

# CHILDREN'S RIGHTS IN CHILE

## Alternative report on the implementation of the Convention on the Rights of the Child by Chile

### Summary in English

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## TABLE OF CONTENTS

<b>1. INTRODUCTION: ACTUAL SITUATION OF THE CHILDREN.....</b>	<b>5</b>
1.1 CHILDREN IN THEIR SOCIETY.....	5
1.2 DEFINITION OF THE CHILD (1 CRC): DIFFERENT MAJORITIES .....	5
1.3 NATIONAL NGOS DEFENDING CHILDREN’S RIGHTS .....	6
1.4 STATE ACTIVITIES RELATED TO CHILDREN .....	7
<b>2. RIGHT TO LIFE (6 CRC).....</b>	<b>8</b>
<b>3. NO DISCRIMINATION (2,20,22,23 AND 30 CRC):.....</b>	<b>8</b>
3.1 MAPUCHE INDIGENOUS CHILDREN.....	8
3.2 DISABLED CHILDREN.....	10
3.3 GIRLS.....	10
<b>4. PROTECTION FROM ALL FORMS OF VIOLENCE (19 CRC) .....</b>	<b>10</b>
4.1 SCENES OF VIOLENCE.....	11
A) <i>Violence within the family</i> .....	11
B) <i>Other scenes of violence</i> .....	12
4.2 SPECIFIC TYPES OF VIOLENCE .....	12
A) <i>Sexual abuses (34CRC)</i> .....	13
B) <i>Economic exploitation (32 CRC)</i> .....	13
C) <i>Child Trafficking (art. 35 CRC)</i> .....	14
D) <i>Torture and other cruel inhuman or degrading treatment or punishment (37a CRC)</i>	
<b>5. PREVENTION, PROTECTION AND RECOVERY OF A CHILD VICTIM OF VIOLENCE (4, 19 AND 39 CRC) .....</b>	<b>16</b>
<b>6. PROTECTION OF CHILDREN DEPRIVED OF LIBERTY (37B, C, D CRC) .....</b>	<b>17</b>
6.1 CHILD VICTIMS: “PROTECTED” CHILDREN.....	18
6.2 CHILDREN IN CONFLICT WITH THE LAW .....	18



## 1. Introduction: actual situation of children

### 1.1 Children in their society

Notwithstanding the ratification of the Convention on the Rights of the Child 16 years ago (in 1990), the perspectives of this Convention, as well as its conception of children and adolescents as authentic subjects of rights, has not been assumed by Chile, neither legally nor institutionally. However, the role of children in Chilean society is changing. Whereas they are still considered as subjects in need of protection by the majority of national laws and institutions, their position as full members of society with full rights is starting to be accepted.

In legal terms, the survival of the Minors Law (“Ley de Menores”) of 1967, which leads the national legislation applicable to children in Chile, together with other subsequent laws that partially include the principles of the Convention, show this slow transition.

Sociologically, due to economic reasons, children are becoming more and more dependant on their families. Currently, the economic growth of the country and the consequent spread of financially stable families is extending the development process of children (especially the transition from adolescents to adults) and the possibility of emancipation. Adolescents are trapped by this economic growth, which has led to increased prices, particularly housing and education. In that sense, families are forced to sustain their children longer: for instance, educational costs are considered to be a parental responsibility even in the case of higher degrees (like university), even if they are studied over the majority age of 18.

However, structural matters tend to go hand in hand with sociological perspectives. The consequence is that children are being protected at any price, as they are only understood as recipients of external situations decided by others. Contrary to the perception that children and adolescents have had of themselves for some years, they are now assuming more rights and positions as full citizens in their society, and in doing so, they are claiming and defending their rights □ as they showed at the end of May 2006 during strikes occurred all over Chile, where children and adolescents demanded essential changes in the educational system.

Although some successes and transformations have occurred in recent years, the position of the child in Chilean society remains mainly related to a tutelary view. As a result, efforts should now aim for both law and society to respond to the vision that children have already assumed.

### 1.2 Definition of the child (1 CRC): different majorities

In conformity with article 1 of the Convention on the Rights of the Child (CRC), Law 19.221<sup>1</sup> establishes the general age of majority in Chile □ when citizens attain full active and passive capacity □ at 18. However, there are four exceptions in the following areas: marriage, sexual intercourse, labour and criminal responsibility, where the age of majority is below 18.

- Firstly, the age of marriage is set at 16 for both boys and girls, according to Law 19.947 of 2004, which adapted the former discriminative legislation that distinguished the marriageable age of boys and girls (12 and 14, respectively) to the CRC following the Committee’s recommendation<sup>2</sup>.

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<sup>1</sup> Law 19.221 came into force on 1<sup>st</sup> June 1993.

<sup>2</sup> CRC/C/15/Add.173 § 22, 3<sup>rd</sup> April 2002.

- Secondly, the minimum age of sexual consent is 14, according to the new legislation of 2004<sup>3</sup>. Therefore, every sexual intercourse under that age constitutes rape<sup>4</sup>, except for homosexual relations, which are still sanctioned as a crime until the age of 18<sup>5</sup>.
- Thirdly, the minimum age for working is fixed at 15 years old<sup>6</sup>. Children between 15 and 16 might be legally contracted if they possess parental authorisation and have fulfilled the minimum grade of obligatory education (medium grade). In fact, that later condition makes this rule virtually impossible, as the obligatory education grade implies at least 12 years of education, which means that only children over 17 might have finished the medium grade of obligatory education.
- Lastly, the minimum age of criminal responsibility is 16 years old. Although when holding children between 16 and 18 responsible, they additionally need to be declared with discernment by a judge. As such, children over 16 abide by the same penal system as adults<sup>7</sup>, which fully contradicts the CRC. Nevertheless, in order to comply with the last recommendation of the Committee<sup>8</sup> there has been a recent reform in that sense, by the publication of the Law 20.084 in 2005, which creates a specific penal system for minors together with the reduction of the age limit, which has also been downplayed, because it fixes the frontier for criminal responsibility from 14 years, allowing two exceptions: in case of offences detected (*flagrante delicto*) and of sexual crimes with restricted conditions<sup>9</sup>.

### 1.3 National NGOs defending children's rights

There are currently several issues that Chilean children face daily: violence, poverty and discrimination in education. Chilean NGOs defending children's rights concentrate their efforts mainly on these three problems. Some of them also focus on a vulnerable category of children, such as disabled, indigenous or imprisoned children.

Presently, these organisations are questioning their current models and means of action within Chilean society<sup>10</sup>, which is well known for its weak capacities of participation and reaction, as well as its lack of power in mobilizing certain social groups. Some voices are claiming that even real civil society is missing. Whatever the extent of problems, the fact is that NGOs in general, and those defending children's rights in particular, suffer the consequences of economic growth and social stability that lead to the transition of a real democracy, where government actions, which otherwise would or should be questioned, are

<sup>3</sup> Law 19.927, approved on 8th January 2004.

