

# CHILDREN'S RIGHTS IN CHILE

Alternative Report to the Committee on the Rights of the Child of the United Nations on the implementation of the Convention on the Rights of the Child in Chile



Santiago, october 2014

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## Context

The following report was prepared jointly by the member institutions of the mesa de seguimiento de tratados, association that gathers Fundación Iguales, Observatory of Human Rights and Legislation, Human Rights Centre of Universidad Diego Portales, Humanas Corporation, Emancipatory Circle of Women and Girls with disabilities of Chile and Opción Corporation. The World Organization Against Torture (WOAT) has also accompanied this process, following work being done with Corporation Opción since 2004. The general coordination of the report was undertaken by the Children's Studies Centre of Corporation Opción.

Created in 1985, the WOAT currently constitutes the principal international coalition of Non Governmental Organizations (NGOs) which fights against torture, summary executions, enforced disappearances and any other cruel, inhuman or degrading treatment. Its International Secretariat based in Geneva offers individualized medical, juridical and/or social assistance to hundreds of tortured victims, and disseminates daily urgent calls throughout the world, with the purpose of protecting individuals and fighting against impunity. Specific programs provide support to certain categories of particularly vulnerable people such as women, children and human rights defenders. Among other activities, the WOAT provides field organizations access to the United Nations mechanisms of human rights protection. WOAT has advisory status with the following institutions: ECOSOC (Organization of the United Nations), International Labor Organization, African Commission on Human Rights and Peoples, Francophone International Organization and the European Council.

The report has been developed following the recommendations of Child Rights Connect, established in the Guide for Non Governmental Organizations presenting Alternative Reports to the Child's Rights Committee, which contains eight sections summarizing main advances and concerns of the institutions regarding the implementation of the Convention of the Rights of the Child in Chile. Attached also is an annex with documents and interviews with key informants to allow a more in-depth understanding of the topics developed in this Report.

## Chapter 1. General Measures of Implementation.

During the period, significant advances have taken place in education, health, special protection and juvenile justice, as shown in both legislative and institutional changes. Especially noteworthy are:

- Repeal of the Constitutional Organic Law on Education of 1990, replaced in 2009 by the General Law of Education, due to student mobilizations of 2006. The fundamental change was the modification of its legal category lessening the quorum required for its approval, which will make easier future modifications.
- Promulgation of the Law on Criminal Responsibility of Adolescentsof 2005, which generates a system of differentiated treatment for children and adolescents in conflict with the law.
- Family Courts took effect thereon the dictation of the law 19.968, which introduced the special procedure of protection measures when severe violations take place of the fundamental rights of children and adolescents.
- Exclusion of minors from regulations on terrorist offences, as well as from the genetic fingerprints register.
- The program Chile Crece Contigo (Chile Grows with You), which up to the date of its last report (2009), assumes the existence of important advances in the field of social protection for early childhood.

- Extension of the period of maternity leave from 12 to 24 weeks, with the possibility now that the extension period could be assumed by the mother or the father. Nevertheless, it is still common that only the mother is the exclusive responsible one for the children, and to this date, very few fathers have used this benefit.
- The creation and establishment (2010) of the National Institute of Human Rights (NIHR), which as a public institution is to prevent and to promote the full application of human rights in Chile.
- The entry into force of the law 20.340 in 2010, which establishes provisions in the matter of protection of refugees including special procedures for not-accompanied children or separated from their families.
- The change of administrative criteria by the Department of Foreigners and Migrants of the Ministry of Interior and Public Security regarding the interpretation of the concept “foreigner passer-by”, that could facilitate nationality granting to all children born in Chile, with the exception of children of crew members and/or tourists.
- The creation of the National Council of Childhood, decree n° 021 of 2014, in order to advice the President of the Republic in the promotion, protection and guaranty of the children’s rights.

Both the advances in the period and the issues of particular concern to civil society will be addressed in greater depth in the following chapters.

Civil society organizations have played an active role in order to **adapt the legislation and institutional framework to the Convention**. However, we note with concern various subjects that affect boys and girls living in Chile.

The need to respond to the diverse needs of children led the State to the implementation of initiatives that sought to meet these deficiencies in some way. In this respect and according to what was informed to the Committee by the State, between 1999 and 2000, through the Intersectoral Technical Committee on Childhood and Adolescence, with the support of UNICEF, the National Policy for Children and Adolescents and of its Plan of Action was developed. Subsequently, in July 2002, the D.S. N° 114 (Supreme Decree) created the Council of Ministers for Children and Adolescents. Among the tasks of this Council was the monitoring and approval of policies and plans of action aimed at children, an instrument that was considered in the continent as a valuable methodology and that marked a guideline for the region. This Council stopped working since the year 2004, without the reasons that led to such a decision being known. On May 14, 2014, through the Decree n° 021 with the repealing of the previous decree, was created the referred National Council of Childhood.

Also in 2007, a proposal for an Observatory on Children was worked on by NGO with the Ministry of Planification and Cooperation (MIDEPLAN) teams, which stopped working in 2010.

