of this law stated that the Ministries to comprise the Council on migration policy were Interior, Foreign Affairs, Labour, Finance, Social Development, Justice and Defence. The inclusion of the latter reinforced the ‘national security’ approach that permeates the entire document.

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Table 1
Chile (1982-2009est): Foreign-born population estimates and intercensal growth of foreign born population (Census Data)

Country of Origin			Census	DEM estimate*	Intercensal growth (%)		Growth (%)
	1982	1992	2002	2009	1982-1992	1992-2002	2002-2009
South America							
Argentina	19,733	34,415	48,176	60,597	74.4	40.0	25.8
Peru	4,308	7,649	37,860	130,859	77.6	395.0	245.6
Bolivia	6,298	7,729	10,919	24,116	22.7	41.3	120.9
Ecuador	1,215	2,267	9,393	19,089	86.6	314.3	103.2
Brazil	2,076	4,610	6,895	9,624	122.1	49.6	39.6
Venezuela	942	2,397	4,338	N/A	154.5	81.0	
Colombia	1,069	1,666	4,095	12,929	55.8	145.8	215.7
North America							
United States	4,667	6,249	7,753	9,720	33.9	24.1	25.4
Europe							
Spain	12,290	9,879	9,084	11,025	-19.6	-8.0	21.4
Germany	6,125	5,603	5,473	6,547	-8.5	-2.3	19.6
Asia							
China	669	1,170	2,401	4,589	74.9	105.2	91.1
Other Countries	24,413	30,897	38,077	63,249	26.6	23.2	66.1
Total	83,805	114,531	184,464	352,344	36.7	61.1	91.0

* DEM: Departamento de Extranjeria y Migracion, Ministerio del Interior, Chile (Department of Immigration, Secretary of Interior, Chile)

Source: DEM, 2009; Martinez, 2003; Martinez, 2011

Table 2
Chile (2010-2012): Foreign born population according to Residence Permits and growth of foreign-born populations

Country of Origin	Residence Permits			Annual growth (%)	
	2010	2011	2012	2010-2011	2011-2012
South America					
Argentina	1,272	1,338	1,642	5.2	22.7
Peru	7,736	8,117	11,026	4.9	35.8
Bolivia	1,083	1,582	3,746	46.1	136.8
Ecuador	878	902	1,082	2.7	20.0
Brazil	432	475	696	10.0	46.5
Venezuela	334	367	511	9.9	39.2
Colombia	1,462	1,699	3,039	16.2	78.9
North America					
United States	345	366	537	6.1	46.7
Europa					
Spain	280	283	537	1.1	89.8
Germany	181	166	233	-8.3	40.4
Asia					
China	616	665	699	8.0	5.1
Other Countries	2,471	2,833	3,563	14.6	25.8
Total	17,090	18,793	27,311	10.0	45.3

* Source: Departamento de Extranjeria y Migracion, Ministerio del Interior, Chile (Department of Immigration, Secretary of Interior, Chile)

Table 3
Chile: Ten main countries of emigration, first and second generation

Countries	Number of Chileans
Total	857,781
Argentina	429,708
USA	113,394
Sweden	42,396
Canada	37,577
Australia	33,626
Brazil	28,371
Venezuela	27,106
Spain	23,911
France	15,782
Germany	10,280
Other countries	95,630

Source: INE-DICOEX 2003-2004.