<sup>4</sup> Art. 362 of the Penal Code (last modification in 2001, by the Law 19.696).

<sup>5</sup> Art. 365 of the Penal Code.

<sup>6</sup> The Law 19.684 of 2000 modifies article 13<sup>th</sup> of the Labour Code adapting it to the ILO's Convention no. 138 of 1973.

<sup>7</sup> Arts. 10 and 72 of the Penal Code state that children between 16 and 18 declared with discernment are subjected to the same penal system as adults.

<sup>8</sup> CRC/C/15/Add. 173 § 53, 3<sup>rd</sup> April 2002 and CRC/C/15/Add.22 § 17, 22<sup>nd</sup> April 2002.

<sup>9</sup> Art. 58 of the Law 20.084, entitled "Liberty restriction of minors under 14", gives police officers every legal faculty to restrict the liberty of minors under 14 caught red-handed in order to restore public order and peace as well as to protect the victim.

On the other hand, art. 4 of the above mentioned law sets a special rule in case of sexual crimes, which are punishable for children under 14 if their conducts include another minor. In fact, it can be deducted that sexual relations between a minor under 14 and another of a maximum age of 12 (in case of children of different gender) or 11 (in case of children of the same sex) constitute sexual crime.

<sup>10</sup> Meeting of Children Rights' National NGO Networks in the Southamerican Region, 4-5 May 2006, Santiago (Chile): "Las ONG hoy no se las ve como participativas, ni se movilizan y falta reacción ante violaciones[Today NGOs are not seen as participative, they do not mobilize themselves and there is lack of reaction against violations]". [http://www.redlamyc.info/Eventos/reuniOn\\_de\\_redes\\_nacionales\\_de\\_ong\\_y\\_ong.htm](http://www.redlamyc.info/Eventos/reuniOn_de_redes_nacionales_de_ong_y_ong.htm)

accepted without leaving any space for discussion. In that sense, putting some issues into question might be misunderstood as questioning democracy or the system itself.

This fragile situation ends up creating inequality between their actions and those which are governmental, not to mention the subsequent lack of coordination, which at the end leads NGOs to difficulties in adapting themselves to the centralized structures of Government as they have communal, regional, national and/or international basis.

#### 1.4 State activities related to children

The present activity of the State related to children is displayed in legislative, executive and judicial terms. Beginning with **legislative actions**, Chile is struggling to amend their regulations to international standards, although he is often failing in doing so. For example, the establishment of a special criminal justice system for minors also implies breaching the standards of the CRC as it contains provisions such as articles 4 and 58 which allow for the detention of children under 14, without mentioning any limit.

At the executive level, the Government also tries to plan and put into practice programmes and projects in order to protect children. The main subject responsible and therefore involved is the National Minors Service (SENAME), established in 1979 and amended several times afterwards.

SENAME, an institution dependant on the Ministry of Justice, is in charge of both the protection of the child victims and the responsibility of children in conflict with the law. This dual duty was actually criticised by the President M. Bachelet in her Report to the Advisory Council (“Consejo Asesor”) in June 2006, where she stated that this system might lead to one that fails to protect adequately either of them<sup>11</sup>. Nevertheless, this dual system has been amended several times, as mentioned before, and aims to cover or embrace prevention, protection and the recovery of children in either situation. The latest reform in 2004 directed his attention to the improvement of recovery, planning prospective increments in specialised, communal and familiar assistance. As a result, the actual network of institutions directly or indirectly collaborating with the SENAME in all fields of action includes 32 Children’s Rights Protection Offices (OPD), which are communal instances of protection that provide children with alternative measures such as family assistance or alternative conflicts resolutions. Moreover, other institutions like the CONADI (National Corporation for Indigenous Development) and the OIRS (Information, Complaints and Suggestions Office) complement the network of protection and prevention of children’s rights. Nevertheless, its coordination has become a real problem, which prevents the effective care of minors.

Besides, **judicial practice** follows its own criteria firstly by being reluctant to consider international law in force in Chile □ especially the CRC □ and consequently avoiding its use as an effective judgement criteria. Secondly, many of those who do take the CRC into consideration, interpret subjectively or misinterpret its contents<sup>12</sup>. OMCT and OPCION are concerned that the CRC is generally not considered among the enforced laws applicable to minors by a majority of judicial authorities<sup>13</sup>.

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<sup>11</sup> “[...]este sistema puede terminar no protegiendo adecuadamente a ninguno de los dos [...]”, M.Bachelet, Report to the Advisory Council, June 2006.

<sup>12</sup>For instance, in the case ATALA, the principle of the best interest of the minor was used to justify a measure that prevented the children from living with their mother, claiming their right to have a “normal” life, whereby the Supreme Court meant a life without contact with their mother and her homosexual partner. **I DON’T KNOW IF THIS IS NECESSARILY THE BEST EXAMPLE TO GIVE.**

<sup>13</sup> For example, the published Compilation of Legislation and Jurisprudence dedicated to Minors’ Law in 2000 by the Editorial Jurídica de Chile, does not include the CRC among the operative or applicable law.

## 2. Right to life (art. 6 CRC)

According to the Chilean Constitution, every person has the right to life and the right to its physical and psychological integrity<sup>14</sup>. This guarantee has its counterweight in the penalization of several misconducts against a child. In that sense, the Penal Code sanctions infanticide or child murder, ill-treatment (physical and/or psychological abuses), mutilations, injuries (grievous bodily and/or psychological harm), rape, sexual abuses, prostitution, pornography and child trafficking<sup>15</sup>. All of those offences are penalized with more severe sanctions, beginning with deprivation of liberty, because of the victim's age.

Nevertheless, the integral development of children has not yet been recognised as a right itself. Rather, it is conceived as the objective of education<sup>16</sup>. Besides, infant mortality rates in Chile are 9/1000 for boys and 10/1000 for girls<sup>17</sup>, which is the fourth lowest rate in the region of the Americas, behind Canada, USA and Cuba. However positive this situation may seem, it is regrettable that the cause of infant mortality is related to poverty. In fact, 18.4% of children in Chile are poor, among them 4.7% live in situation of indigence or extreme poverty, that means over 2,900 and 780 children affected, respectively.<sup>18</sup> As result, the Government added a new perspective to its traditional unique focus on life and development as health matter, introducing a socioeconomic view: the aim to reduce social and economic distances among children.

## 3. No Discrimination (Arts. 2, 20, 22, 23 and 30 CRC)

Children who are especially vulnerable to discrimination can be categorised as follows: indigenous, disabled, homosexual, poor or in economic difficulties, females and those who are deprived of liberty.

Legally, the Chilean Constitution does not mention discrimination either as a negative principle nor as prohibited conduct<sup>19</sup>. However, one cannot omit effort on the part of the State to adapt its norms at a lower legal level to the international principle of non-discrimination. The latter was the proposal or a draft bill that established measures against discrimination introducing discrimination in the Penal Code as aggravating circumstances<sup>20</sup>, mentioning motivations such as sexual orientation, racism or religion.