The Children’s Law of 1967 is still current in Chile, answering to a vision of childhood from the guardianship paradigm<sup>1</sup>. Chile is the only country in Latin America that does not have a law on the Protection of Rights. For this reason the Civil Society has participated in driving this debate since 1990, without having positive results. In 2005, the Government submitted a Bill, which to this day is frozen in the National Congress.<sup>2</sup> In 2011, the Ministries of Justice and Social Development developed a Project of Law of Integral Protection. In April 2012, a consensus was reached between the Civil Society Organizations, assembled in the Block for Children (which represents a broad political spectrum) and the

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<sup>1</sup>See Committee on the Rights of the Child, Final Observations, Chile, CRC/C/CHL/CO/3, 2007, para. 7

<sup>2</sup> Document of the Forum for Childrens Rights: Proposals on Childrens Matters for the Presidential Candidates, 2009.

government, reached an agreement on a law project, that later was dismissed by the government itself and introduced to the Parliament through a senatorial motion<sup>3</sup>.

On the subject of legislative reforms, it is necessary to point out that to the year 2012 there was 110 bills in the National Congress<sup>4</sup> and 2 proposals for constitutional reform. This demonstrates the dispersion and lack of articulation, trying to resolve problems in a partial way in the absence of an Integral Law on Protection of Rights.

Adding to this dispersion, the Executive has sent a bill to reform the SENAME which implies its division into two services<sup>5</sup>, whereupon the agencies of civil society as a whole have repeatedly pointed out<sup>6</sup> that such reform only acquires real sense in the framework of a Law of integral Protection following the principles of the CRC, which, from a rights based approach can guide the set of universal policies (Health, Labor, Housing, Education, Social Protection, Public works, Justice, among others) and mandate public organizations (State services, Municipalities, Courts, services provided by NGOs with state funds, etc.), organizing action with the purpose of realizing the rights of all children and not only those who are in vulnerable situations as currently is. SENAME develops entirely separate programs for the care of children whose rights are violated (coordinated by the Department of Protection of Rights) and adolescents in conflict with the criminal law (coordinated by the Department of Juvenile Justice).

Therefore, the concern is on resolving a purely administrative problem that affect a little piece of the children, without getting to the heart of the problems which are resolved by a Law of Protection and an institutional framework according to it, putting administrative protection as first line of action of the State to childhood.

This *structural void in the matter of protection in Chile*<sup>7</sup> generates a constant pressure, particularly on SENAME and on the care programs in charge of NGO's and the courts, with exceeding social expectations which in turn provokes criticism by the political world, the media and the public opinion, to what is perceived as inefficiency and lack of achievements without acknowledging the profound impact of not deciding as State, to close the structural gap once and for all.

It is necessary to point out that the absence of the figure of the Child Ombudsman persists, whether in the form of a Specialized People's Ombudsman or of an Independent Ombudsman, to thus meet the recommendations made by the Committee. This has been a permanently demanded by the NGO's since the 80's in the country but to the date, there are not been presented concrete proposals in the matter.

Another area of concern for civil society organizations is *the social inequality that exists in Chile*, which threatens the quality of life of children and its future possibilities.

The Organization for Economic Cooperation and Development (OECD) places Chile as the country with the highest inequality among its population in income terms, and the third one in terms of the proportion of poor population. In its report "Panorama of society", the OECD highlighted that the Gini coefficient in Chile is 0.50, ranking above the average of the organization (0.31). In addition, according

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<sup>3</sup> This motion was rejected by treating issues of exclusive law initiative of the President of the Republic.

<sup>4</sup> Infancia y adolescencia: Proyectos de ley en tramitación. Biblioteca del Congreso Nacional, Mayo de 2012

<sup>5</sup> See Mensaje Nº 31-360 (2012) *Message from the President of the Republic, to initiate a bill to eliminate the present National Service of Minors and create two services for care of children and adolescents.*

<sup>6</sup> See: Proposal by the Consultative Committee (July 2009) *Accredited collaborating organizations and the redesign of SENAME*; Consultative Committee of the Collaborating Organizations of SENAME (2011) *Critical Knots and Proposals Commission on Juvenile Justice*; Chilean Forum for the Rights of the Child *Protection System for the Rights of Boys, Girls and Adolescents.*

<sup>7</sup> From the evidence collected in Chapters of 2013 and 2014 of the Report on Human Rights on UDP, the structural void is produced by a system that is not oriented towards protecting integrally children and adolescents, but only oriented to protect those who have been seriously vulnerated in their rights. Specially because of total abasence of a public policy that puts together the institutional response considering the administrative faction first, letting the judicial one for last instance.

to this report, 18.9% of Chileans are poor, far away from the OECD average of 10%<sup>8</sup>. In territorial terms, profound inequalities also exist linked to accessibility, due to the low levels of national integration and high prevalence of poverty and lack of formal education in isolated areas, as well as referred to urban mobility, marked by a strong territorial segregation linked to social inequalities.<sup>9</sup>

According to the analysis carried out by Sol Foundation, based on data from CASEN (national survey of socio-economic characterization) of 2009, the average direct income of the richest 10% Chilean households is 46.2 times the average of the direct income of the poorest 10%.