However, this vision has not been totally reflected in the actions of the Government. Although, the non-discrimination principle is stated in the "Política Nacional y Plan de Acción Integrado a favor de la Infancia y la Adolescencia 2002-2010" (a governmental programme which sets general criteria about children and youth), it has by no means translated into the specific planification. That is the case of specific programmes like the "Plan Nacional para Superar la Discriminación en Chile" and the "Plan por la igualdad y la no discriminación 2004-2006", both issued in 2004, ignored children as an especially vulnerable category to discrimination.

### 3.1 Mapuche Indigenous Children

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<sup>14</sup> Art. 19 (1) of the Constitution.

<sup>15</sup> Arts. 392 and following of the Penal Code.

<sup>16</sup> Art. 19 (10) of the Constitution.

<sup>17</sup> Source of information: World Health Organization (WHO)

<sup>18</sup> Data Base: UNICEF Chile, [www.unicef.cl/indicadores/pobreza2005.htm](http://www.unicef.cl/indicadores/pobreza2005.htm), actualized to 2005.

<sup>19</sup> Art. 19 of the Constitution mentions the right to equality and the equality in and in front of the law; art. 1. IV establishes them as a state duty. Art. 9 mentions the equal right to access recuperation and rehabilitation. But above all these is the art. 1.1 who affirms: "todas las personas nacen libres e iguales en dignidad y derechos [every person is born free and equal in dignity and rights]".

<sup>20</sup> Project of Law presented to the Congress on the 14<sup>th</sup> March 2005.



To show that this principle has not been incorporated as an active policy, one can mention the special situation of the Mapuche children, who are discriminated institutionally and socially. Beginning with the latter, they suffer verbal and physical aggression quite simply because they are indigenous. Moreover, they suffer from both active and passive discrimination perpetrated by the State. Actively, special forces (militarised section) of the Carabineros' Police, known as the "Policía de Investigaciones", commit ill-treatment and acts of torture against members of the Mapuche communities, mostly in the context of the conflicts between the Government and the Indigenous communities related to the title deed or legal ownership of lands. In that scene, children are eyewitnesses of abuses and ill-treatment to their families and neighbours, and sometimes victims themselves<sup>21</sup>. For example, Daniela Ñancupil or Álex Lemún are two of the most known cases of Mapuche children victims of violence, both wounded by shots fired by policemen, although unfortunately the latter was fatally injured and died soon afterwards<sup>22</sup>.

Another type of discrimination faced by indigenous children occurs in the educational system: over 30% of Mapuche Children abandon school before finishing secondary education, which is the minimum obligatory grade and a constitutional granted right<sup>23</sup>. Governmental sources blame this on the organisation of indigenous communities which base their societies on communal work and social structures. As a result, Government claims that children have to work in order to help their families<sup>24</sup> because they are conceived as actual and active subjects within their communities. To the contrary, Indigenous people firmly deny this argument of an existing duty, questioning the Government's real intentions in saying so: in their view, the last source of the indigenous education problem is violence, as children are emotionally and psychologically affected and/or damaged to the extent that their basic capacities for learning might be hindered<sup>25</sup>.

Nevertheless, the Government has managed, since 2001, the "Programa Orígenes", which aims to protect and reinforce the education of indigenous children. So far, it has been implemented in 44 communities located in the Regions I, II, VII, IX and X. As a result, the government affirms that almost 65 thousand children and 162 schools have benefited from it. Furthermore, efforts to promote the contracting of some community members like the "elders" or "wise", who have wide knowledge of costumes and traditions in each community, have been made. In addition, the Ministry of Education gave 1200 scholarships and grants to indigenous children in 2005. However, many Mapuche believe that the grants system fails them as most are unable to obtain one. Those still living in indigenous communities are claiming that these grants are only accessible to indigenous children of 2<sup>nd</sup> or 3<sup>rd</sup> generation, namely children of indigenous parents or grandparents who used to live in their native communities.

OMCT and OPCION are concerned about the insufficient institutional efforts made to ensure the access to education of indigenous children, especially those among the Mapuche

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<sup>21</sup> Juana Calfunao of the Juan Paillalef Mapuche community, explained to OMCT that her child Rosa was present every time she has been ill-treated. Equally, Human Rights Watch's report *Undue Process: Terrorism Trials, Military Courts and the Mapuche in Southern Chile*, 27 October 2004, contains further examples.

<sup>22</sup> <http://www.mapuche-nation.org/espanol/html/noticias/ntcs-262.htm>, <http://www.mapuche-nation.org/espanol/html/noticias/carta-08.htm>, <http://hrw.org/spanish/informes/2004/chile1004/6.htm>.

<sup>23</sup> Art. 19 (10) of the Constitution, modified by the Law no. 19634 of 1999, together with the educational reform of 7<sup>th</sup> May 2003 that introduced the obligation of 12 years of schooling.

<sup>24</sup> The Government's argument is based in the information contained in the Study "Child labour and indigenous communities in Chile", published by the Teachers' Union in 2004, in which the ILO's Subregional Office and UNICEF collaborated as well.

<sup>25</sup> For instance, Juana Calfunao □a "lonko" or leader of the Mapuche community Juan Paillalef (Cunco, IX Region) □who is a regular victim of ill-treatment by police agents blames the State for her 8-year-old girl Rosa incapacity to learn reading or writing because of the damage caused by her witnessing of her mother being tortured and her subsequent fear of being a victim of violence at any moment.

communities. The measures taken exclusively cover matters of language<sup>26</sup>, without tackling the problem of access and fulfilment of education itself.

Violation of the rights to education is also stressed with regard to poor, disabled, female and detained children. All of them have difficulties either accessing the educational system or remaining in it until fulfilling the minimum obligatory level. As a result, student strikes occurred at the end of May 2006<sup>27</sup> showing how alarming the issue is. Consequently, President Bachelet's Government responded by taking some measures that implied partially incorporating some of their demands in its political programmes; though its main answer was the inclusion of students' representatives within the commission appointed by the Presidency in order to lead reforms in Education.

### **3.2 Disabled children**

Mentally or physically disabled children do not have access to education guaranteed in practice<sup>28</sup>. This is the case of Martín Barrós, a 5-year-old, whose father requested admission in 25 schools before getting his son accepted into the educational system. In fact, this did not really happen until he explained his case to the press and was heard by the public. However, Chile claims that the adoption of the "National Policy of Special Education for 2006-2010" by the Ministry of Education in August 2005 guarantees full access to education without discrimination to disabled children. Certainly, that helps theoretically, though in practice there is still a lack of concrete measures and means to fully realise the right to education of these children. In addition to this, OMCT and OPCION are also deeply worried about the failure to execute legislation that imposes the adaptation of public infrastructures so that every disabled person can enter and benefit from public spaces<sup>29</sup>.