The Children and Adolescent 2009<sup>10</sup> Index sets scores from 0 to 1 according to the quality of life enjoyed by children at the national, regional and municipal levels in four main themes: Education, Health, Housing and Income. In general terms, children belonging to the Region of Magallanes, reached a higher quality of life, with a score of 0,728. The Region of Araucanía had the lowest score of only 0,563 below the national average of 0,664. The scores are even more polarized when compared children living in Municipality of Vitacura, one of the richest in the country with a score of 0,927, with the Municipality of Alto Biobío, one of the poorest, obtaining the lowest rate, only of 0,275.

This inequality correlates with the lack of universal prevention policies directed at children and articulated in the territories<sup>11</sup>. Prevention is a subject much complained about, but about which very little is implemented.

The actions of sensitization or promotion of good practices in citizenship, have a negative balance, specifically in two areas that have resonated enough this last time in the country: the sexual abuse and sexual exploitation of children. Even when knowledge has been given about the depth of these problems on a national scale, preventive activities and education campaigns aimed at children are extremely weak.

With regard to **general prevention**, the program Chile Crece Contigo only reaches 40% of the population living in conditions of extreme poverty and who are between the ages of 0 and 6. Thus children over the age of 6 who live in poverty and extreme poverty are left out of the benefits, without any other public organization to take care of this group which also happens with children of all ages who do not belong to these social sectors and whose rights can nevertheless be infringed upon. It is necessary to finish with the idea, which exists in the country, that the plans and programs for children are only and exclusively aimed at the sectors living in conditions of poverty. It is demonstrated that violations to children rights cut across all sectors of the country.

Also of concern of civil society organizations is the **weak systematization of knowledge and information in matters relating to children, families and adolescence**. In Chile, data are scattered among the various actors of the system and there is no unified data bank enabling access to reliable and up-to-date information<sup>12</sup>. Although SENAME has a data system, these refer to the population of children who have suffered from serious rights violations, without accounting for the reality of all children who live in the national territory. An example of what is mentioned here is the fact that the Institute of Statistics (INS)

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<sup>8</sup> Without also considering the profound qualitative differences from the 10% OECD, for example, the recognition of guaranteed social minimums by the State in respect of 18.9% of Chile, which has no such guarantees

<sup>9</sup> Senate (2012) *Portrait of Inequality in Chile*.

<sup>10</sup> Ministerio de Planificación (2009) Índice de Infancia y Adolescencia

<sup>11</sup> Between the years 2006 – 2007, SENAME closed most of the prevention programs known as Centros Infanto-Juveniles (CIJ) to set up targeted prevention programs (PIB) and specialized protection programs. Due to pressure from the Association of Municipalities and the parliamentarian world, finally SENAME accepted to generate in some localities, assigning \$2.000.000.000, preventive programs thus giving birth to the Programas de Prevención Comunitaria (PPC)

<sup>12</sup> This situation is worsen by the questioning regarding to the low methodological quality both the last population census of 2012 and the national social – economic characterization survey of 2012 (CASEN).

disaggregates the population of children with different criteria than the Public Prosecutor's Office or the Ministry of Health, which makes it difficult to carry out in-depth analyses involving data from different sources. This weakness also can be found on the judicial system statistics, which does not disaggregate the data of protection measures presented in Family Courts (causals, measures taken and monitoring). Furthermore, would be of value if this information were disaggregated considering variables of gender, gender identity, nationality and ethnic belonging.

Civil society organizations have special concern for the various manifestations of **violence** that occur in the relationship of the Chilean society with children. In this context, we are concerned with the high rates of child abuse emphasizing that 71% of children declares living with psychological violence in their homes and 29.5% with serious physical violence<sup>13</sup>.

Moreover, in the school system it is possible to point out that 86% of students have declared frequently seeing taunts and insults at school and 50% have identified threats or harassment, and 71%, fights.<sup>14</sup> A recent report by the Superintendent of education is very disturbing, indicating that 54% of the abuses reported by students in school campuses are committed by adults, mostly teachers.<sup>15</sup>

It is also very worrying the levels of institutional violence toward children by police repression during the student demonstrations and the Mapuche conflict, detailed in Chapter 4 of this report.

Finally, there are diverse issues about migratory regularization of children whose parents are foreigners living in Chile with irregular situation, in regard both obtaining a residence visa and Chilean nationality. It becomes necessary to adequate the regulations concerning migration, guaranteeing that the new legal frame has the best interest of the child in its approach. This subject will be addressed in more detail on chapter 8.

#### **Recommendations:**

- 1. Rapid approval of a Law on the Protection of Rights, according to CRC principles and norms; related abolition of the law on minors, and setting up of an institutional system for the protection of rights that guarantees its effectivity for all children living in the national territory.**
- 2. The installation of a Central Authority, with sufficient political power to articulate the set of public organizations and private sector entities that receive state contributions, ensuring compliance with the plans and programs aimed at realizing the rights of children based on the CRC standards and other instruments of Human Rights ratified by Chile.**
- 3. The establishment of the figure of the Children Ombudsman in accordance with the Paris Principles and the Observation 2 of the Committee on the Rights of the Child.**
- 4. The participatory generation and implementation of a great National Agreement Against Violence and Social Inequality of Children, founded on a children's rights approach, with widespread participation including the diverse State organs involved and the citizenship participation.**
- 5. The installation of a data collection system with reliable data disaggregated by age till 18 years of age, that also enables to obtain information broken down by sex and vulnerable groups, particularly by nationality and ethnic belonging.**
- 6. To make a new normative in matter of migration that guarantees in all procedures, on one side the principle of the best interest of the child and on the other, the help to regularize their migratory situation applied within national and international human rights norms.**

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<sup>13</sup>See UNICEF (2012) *4<sup>th</sup> Study on Child Mistreatment*. Santiago, Chile

<sup>14</sup>See Mineduc Survey gives allarming polls on Bullying. SEPEC Foundation. April 25th, 2011.