### **3.3 Girls**

However, some discriminated categories, such as female children, are legally protected. As such, the Constitutional Law of Education (LOCE), reformed in March 2005, includes fines as sanctions to scholar establishments that expel or put pregnant girls aside of their centres, activities, lessons or any other event within the scholar community if based only on their condition of pregnancy. It also imposes their obligation of being flexible to the girls' needs, as well as their duty to help them remaining inside the educational system as long as possible. In practice, those obligations are still being violated, especially by private educational establishments<sup>30</sup>.

## **4. Protection from all forms of violence (Art. 19 CRC)**

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<sup>26</sup> Programa de Educación Intercultural Bilingüe", a specific program focused on bilingual education, the result of the agreement between the Ministry of Education and CONADI (Nacional Corporation of Indigenous Development)

<sup>27</sup>During the last weeks of may 2006, students of primary and secondary school mobilized in strikes in several Chilean cities, demanding the reform of the "Ley Orgánica de Calidad de la Educación" (LOCE, Law of Educational Quality) and claiming for a real free access to education, namely official exams (PSU) without fees, free and unlimited public transportation abonnements and infrastructure investments, in order to get a high quality educational system.

<sup>28</sup> Quoting the First National Study about Disability in Chile, April 2005; who also estimates that only 1 out of 5 disabled children studies, of those only 1 out of 2 finishes the basic or primary education, 1 within 8 children fulfils secondary education (the legally minimum) and 1 out of 20 reach to access university.

<sup>29</sup> The deadline for the fulfilment of the execution of this legislative obligation was 31st December 2003.

<sup>30</sup> The Inter-American Human Rights Commission, Report 32/02 Petition no. 12.046 (12<sup>th</sup> March 2002) states the violation of Mónica Carabantes Galleguillos' rights by the state of Chile, whose Supreme Court confirmed as licit an internal rule of the school preventing pregnant girls from registration.

According to UNICEF's data base<sup>31</sup>: 73.6% of children in Chile are victims of some kind of violence within their families, among those 53.9% suffer physical violence, which in 25,4% of the cases correspond to physically severe violence. Consequently, and due to the special emphasis placed on violence by the Committee's, particularly within families, this report will analyse the problem in relation to the aggressor as well as the offence or crime typified.

#### 4.1 Scenes of violence

##### A) Violence within the family

Violence in families is still legally permitted in the Civil Code, which contains in article 234 the faculty of parents and/or guardians, those who have the parental authority, to "correct [the behaviour of] their children" setting two limits: the respect and protection of children's health, on the one hand, and their personal development, on the other. Therefore OPCION and OMCT are deeply concerned about the existence of a legal basis that justifies physical and/or psychological violence or punishment against children, as it breaches international law and its standards, in particular the Convention on Rights of the Child that prohibits any form of violence against children. No rule of that sort can be accepted, not even if it is limited. Therefore, we recommend the State to delete it and to specifically declare the prohibition of all forms of violence against children including corporal punishments, without exception.

Besides, in general terms, violence against children has civil and penal consequences in Chile, inserted in a confusing legal framework<sup>32</sup>. If violence occurs in the family sphere, a court may suspend or remove parental responsibility (*patria potestas*)<sup>33</sup>. On the other hand, penal responsibility is increased, considering the aggressor was one of the parents<sup>34</sup>. Specific crimes against children are also contained in the Penal Code. In particular: ill-treatment (physical and/or psychological abuses), kidnapping, abandonment, injuries (grievous and not severe bodily and/or psychological harm) sexual contact, sexual abuses, paedophilia, sodomy, prostitution, pornography and rape of minors. All of them are punished with a minimum sanction of short termed imprisonment ("minor prison"). In addition, child murder and abandonment of minors resulting in injuries are punished with long termed convictions ("major prison").

Aside from sanctioning parents, guardians or any member of the family responsible for the child's aggression, judges are obliged to take "protective measures" with regards to the child, among which the internment of the child in a legal establishment under the responsibility of the SENAME, is possible. Therefore, child victims might also be punished in case those measures of deprivation of liberty are taken by judges who do not have a legal obligation to call the minor concerned in the process. As a result, OMCT and OPCION recommend the State to do whatever possible to avoid the systematic internment of children victims from violence. Secondly, they raise their concern about the fact that article 30 of the Minors Legislation of 1967 is still effective, as it contradicts article 12 of the CRC regarding the State's obligation to assure that children's opinions are to be heard and taken into consideration, especially in those proceedings affecting them.

However, OMCT and OPCION welcome the progress made by the introduction of three new judicial proceedings within the Family Justice System, in particular the one that directly deals with violence occurring in families ("Proceso de violencia intrafamiliar"). Specifically, OMCT and OPCION value the deadlines imposed to judicial stages and decision periods, as

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<sup>31</sup> "Comparative Study about child mistreatment", UNICEF, August 2000.

<sup>32</sup> Contained basically in the Minors Legislation of 1967, Civil Code, Penal Code and Law no. 19.325.

<sup>33</sup> Art. 30 of the Minors Legislation 1967.

<sup>34</sup> Art. 340 of the Penal Code in relation to the respective crimes arts. 395 and forward, increases in one degree the sanction of each crime.

well as the flexibility of subjects that might bring the criminal action and initiate the prosecution.<sup>35</sup>

## **B) Other scenes of violence**

Particularly worrying is the frequency of violent situations inside establishments where children are interned. Those lie under SENAME's responsibility, although these establishments are lead by "Gendarmería" forces. Violence in those establishments is perpetrated by various subjects: Gendarmería agents and minors against each other. As a result, every child deprived of liberty without considering the cause of imprisonment, is affected.

Firstly, agents of Gendarmería, in charge of the children's custody, frequently use force and violence . Mainly, because they are neither adequately prepared nor trained to work in contact with minors. Moreover, many of the agents are not much older than those interned themselves; this situation leads to tensions that end up in fights for the control of power.<sup>36</sup> In addition, the effective legislation gives them wide powers to take disproportionate discipline measures such as a 2 months suspension of the permission to go out or the use of solitary cells<sup>37</sup>. Even if there is specific mention in the same legislation to the prohibition of torture and other cruel, degrading or inhuman treatment.<sup>38</sup>

In that sense, Gendarmería agents who break the law respond firstly administratively and subsequently criminally, although they might only be subjected to penal responsibility<sup>39</sup> in case there is a formal accusation against them. With regard to this situation, OMCT and OPCION are aware of the lack of accusations and therefore prosecutions. Because, on the one hand, children and their families avoid this process, fearing the consequences to and/or punishments of interned children. On the other hand, authorities, subjected to the legal obligation of reporting any crime that they become aware of □ specially if they are in charge of an internment institution<sup>40</sup> □ do not proceed criminally against their colleagues. Whatever the case, the effectiveness of the sanctions responding to violence against children perpetrated by State agents is failing.