<sup>15</sup>See Maltrato en Colegios: 54% de los denunciados son adultos. LA TERCERA. Octubre 20th, 2012.

## Chapter 2. Definition of the Child

A matter of concern is the contradiction between a notion of children as subject of rights and the emphasis on public security related to public policies. The priority afforded by the Executive to the protection of order and security has led to the implementation of projects such as the plan A Safe Chile that establishes public safety guidelines for the period 2010-2014<sup>16</sup>. This program does not mention the fundamental rights of persons, nor considers in its analysis the multiple causes of the criminal phenomenon<sup>17</sup>. This has negative repercussions on the appreciation that the citizenship has of children in vulnerable situations. Instead of looking at them as subject of rights that must be protected, children are stigmatized and criminalized, with a sole emphasis on the possible danger they might represent to society.

This vision of the phenomenon led to the establishment in 2007 of a legislative agreement on security by all political sensibilities<sup>18</sup> with parliamentary representation. By placing in the center of the agenda the issues of public safety, it postponed once again changes towards building a social policy with a focus on rights. A new institutionality in the matter was defined, creating the Vice Ministry for the Prevention of Crime and a national service specializing in the prevention of drug use. Also the so-called "Short Anti-crime Agenda" was launched that essentially resulted in the granting of more powers to the Public Prosecutor's Office and the police. In addition it created the "network for national assistance to victims" for the attention of the population exposed to violent crimes. As an example of the criticism that we make, the agreement also incorporated "the new institutionality of SENAME"

Thus, the response of the State aimed at generating intervention programs for children under the age of 14, who have infringed the law<sup>19</sup>, is deficient. It is disturbing that these programs, from the perspective of citizens' security, have focused mainly on the behavior of the child leaving aside the context. As a result, children are not seen as subjects exposed to a serious violation and, therefore, belonging to the scope of protection; on the contrary, they are conceived as criminal offenders. The idea fragments the child and defines it as a potential risk that is necessary to control and to minimize.

Regarding the determination of the **minimum age for marriage**, the Committee recommended reviewing the legislation<sup>20</sup> with a view to establish the minimum age for marriage at 18. The current legislation maintains the possibility for children to get married at age 16, authorized by their parents or legal representatives with a rule of preference favorable to the marriage<sup>21</sup>. In 2010, 352 underage children were legally married.

In Chile **different notions of the capacities of children** exist which bear no relationship with uniform criteria or with the application of the principle of progressive autonomy. According to a report by the Institute Libertad y Desarrollo, there is a disparity of criteria at least in relation to the legal age for certain legal acts; to get married, to have criminal responsibility, to start working, in procedural matters and in health. The notions of infant (less than 7 years and absolutely incapable), prepubescent (women older than 7 years of age and under 12 and men older than 7 and less than 14 years), young adult (woman older than 12 years and man older than 14 years), establish differences in the administration of assets and the recognition of children, among others<sup>22</sup>.

### Recommendations:

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<sup>16</sup>See Public Security Plan, Chile Seguro.

<sup>17</sup>See Instituto Igualdad (2010) "*Chile Seguro*": *analysis of the public security proposal by the Government*

<sup>18</sup> See Acuerdo Político Legislativo en Materia de Seguridad Pública

<sup>19</sup> See interview to A. Astorga. Psychologist, coordinator of PIE, Corporación Opción

<sup>20</sup> Ver Comité de derechos del Niño, Observaciones Finales, Chile, CRC/C/CHL/CO/3, 2007, para. 28

<sup>21</sup> Artículo 107 inciso 2º del Código Civil "*In case of equal votes against in conflict it will prefer the marriage decision*".

<sup>22</sup>See Informe Instituto Libertad y Desarrollo, Menores en Chile ¿cuándo son o no capaces?



1. **In crime prevention policies aimed at children, privilege rights over any other approach.**
2. **Harmonize legislation to make effective the principle of progressive autonomy of the rights of the child in all the national legislation.**

## Chapter 3. General Principles.

With respect to the principle of **non-discrimination**, civil society celebrates the creation of the law<sup>23</sup>, which establishes measures against discrimination and determines specific penalties for any person who commits an arbitrary discriminatory act. However, it is of concern the persistence of discriminatory attitudes among the youth and children regarding sexual minorities and immigrants, as demonstrated in a quantitative study carried out by the CEN of Corporation Opción<sup>24</sup>, which shows that these groups are the ones most often subject of negative comments in the social circles of children. In turn, the demands of rights by LGBT and immigrants (mainly of Peruvian nationality), are validated to a much less extent by children. According to information provided by UNICEF<sup>25</sup>, indigenous Mapuche children report that they are subject of discrimination, especially by their physical characteristics and their surnames; at the same time they feel excluded from access to good education, work and technological resources. In the case of immigrant children, the ones of Peruvian nationality are the most affected by discrimination. Therefore it can be said that in Chile being of said nationality constitutes a stigma of negative discrimination, without the State promoting policies, programs and management of diversity in the school, social or community settings<sup>26</sup>.

For civil society is of concern the disregard of sexual orientation and gender identity in children and adolescents, reflected in the lack of more inclusive and respectful public policies, or the pressure to fulfill supposedly normal roles, limiting the freedom of expression and being.

The Supreme Court has been making reference to the **best interest of the child** in its rulings, especially regarding the ruling on custody where it conceptualizes what must be understood by the same<sup>27</sup>. Nevertheless, the juridical construction of the best interest of the child used for the rulings is weak. In other words, the principle is mentioned but there is no reference to how the facts of the issue were weighed to construct the verdict<sup>28</sup>.

Although there has been progress in its implementation, it is of concern that the principle of the Best Interest of the Child is still not widespread and it remains encapsulated in the circle of specialists. It is not possible to find it in the current formulation of public policy or in the discourse of the authorities. An emblematic case of wrong application is that of C.C.M., a 9-year old who along with some peers and adolescents participated in criminal acts much hyped by the media, against whom the health, educational and judicial systems address the problem from a criminal point of view, without ever taking into account the situation of violation of the rights of the child and leaving aside the superior interest of C.C.M.<sup>29</sup>

With regards to the **Right to be heard**, one of the major advances in this field is the incorporation of the opinions of children in the elaboration of the 4th and 5th Report submitted by the State to the

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<sup>23</sup> Law N° 20.609 of the 24th of July, 2012.

<sup>24</sup>See Centro de Estudio de la Niñez CEN, Corporación Opción, Universidad Central (2012) Niños, Niñas y Derechos Humanos: Nuevo actores nuevas visiones. Santiago de Chile.

<sup>25</sup>See Unicef (2007) Los Jóvenes Mapuche de Chile hablan contra la discriminación.

<sup>26</sup>See Pavez, I. (2012) Inmigración y Racismo: Experiencias de la niñez peruana en Santiago de Chile.

<sup>27</sup>See ruling 620-2011 fourth room Supreme Court annexed to this report.

<sup>28</sup>As examples see resolutions 608-2010, 1715-2011, 528-2011 of the fourth room of the Supreme Court.

<sup>29</sup>See summary of the case annexed to this report.

Committee. The project Participation of Children 2010 is highly valued, which was financed by the Ibero-American Fund for the Development of the Children. As well as the realization of six meetings of participation (2011) in the area of health, whose results were an input to the formulation of the National Program of Integral Health of Adolescents and Youth.

However, all the actions of the State are still isolated missing a general framework that drives participation in matters that involve children and adolescents. In this regard efforts have been made by the civil society trying to create spaces for child participation, innovating with appropriate methodologies and encouraging that children be heard by public policy makers<sup>30</sup>.

The Law of rights and duties of the patients (2012) concerned that it does not include the right of children to information about diagnosis and treatment<sup>31</sup> delivering the responsibility for any decision on the matter to the legal person in charge of the child.

It is also of concern to civil society the repressive manner in which the State has responded to the social demonstrations led by students dissatisfied with the educational system (2011-2012). The Government has opted, in the face of the demands expressed by young people and adolescents, to discredit and criminalize the movement, showing greater interest in subtracting force from the social movement and appeasing public opinion than listening to the group as a valid interlocutor.

The current General Law of Education does not contemplate in its articles the figure of the student's council, a fact that denies legal grounds to a fundamental element for the participation of children in the educational establishments. On the other hand, the law of Associations and Civil Participation, enacted in 2011, does not contemplate the creation of spaces of participation for children, leaving aside the right of these to be heard and to have participation in the creation of public policy<sup>32</sup>.

In relation to the principle of **Survival and development**, we celebrate the issuance in the year 2012 of the law that establishes a subsystem of Social Promotion and Protection called "Securities and Opportunities", aimed at individuals and families that are in extreme poverty, known as "Ethical Household Income", and whose object is to promote access to better living conditions. This subsystem provides support programs to the most vulnerable families, and also cash transfers according to dignity, duties and accomplishments. Among the latter, granting conditions include that children under the age of 6 years old have their "healthy child control"<sup>33</sup> to date, that children of school-age actually attend school, and also obtain good grades. While we appreciate the incentive to the health and education of children that these measures are intended to establish we are concerned that in order for families to get an extra income, it is the children the ones that need to fulfill these criteria.