Secondly, violence occurs also among minors against each other. In this case, perpetrators respond both to discipline measures and of course, to penal legislation in case their actions constitute a crime<sup>41</sup>. In this context, the most frequent events are not only individual forms of violence □ namely individual fights □ but collective forms or riots that unfortunately lead to a rise in violence.

### **4.2 Specific types of violence**

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<sup>35</sup> The victims themselves or any other interested person is actively legitimated to denounce the situation and initiated this process.

<sup>36</sup> *Annual Report About Human Rights In Chile 2006*, Law Faculty of the Universidad Diego Portales, Santiago, June 2006.

<sup>37</sup> Art. 40 of the Gendarmería Rules no. 553 of 2002.

<sup>38</sup> Art. 8 of the Gendarmería Rules no.553 of 2002.

<sup>39</sup> Their penal responsibility implies increased sanctions, according to the special crimes contained in art. 150 and forward of the Penal Code.

<sup>40</sup> Officers in charge of an internment establishment shall be sanctioned with a month of suspension in case they do not report the offences and/or crimes they know happened in the establishment of their responsibility, according to article 17 of the Minors' Law of 1967.

<sup>41</sup> To be subjected to penal responsibility they need to be over 16 and declared with discernment capacity.

## A) Sexual abuses (Art. 34 CRC)

Over 3.719 children are victims of sexual abuses<sup>42</sup>. According to the data collected by the Medical Legal Service 79.9% of those aggressions committed by a known person, and 44.1% by a family member. As a result, the number of victims mentioned before, may not be the real one, as a number of cases are not denounced because of the relationship with the perpetrators.

The age of sexual consent was increased in 2004, by the Law 19.927 from 12 to 14 years old for any heterosexual relation. As a result, any sexual contact with minors under that age might be prosecuted as sexual abuse of children, which is punished with a minimum sanction of conviction by the Penal Code<sup>43</sup>. On the contrary, the legal age for homosexual intercourse is set up at 18 years old: article 365 contains the sanction of sodomy for minors under 18 punishing it as rape. That leads to children's discrimination based on sexual orientation, as heterosexual intercourse is punished only if the consenting minor is under 14. That article together with the survival of a rule that sanctions prostituted children (between 14 and 18 years old, Art. 367) concern OMCT and OPCION.

The SENAME is responsible for the protection of victims, as well as their juridical and psychological attention. Unfortunately, their actions to address child victims often end in measures of internment, which are felt as punishments by child victims instead of being understood as measures of protection and recovery; the child's perception and emphasis that he is not responsible could be considered more.. Nevertheless, judicial practice remains severe and firm in their prosecutions of individual and collective or mass cases<sup>44</sup>, which always breeds contempt among the public opinion. In the meantime, actions taken by the Government in order to increase the investigation of this offences and to improve their reporting avoidance have been regular since 2001.

## B) Economic exploitation (Art. 32 CRC)

According to Chilean Labour Law, recently modified by the Law 19.684 in 2000 together with the educational reform of the 7<sup>th</sup> May 2003 that introduced 12 years obligatory schooling, child labour is permitted only in three situations: for children between 16 and 18 years old with parental authorisation; if the child is 15-16 it is also possible, in case they have fulfilled their minimum educational duties<sup>45</sup>; lastly, children under 15 may also be legally permitted to work in theatre, cinema, television or similar activities, with an additional judicial authorisation. Besides, the Minors Law of 1967, modified by the Law 19.806 of 2002 mentions four situations related to economic exploitation, all of which are punished with conviction<sup>46</sup>.

The SENAME and the Labour Direction<sup>47</sup> take the charge of controlling the observance of those legal limits, which are often crossed because of the popular belief of children being

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<sup>42</sup> According to a study realised by the Universidad Arcis, as a result of an agreement signed between SENAME and the ILO, whose results were pointed out in the Conference about Sexual Exploitation, August 2004.

<sup>43</sup> Arts. 362 and following of the Penal Code punish the crime of sexual abuse, sodomy, pornography, commercial sexual exploitation and sexual tourism.

<sup>44</sup> On 24th May 2006 the Criminal Court of the Maule Region (VII) sentenced Paul Schäfer, former leader of the "Colonia Dignidad" to 20 years of conviction and to pay 1,4 million Chilean dollars in compensation to his victims.

<sup>45</sup> This prevision of the art. 13 of the Labour Code became virtually impossible as the educational amendment of 2003 introduced the 12-year obligatory schooling, which is supposed to be finished the soonest with 17.

<sup>46</sup> Art. 62 of the Minors Law punishes: the employment of children in bars, prostitution houses or game establishments; exhibition of minors and/or their abilities; night work between 10pm and 7am); and also punishes the parents who consent their children to roam or beg.

<sup>47</sup> "Dirección del Trabajo", a department dependent on the Ministry of Labour.

firstly part of the familiar manpower, and secondly because they are popularly considered more adequate as well as less expensive for dangerous jobs<sup>48</sup>. In that sense, the Government approved in 2001 a program addressed to prevent and abolish child labour<sup>49</sup> that was put into practice in 2002. One year later, the Ministry of Labour together with the International Labour Organization (ILO) published the results of a poll, taken between February and April 2003, which showed that 5.4% or 193,816 of all the children between 5 and 17 years old in Chile had worked at least 1 hour per week, within 3% (107,676 children) did “unacceptable activities”-namely dangerous and prohibited jobs<sup>50</sup>. In addition to that, the special vulnerability of indigenous children to economic exploitation has to be highlighted, as pointed out by the Study “Child Labour and indigenous communities in Chile”, which was published by the Teachers’ Union in 2004. This report assesses prompt involvement of indigenous children in communal activities □with economic content, without doubt□ that consequently prevent them from attending school because of exhaustion and fatigue, which also affects teachers, who have to decide whether to lessen educational standards in every class or to contribute to school abandonment by ignoring the situation of part of their students.

Moreover, concrete preventive and repair measures have been made with regard to child labour. For example, the SENAME is building up a register of this worst form of child labour and the children’s needs, as well as implementing some prevention projects together with NGO’s like “Centro de Profesionales para la Acción Comunitaria” (Ceppac) and “Servicio de Paz y Justicia” (Serpaj). OMCT and OPCION welcome this collaboration within civil society. Other examples refer to reparatory measures: in this context, socialization areas (“espacios socializadores”) that enable children victims of economic exploitation to rebuild their confidence as adults as well as to reintegrate them into society, have been included.

### C) Child Trafficking (Art. 35 CRC)

The Government has gathered no data on this issue. Only the NGO Raíces, specialised in problems of child sexual commerce took a poll in 2001 stating that within a period of 4 months, 17 cases of trafficking occurred just in the I, V and XIII regions, but mentioning only denounced cases, without counting the unreported ones.

Trafficking constitutes a crime under art. 377 bis of the Penal Code. Although its punishment is limited in three ways: firstly, it only punishes accomplished facts, without regard to attempts to commit the crime, its preparatory stages or uncompleted trafficking. Secondly, the action is considered a crime only in case of trafficking for sexual exploitation; that prevents conducts with different purposes like illegal adoption or commercial exploitation from being sanctioned. And thirdly, this article refers just to external trafficking, namely, only when those actions occurred crossing the frontier might be sanctioned. A recent example, occurred in April 2006, shows these limitations: a lorry driver who picked up two 15-years-old adolescents in Chile and crossed 4 frontiers in their company might only be sanctioned, according to present legislation, in case he had led them to abandon home, but by no means for child trafficking. Due to this legal vacuum, two legal proposals have been put further: a draft bill, whose main amendment proposes the punishment of child trafficking in its different stages of consummation, from attempt to commit a crime to its partial or total accomplishment. Likewise, another draft bill leads to the amendment of foreigners’ legislation, punishing not only authors and accessories, but also everyone enriched by the fact of child trafficking.

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<sup>48</sup> Report :*Worst Forms of Child Work*, SENAME, August 2004, exemplifies this statement with the children employed in maritime fields (to work at sea, offshore or under water) as well as in jobs within the traffic jams.

<sup>49</sup> “Plan de Acción Nacional para la Prevención y Erradicación Progresiva del Trabajo Infantil y Adolescente”.

<sup>50</sup> *National Diagnose of Child Labour and their Worst Forms’ Project.*

Apart from legal measures, the Government tries hard to fight against these crimes not only nationally, but also internationally. As a result, government employees are participating in international activities in order to prepare and qualify themselves on child trafficking issues<sup>51</sup>, leading to improved prevention, investigation and prosecution of those crimes. Moreover, Chile, as a member of the Interamerican Institute of the Child, has signed formal multilateral and bilateral agreements with Argentina, Brazil, Paraguay, Bolivia and Uruguay, as well as with regional organisations like MERCOSUR in order to implement investigation networks at every level<sup>52</sup>. So far, Chilean measures have been mainly taken in relation to publicity of missing children<sup>53</sup>. Detached from the benefits of those efforts, OPCION and OMCT raise their concern about the limitation of the measures taken against child trafficking, whose coordination and cooperation among the different security and police forces are crucial.

#### D) **Torture and other cruel inhuman or degrading treatment or punishment (Art. 37a CRC)**

Three categories of children can be considered as especially vulnerable to torture: they are those deprived of liberty, indigenous children and “ex-minors” which refers to those adults who were children during Pinochet’s dictatorial regime. Considering that torture and other ill-treatment are already punishable in the Penal Code<sup>54</sup>, OMCT and OPCION raise their concern about the incoherence of permitting some of those in certain laws, even if only in a limited way.

In that sense, beginning with the first category of vulnerable **children** mentioned above, and considering that torture **inside detention establishments** is constant and mainly related to the sanction of solitary cell, it has to be highlighted that this punishment is permitted by two decree-laws (no. 730, article 84, and the art. 40h of the one no.553). However, since 2005 there is a specific prohibition of the use of solitary cells as well as other ill-treatment used as punishment or discipline measures □partially complying with the definition of article 1 of the Convention Against Torture□ contained in article 45 (b) of the Minors’ Responsibility Law no. 20.084, which unfortunately, although approved, has not yet entered into force yet.

In practice, courts of appeal have repeatedly reminded Gendarmería agents that such measures should be avoided, as they are put into practice without respecting minimum sanitary, lighting or ventilation conditions. In addition, it should be mentioned that solitary cell sanctions are not only put into practice regularly as punishments, but also as measures of protection “in favour” of minors. In this sense, the *Annual Report About Human Rights in Chile of 2006*<sup>55</sup> assesses that in the Graneros’ establishment children are interned in solitary cells as to prevent them from being hit by other interns. In other establishments, like

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<sup>51</sup> In 2004, Chile took part in a Workshop for qualifying governmental workers: “Taller de Capacitación de funcionarios gubernamentales para combatir la trata de personas”, celebrated in La Paz (Bolivia). In 2005 Santiago hosted the International Seminar against Child Pornography and Child Trafficking in the area of sexual commerce. Also in the same year, the Ministry of Justice promoted an exchange of experiences in those issues with other American states as well as Germany, Spain and Norway. In March 2005, Chile also hosted the First Interfrontier Meeting to combat child trafficking between Chile and Peru.

<sup>52</sup> “Tráfico de Niños, Pornografía Infantil en Internet y Marcos normativos en Argentina, Brasil, Paraguay, Uruguay, Bolivia y Chile” and the “Declaración de Comisiones Nacionales de Prevención y Erradicación del Trabajo Infantil en la zona de MERCOSUR y Chile”, Buenos Aires, 29th September 2004.

<sup>53</sup> In the main Chilean Airport as well as in the web [www.chilenosdesaparecidos.org](http://www.chilenosdesaparecidos.org) photographs of disappeared children are exposed.

<sup>54</sup> Art. 150 (A) of the Penal Code sanctions the crime of torture. Further articles contain special crimes related to the ill-treatment committed or perpetrated by public authorities.

<sup>55</sup> Faculty of Law, Universidad Diego Portales, 2006.

[http://www.udp.cl/derecho/derechoshumanos/informesddhh/informe\\_06/indice\\_introduccion.pdf#search=%22informe%20anual%20derechos%20humanos%20chile%20diego%20portales%202006%22](http://www.udp.cl/derecho/derechoshumanos/informesddhh/informe_06/indice_introduccion.pdf#search=%22informe%20anual%20derechos%20humanos%20chile%20diego%20portales%202006%22)

the “Centro Tiempo Joven”, there is actually an entire house dedicated to these punishments<sup>56</sup>. Problems are aggravated by the low rates of reporting to the authorities, who are also obliged to denounce and/or investigate any known irregularities. As a result, many unreported cases remain unsolved and without any prospective of being prosecuted, either administratively or criminally; because victims are frightened of reprisals against them, and the authorities, who are not sufficiently dissuaded by the threat of the penalties for infringing their duties, avoid charging their colleagues.

Secondly, **indigenous children** are frequent victims of acts of torture perpetrated by police forces (Carabineros and other special forces which are militarized fractions of the Police) directly (as victims) and indirectly (as witnesses), all of whom occurred mainly regarding the property disputes between the Government and indigenous communities, especially with the *Mapuche*, because of the title deed or legal ownership of lands. In this context, several cases of State impunity can be mentioned: for instance, the cases of Alex Lemún, a 17 year-old boy shot by the Carabineros Agent Marco Aurelio Treuer the 7<sup>th</sup> November 2002; or Daniela Ñancupil, a 13 year old *Mapuche* wounded by shots fired during the eviction of indigenous peoples located in the Galvarino District in January 2001<sup>57</sup>.