#### **Recommendations:**

- 1. Have an Institutional Protection System, articulated and with standards applied across the set of public policies of universal character, which recognize the general principles of the CRC. A good practice of the State of Chile is the Program of Management Improvement of gender, which could be assimilated to childhood and adolescence<sup>34</sup>.**

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<sup>30</sup>See Informe Alternativo de la Sociedad Infantil Chilena, septiembre 2012, Corporación Opción

<sup>31</sup>See Cámara de Diputados (2011) Legislatura 359ª, Sesión 123ª en martes 20 de diciembre de 2011

<sup>32</sup> See Law 20.500

<sup>33</sup> It refers to a free program developed by the Ministry of health aimed at the entire population of 0-6 years whose objective is to monitor the growth and development of the same.

<sup>34</sup> The main purpose of this tool is that the gender approach is incorporated into the provision of services and / or strategic products and information systems of public services, so that they identify needs and give different answers for men and women. The advantage of incorporating this dimension into PMG allows the budget increase for women beneficiaries of government programs steadily and also allow see gaps, inequalities and gender barriers to take decisions aimed at achieving equity in the

2. **Create channels and practices that allow more space for child participation.**
3. **Elaborate inclusive public policies of children and adolescents of sexual diversity, emphasizing on respect and non-discrimination.**

## Chapter 4. Civil Rights and Freedoms

Civil society values the ratification in 2008 by Chile of the Optional Protocol of the Convention on Torture and other Cruel, Inhuman and Degrading Treatments

We are concerned that, despite this ratification, numerous situations of police violence have taken place in the context of the student manifestations of 2011 and 2012. The National Institute of Human Rights (NIHR) in its 2011 report<sup>35</sup> gives an account of the repressive nature of detentions and abuses reported by children and adolescents themselves. The excessive use of tear gas and the occurrence of unusual violence have also been denounced; being one of the most emblematic cases that of Manuel Gutiérrez<sup>36</sup>, murdered by a police officer while observing a demonstration. Although securing public order is one of the tasks that the police must enforce, the lack of preventive measures by the police is worrisome concerning the protection of mobilized citizens and the environment where these take place.

It is also of serious concern that to this date conceptualization of the **offence of torture** has not been changed nor has it been declared imprescriptible according to international obligations assumed by the State, which has generated criticisms both of the Committee against Torture and the Human Rights Council. The initiatives of law presented to carry out these modifications were not debated until 2013, nor was legislative urgency<sup>37</sup> assigned to them.

A report by Corporación Opción has brought to light the existence of a series of situations constituent of torture or degrading treatment towards children, exercised by the police. It established the existence of 289 cases of children, mostly male, victims of abuse by the police and the Police Department of Investigations (PDI or Civil Police)<sup>38</sup>. Noteworthy are two cases of children who were subjected to torture during a criminal investigation and which were arrested and hooded by staff of the PDI. Complaints were launched with the support of the NIHR.

Between 2011 and 2012 there has been sexual violence by police against students arrested during demonstrations or evictions of schools. Those affected have reported assaults carried out in police precincts, such as forced nudity, touching, insults and threats<sup>39</sup>. This led to the NIHR and feminist NGOs to take legal action against those responsible<sup>40</sup>. However, the tendency has been to close the investigations without convicted persons, preventing the due victim's reparation. Is particularly

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matter. Fuente: Social Develop Ministry on line <<http://www.ministeriodedesarrollosocial.gob.cl/centro-informacion/equidad-genero/>> (consulted on Oct. 2 2014)

<sup>35</sup> See Instituto de Derechos Humanos (2011) *Situación de los Derechos Humanos en Chile. Informe Anual 2011*. Santiago de Chile

<sup>36</sup> Manuel Gutiérrez died on 26 August 2011 after receiving a bullet shot by Carabineros de Chile. He was a 14 year old boy who was walking with friends when he was shot during a day of student protests. The first reaction by Carabineros was to deny responsibility by the institution, later the Military Prosecutor opened an investigation, prosecuted policemen and expelled them, while the penal accusation is still pending.

<sup>37</sup> Observatorio Parlamentario (2012) *Balance al Poder Legislativo año 2011*. Chile

<sup>38</sup> See letter by Consuelo Contreras, Executive Director of Corporación Opción to Rolando Melo, Director Nacional de SENAME. 30 August 2012.

<sup>39</sup> See "Protestas estudiantiles y violencia policial en Chile: ¿Hay un vínculo entre la dictadura de Pinochet y la violencia actual?. Eguneko Gaiak. Agosto, 2012

<sup>40</sup> See "Protestas estudiantiles y violencia policial en Chile: ¿Hay un vínculo entre la dictadura de Pinochet y la violencia actual?. Eguneko Gaiak. Agosto, 2012

disturbing that the Ministry of Interior which is directly responsible of police action, has not taken part in the court cases nor taken exemplary measures to demonstrate absolute reject to those practices.<sup>41</sup>

Civil society celebrates the resolution enacted in September 2012 by the General Comptroller's Office of the Republic that allows officials of the NIHR to enter police buses where people are detained in demonstrations, in order to corroborate that their rights are being respected.

We also celebrate the resolution issued by the Family Judge, Juan Patricio Silva, who determined the absolute prohibition of the use by police of elements of dissuasion, such as tear gas and pellets against children and their respective residences<sup>42</sup>.

Up to date the National Mechanism of Prevention against Torture has not been implemented as stipulated by the Optional Protocol of the international Convention, nor are there records of cases or police training in the doctrine of human rights<sup>43</sup>.