Lastly, “**Ex-Minors**”, are claiming for the re-open of the National Commission on Political Imprisonment and Torture<sup>58</sup>, as well as their formal recognition as victims of torture and the payment of subsequent fair compensations by the State. Even though there was a complementary recognition of 102 children born in prison or detained with their parents, associations like the National NGO’s Network for the Childhood and the “Agrupación Ex-Menores de Edad Víctimas de Prisión Política y Tortura” allege their right to the recognition of former minors as victims of torture – and not only as sons and daughters of political detainees. These NGOs also claim an investigation for every offence □ not only those resulting in death, such as torture □ without temporal or formal restrictions. Consequently, they have sued the Government for damages and expect the establishment of a permanent commission that would enable every victim to report its case without pressure, receiving just and fair compensation.

## **5. Prevention, Protection and Recovery of a child victim of violence (Arts. 4, 19 and 39 CRC)**

The National Service for Minors (SENAME) is responsible for promoting and protecting the rights of children and adolescents and to contribute to the social reinsertion of adolescents that are in conflict with the law. So far the **protection** of children implies the judicialization or institutionalization of victims, who are placed in either Care Residences or families (“Hogares o Familias de Acogida”), or OPDs (Rights’ Protection Offices, “Oficinas de Protección de Derechos”). Whereas the former is related exclusively to the deprivation of the child’s liberty, the latter has the advantage of attending to children at a local level, without removing them from their communities, even if the real effectiveness and use of those 32 OPDs all over the country is little comparing to the demand of children diagnosed “in need of protection” by the Diagnose Centres of the SENAME: in 2003 it amounted to over 61,000 children, showing also its increasing tendency year by year. In addition, the SENAME carries out special projects related to specific problems like: 31 about

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<sup>56</sup> House no.5 is addressed to the isolation of children: 12 solitary cells of 2x2m. with an iron door and a window of 20x20cm. They are lacking toilets and there is therefore a strong smell, as the Study of The Clinic stated, 26th May 2005, no. 153.

<sup>57</sup> In the first case, the Carabineros Agent was cleared of any responsibility by the Martial Court, which does not respect the minimum guarantees of processes. And in the Second case, nobody has been yet formally charged, although all the policemen authorized in that incident to carry fire-arms were identified.

<sup>58</sup> This National Commission on Political Imprisonment and Torture, better known as the Valech Commission, was created in September 2003 in order to recognize the victims of torture during the dictatorship of General Pinochet (11/09/1973 to 10/03/1990). It was dissolved in 2005.



the ill-treatment of children, 22 projects related to drug abuses, 10 about child abandonment, 9 related to sexual child exploitation and 3 projects related to child labour.

According to the 2001 reform of the institution, the SENAME is making an effort to open more centres dedicated to the promotion and strengthening of children's rights. So far, their offer is composed by multiple forms of establishments<sup>59</sup> as well as **prevention** projects carried out by the SENAME's network institutions □ establishments and other either public or private societies collaborating. By 10<sup>th</sup> April 2006, over 200 projects at a national level were already governmentally subsidized and promoted. However, they do not respond equally to the territorial distribution and needs because 7 of the 13 Chilean Regions benefit from less than 10 projects each (Regions I, II, III, IV, VI, XI, XII); 4 of those count with no more than 5 projects. The VII, IX and X Region move around 15, whereas the VIII and XIII Region count 30 and 56 projects, respectively, an amount that contrasts with the 2 projects carried out in the IV Region. Therefore, OMCT and OPCION recommend that Chile should improve its coordination mechanisms in order to guarantee a coherent and territorially equal promotion and prevention of children's rights.

Lastly, the OMCT and OPCION regret the lack of any measure of recovery and social reintegration of a child victim in the legislation. It seems incoherent to not mention them if measures of protection are obligatory to take within the judicial procedure when children are declared "in need of protection"; especially, considering that one of those measures is the deprivation of liberty, which consequently separates the child from his family and community. Illogical indeed, after reading the Constitution which states that the family is the nucleus of society.

However, the recovery and reintegration of children's rights is one of the specific SENAME's duties, located within protection measures and only for victims of severe rights violations (child labour, mistreatment, sexual or commercial exploitation, abandonment or homeless children). This prevention is realized by two types of programmes (Mobile Intervention Programs and the Victim's Reparation Program) together with the SENAME's assumption of the children's legal representation in the penal proceeding.

Considering some of the concrete programmes, the recovery of minor victims of ill-treatment is the aim of 28 specific projects, that imply giving their undivided attention to those minors for a period of 12-18months. A Child and Juvenile Intervention Programme<sup>60</sup> was also implemented within the Investigation Section of the Police Department in order to examine children victims of sexual abuse. Moreover, the Legal Medical Service (an institution dependant on the Ministry of Justice) has also been carrying out checkups to them when ordered by tribunals. Regarding commercial exploitation, the offer of recovery programmes is being increased, particularly in Region XIII, where there is more need. However, OMCT and OPCION regret that the prevention system is lacking on promotion of local attention as well as a real consolidation of the specialised programmes<sup>61</sup>.

## 6. Protection of children deprived of liberty (Art. 37 b, c, d CRC)

Considering that deprivation of liberty in Chile is both a sanction and a measure to children's protection, as the Minors Law of 1967 rules both regimes, criminal responsibility and protection, children victims as well as those in conflict with the law suffer from equal consequences in practice.

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<sup>59</sup> This offer includes: Community centres for the Rights of Children and Adolescents ("Centros comunitarios por los Derechos InfantoJuveniles", CIJ), Day Attention Centres ("Centros de Atención Diurna", CAD), Juvenile Clubs ("Clubes y franjas Juveniles"), Centres for familiar reinforcement (Centros de Fortalecimiento Familiar) and Daily Care Centres ("Centros de Cuidado Diario").

<sup>60</sup> "Programa de Intervención Infanto Juvenil, CAVAS".

<sup>61</sup> Recognized by the SENAME in its report *Reform Process in children issues, Actual status and prospects*, April 2004.

## 6.1 Child victims: “protected” children.

The regime of protecting children also includes measures of liberty deprivation as a means to “protect” victims from further aggression. Although these measures should be temporary and only in case of necessity, neither of those restrictions is respected in practice. Moreover, children’s presence in the proceeding where those measures are imposed depends on the judge’s criteria. As a result, many children are not even called to attend the proceeding that decides which measures will affect them. This clearly contradicts the CRC standards which states both the child’s right to be present and his right to be heard, as well as to express his views in any judicial or administrative proceeding affecting him.

## 6.2 Children in conflict with the law

From 16 years old, children are criminally responsible and therefore might be subjected to the adults’ general *Criminal Justice System*, without regard to their age or condition, according to the Minors’ Law of 1967 that refers to the Penal Code<sup>62</sup>. However, the criminal system is only applicable to minors between 16 and 18 who are declared with discernment by a judge. Those who are declared without discernment are sent to the *Familiar Justice System*, which despite being a separated regime in some sense, cannot be considered as a specific one for minors, as it does not respect the guarantees contained in article 40.2 of the CRC.