It also is of concern that in the absence of an Integral Law on Protection of Rights, the police continue to act according to the guardianship norms and have not adjusted to human rights norms ratified by Chile. There are no protocols<sup>44</sup> that guarantee the rights of children in matters regarding investigation and public security that will allow the police to adapt their actions to children<sup>45</sup>.

**Measures to eradicate violence towards children** have not been accomplished to this day. Modification of article 234 of the Civil Code limited the disciplining abilities by parents. This presents two problems: the reach of the law, which only limits the behavior of parents without discussing other adults who could inflict damage on children and the low public impact of this initiative, because its discussion has not had significant dissemination<sup>46</sup>.

#### **Recommendations:**

- 1. Implement the National Preventive Mechanism against torture and conceptualize the crime of torture according to international standards and the generation of protocols of police action appropriate to the CRC.**
- 2. Prohibition all forms of violence, in accordance with General Observation n° 13 of the Committee.**
- 3. To carry out campaigns of sensitization and public education against all forms of corporal punishment as well as for the promotion of participatory and non-violent methods to raise and educate children.**

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<sup>41</sup> Humanas Corporation filed two criminal action for acts of sexual violence against two young students in 2012 (1210001818-5 RUC Ministry Public Ñuñoa and RUC 1210019942-2 Ministry Public Puente Alto) In both cases the public prosecutor closed the investigation informing the complainant of its decision not persevere without formalization or accusation against any of the police officers involved in the events.

<sup>42</sup> Decision taken in response to request for protection by 9 boys affected by chemical disuasive elements used by Carabineros during manifestations in the Region of Aysen

<sup>43</sup> See report by the Ethical Commission against Torture, "La tortura es el miedo a las ideas de otros". Informe de derechos humanos 2012. Editorial Quimantú.

<sup>44</sup> See "Procedimientos Policiales y Derechos del Niño", UNICEF Chile, 2012

<sup>45</sup> See <http://www.lasegunda.com/Noticias/Impreso/2012/05/743732/violencia-policial-en-protestas-lo-que-revisa-la-justicia-y-el-giro-de-carabineros>.

<sup>46</sup> The National Committee against Child Maltreatment was created by the Ministry of Justice in 1996. This Committee elaborated in 1999 a plan of action that included actions to disseminate and studies on this matter. From 2007, it has disappeared alongside with campaigns against child abuse and maltreatment.

## Chapter 5. Family Environment and Care Alternatives.

A study by CEN<sup>47</sup> in 2012 indicates that 90.4 % of children feel safe in their homes, which would indicate the existence of a good level of protection within the family. Meanwhile UNICEF has pointed out that 71% of children are victims of psychological **violence** and 51.1% of physical violence, a number that has not changed in the last 6 years. This implies that relationships inside the Chilean family are based on violent patterns of behavior, which requires an urgent social and cultural change.

The pilot program Early Warning carried out by SERNAM and Hogar de Cristo Foundation promotes significant changes by seeking to prevent and promptly detect situations of family violence affecting children attending crèches. However, for a real impact to take place, it will require official implementation and consequent increase in coverage.

According to CASEN (national survey of socio-economic characterization) of 2011, the percentage of children in poverty in Chile (22,8%) is 2 times superior to the population over 18 years of age (11,5%) and 1,36 times more than the general population (14,4%)<sup>48</sup>. Of all the population in poverty, 41% correspond to underage children, and homes with children residents have almost 4 times higher level of poverty than those with no children, and as consequence 15% critic overcrowding. For a country that grows steadily and that is proud to have a healthy economy, the fact that 1 out of every 4 children live below the poverty line is highly disturbing.

Specifically in indigenous matter, 10,2% of the underage population belongs to a ethnic 34,5% of this figure suffers from poverty or extreme poverty, which is highly superior to the 26,4% of the underage non-indigenous population. Due to this, homes identified with an ethnic and have children, present increased levels of poverty and overcrowding (19,6%).

Noteworthy is the creation of the Mass Educational Program, in the context of "Chile Grows With You", which is installed from a multimedia platform that combines radio, television, internet and telephone, through which useful information and educational material is provided to parents, mothers, significant adults and children regarding the importance of preserving good development in the early stages of life. Likewise, the Program in Support of Biopsychosocial Development of CCC disseminates information on pregnancy, birth and development of infants. It also provides home visits that focus in an integral manner on the family situation of the homes in which children live until the age of four, with the purpose of promoting their development.

On the other hand, the civil society observes with approval the recognition of the principle of family reunification as the axis of the law of protection of refugees<sup>49</sup>.

In terms of initiatives carried out by SENAME and its network of accredited organizations, we consider a step forward the increase in coverage for the reparation of **situations of ill treatment and sexual abuse**; however, it is still insufficient due to its high predominance. According to the same CEN study,<sup>50</sup> 6.7% of children pointed out having been sexually assaulted and according to the statistics of Corporación Opción, for 80.9% of cases attending programs of therapeutic intervention for sexual abuse the assault had occurred within the family, being 31 % of the aggressors the biological father<sup>51</sup>.