In addition, the new limit of criminal responsibility contained in the Adolescents’ Responsibility Law no. 20.084 has to be taken in consideration, which is thought to enter into force in June 2007. As such, OMCT and OPCION regret that the entry into force of the new separated system for adolescents created by the Law 20.084 in 2005 had been postponed to June 2007. Although, they welcome the establishment of an experts’ commission in collaboration with UNICEF in order to study its setting into practice.

This law approved in 2005 establishes a separate and specific criminal system for adolescents, namely minors between 14 and 18 years old. As a consequence, the present limit of penal responsibility has been downplayed from 16, an absolute frontier still in force, to 14 years old, transforming the majority age of criminal responsibility into a relative limit which contradicts article 40.3 (a) of the CRC. As such, Law no. 20.084 contains two exceptions that breach its own general principle: the criminal responsibility of adolescents, namely those between 14 and 18. There are two articles that enable the restriction of liberty of children under 14 without further limitation: in case of offences detected (*flagrante delicto*, article 58) and in case of sexual crimes with restricted conditions (article 4), which are more severe in case of homosexual intercourse<sup>63</sup>.

However, the regime actually in force is the formerly mentioned, subjected to the Minors’ Law of 1967 and the Penal Code. These laws, though stating clearly the minimum age to have the capacity to infringe the law (16), do not take into account either the condition or development of children. One of the principal sanctions of this unifying system both for adults and children declared with discernment is the imposition upon children who

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<sup>62</sup> Art. 10.2 of the Penal Code states the majority age of criminal responsibility is 16 years.

<sup>63</sup> Art. 58 of the Law 20.084, entitled “Liberty restriction of minors under 14”, gives police officers every legal faculty to restrict the liberty of minors under 14 caught red-handed in order to restore public order and peace as well as to protect the victim. On the other hand, art. 4 of the above mentioned law sets a special rule in case of sexual crimes, which are punishable for children under 14 if their conducts include another minor. In fact, it can be deducted that sexual relations between a minor under 14 and another of a maximum age of 12 (in case of children of different gender) or 11 (in case of children of the same sex) constitute sexual crime.

committed either a *crime* (serious or indictable offences) or a *fault* (minor offences) the sanction of conviction.

As a result, one or more of the legally appointed establishments has to be designated by a judge. These centres actually address not only to children in conflict with the law, but also to every child in need of protection, because both regimes are subjected to the Minors' Law of 1967. This law designates following establishments: Transit and Distribution Centres (CTD), Observation and Diagnose Centres (COD), Behaviour Rehabilitation Centres (CERECO) or to those establishments determined by the Republic's President. Even though each one has its own function in terms of either responsibility or protection, children are distributed among them depending on the places and centres available in the region where they are either protected or sanctioned.

Furthermore, there are some children who have been sent to adult prisons, as a result of the Decree-laws<sup>64</sup> that specifically declare spaces for minors inside public prisons such as those of San Antonio, Puente Alto, Eastern Island or Valparaíso □ according to Gendarmería's data base, on the 31<sup>st</sup> Mach 2005, 68 minors were in prison, 12 detained and 56 condemned. In this context, courts of appeal declare generally in favour of the children suing the state for illegal or arbitrary detentions. However, courts of appeal tend to declare every judicial decision that sends children to those establishments illegal, as well as resolutions that imply sending minors to centres different to the ones assigned legally for each cause. For example, many children who were supposed to be protected were sent to centres for criminal responsibility. In those cases, judges of appeal declared illegal or arbitrary the prior judicial decisions, stating, moreover, that availability is not an excuse and, if there are no adequate centres in the region measures of deprivation of liberty do not proceed. Unfortunately, these judicial precedents only occur in cases of preventive detentions and when children are subjected to measures of protection.

Arbitrary deprivations of liberty are prohibited by article 19 (7) of the Constitution that preferences the liberty of anyone processed (including children), permitting only measures of **preventive detention** in three situations of necessity:

- 1) in case of the need to protect the investigation and its proofs
- 2) in case assuring the security of the offended is essential
- 3) if there is a social security necessity

This last exception allows justification for almost every preventive detention. In addition to those legal cases, preventive detentions also happens in practice (*de facto*), without being declared: in case of offences detected (*flagrante delicto*) if the prosecutor asks the judge for an extension of the detention period, or when the children are being diagnosed in order to be protected in one or other centre –many detentions are frequently declared illegal afterwards by courts of appeal responding to that later situation, as mentioned before. In fact, based on this diagnosis, many children have been detained for more than a year, waiting for the resolution addressing them to an adequate centre, while they are still remaining in one that might not be the legally appointed for that purpose. For instance, many children wait for diagnoses in CODs (that correspond to the responsibility regime) or in public prisons.

Nevertheless, **conditions of internment** do not reflect the national legal principles or the international standards. The main problems to tackle are:

- insufficient quantity of food;
- very poor sanitary infrastructures □ namely, basic nursery, if only the case, is frequently not even available;

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<sup>64</sup>For example, the Supreme Decree-Law no. 2367, 2<sup>nd</sup> July 2004.

- distant location of centres –whereby family encounters might tend to sink more and more by force, affecting negatively the child’s rehabilitation and breaching his/her right to maintain regular contacts with his/her relatives;
- appalling access to education and recovery or reintegration measures; insufficient legal, psychological care or social assistance;
- and lastly, the lack of any separation among children with different ages or causes of detention, as well as the infringement of the separation between adults and children, which is systematically committed while transferring them to their judicial proceedings because, executing writs of summons. In this transfers carried out by police officers, detained children are often victims of aggressions by detained adults □in fact, they are better known as “carniceros” (the slaughter) among detained minors.

There is a general consensus about the failure of the rehabilitation system in the centres of deprivation of liberty. Contrary to the case of the programmes developed openly, such as the PIA (“Programas de Intervención Ambulatoria”) or the “Programas de Reparación a la víctima y Servicios en Beneficio de la Comunidad”, which impose alternative measures such as duties of repairing damage to the victims or community services, both of them proved to be more often successful in terms of rehabilitation and reinsertion into society than any measure of detention.

In general terms, judicial proceedings do not take into consideration the condition of children, who are lacking specific mentions and guarantees of due proceedings such as: prompt and direct information about the accusations or free assistance of an interpreter. Even if they are all theoretically operative in Chile, due to the international law in force in the country.

Nevertheless, OMCT and OPCION welcome the enforcement in the whole country of the amendments to criminal procedures, which added essential guarantees to every accused like the presumption of innocence, the right to free legal aid and assistance or the prohibition of being obligated to declare or declare yourself guilty. Moreover, the reform of the Familiar Judicial System is also welcomed, as it entailed three new special proceedings □general familiar proceeding, violence within families’ procedure (“procedimiento de violencia intrafamiliar”) and the one lead to the imposition of children’s protection measures.



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