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<sup>47</sup>Centro de Estudios de la Niñez (2012)Abuso: Configuración y Supervivencia. Representaciones sociales de niños y niñas y el relato de adultos sobrevivientes de abuso sexual en su niñez. OPCIÓN, CEN, Fundación Para la Confianza, Santiago de Chile

<sup>48</sup> Centro de Estudios de la Niñez, CEN (2014). Niñez y adolescencia en Chile: Las cifras. Datos estadísticos y principales estudios. Corporación Opción, Santiago de Chile.

<sup>49</sup> Law Nº 20.430 "Establece Disposiciones sobre Protección de Refugiados", abril 2010

<sup>50</sup> Centro de Estudios de la Niñez (2012) Ibid.

<sup>51</sup>Idem.

During the year 2013, were of public knowledge several cases of pregnant underage girls product of rapes and/or sexual abuse. Particularly dramatic and diffused by the media, was the situation of an 11 years old girl (called “Belén” to protected her identity) the girl lived with her grandmother and visited every other weekend to her mother, the mother’s partner and their child. Since the girl was 7 this man abused her, raping her in multiple occasions and threatening her not to tell.

In June 11 of 2013, due to complains made by the girl and the absence of her period, the grandmother takes her to a health center where is attended by a gynecologist. After examination, they were told that the girl was pregnant. Knowing this, the grandmother immediately filled a police report and at the same time, the health center sends a report to the Public Ministry and the Family Court.

In the meantime, the girl was derivate to a hospital for in-depth exams, because it was a high-risk pregnancy. When the case was known by the press, the girl was already 14 weeks far. Grandmother said “...she is just a girl... get pregnant with 11 years old... get pregnant by a sick person, because what else can you call him, than a sick person”<sup>52</sup>.

It is of public knowledge, that in Chile are forbidden all forms of pregnancy interruption, criminalizing abortion in any kind of circumstances even if it is only to protect the good health of the pregnant woman or girl<sup>53</sup>, or if the pregnancy is product of rape, incest or if underage girl. Therefore, the girl Belén is compelled to carry on the gestation and has absolutely none alternative facing her pregnancy that was consequence of the sexual abuse suffered.

In a television interview, Belén referred to her pregnancy and sexual abuse showing a passive resignation to the violent situation she faces. She declared that “will be like having a doll in my arms... but well... I’m going to love her even if she is what she is of that man that hurt me, I’ll still going to love her, and I will change her”<sup>54</sup>. Despite the complaint was presented by her grandmother to Police on June 11, only in the first week of July when the journalistic report investigation was been carried, that the public organisms in charge of Belén’s protection took action. It took several weeks without the accused being located nor decreed judicial measures in order to protect the girl.

After several weeks of being shown on national media, was decreed a prohibition of informing the further situation of the girl. Due this, her story was hidden on shadows and there is no knowledge about her location and her health.

Unfortunately, cases like this are periodically shown into public light without existing an integral approach regarding the defenseless situation in which are positioned children and adolescents victims of sexual violence and abuse in Chile. This is particularly disturbing in case of girls and adolescents that because of the abuse get pregnant, in a legislation that prohibits abortion in all circumstances and does not give appropriate protection to the revealed cases.

In regard of the situation of institutionalized children and adolescents, despite since 1990 is being impulse a public policy of gradually decreasing children in residence care increasing the outpatient offer, the media impact that cases of abuse cause in the last few years, has pressured even more the Governments to diminish places available in the system, looking instead for alternatives. This is reflected on the National Service for Minors residence’s data in between 2007 and 2013:

Residencies 2006	Residencies 2007	Residencies 2008	Residencies 2009	Residencies 2010	Residencies 2011	Residencies 2012
12.250	12.998	13.026	12.312	11.536	10.699	9.757

<sup>52</sup> News report froma 24 house TVN, available at: <http://ww.24horas.cl/noticiarios/cronicas/violada-y-embarazada-a-los-once-anos-729589> (las time seen 12 july 2013)

<sup>53</sup> ídem.

<sup>54</sup> News Repor of Canal 13, available at <http://www.13.cl/t13/nacional/dramatico-testimonio-de-nina-de-11-anos-embarazada-tras-violacion> (seen last time 11 july 2013)

Nevertheless, this has not been an easy task, due the lack of structural changes previously described. It is because of it that the residential system has clear signs of depletion, where the resources of the State are covering to date on average, only 58% of the required resources<sup>55</sup>. At the same time, incoming profiles have become more complex, demanding higher levels of intervention and therefore increasing demands for resources, which was not considered when the law 20.032<sup>56</sup> was approved.

A positive step is the trend towards strengthening of the model Substitute Families as a response to recommendation n° 45 of the Committee, with 46 projects to 2013 at national level.

A valued initiative is the implementation of visits by a committee of Family Court judges, during 2009 and 2010, to children admitted in the National Service for Minors residential centers throughout the country<sup>57</sup>. In this same line, worth noting is the implementation in 2012 of a monitoring mechanism for supervision of protection residences dependent on the Service, in charge of the Regional Ministry of justice<sup>58</sup>.

During the year 2011 a Commission was formed consisting of family judges and UNICEF, in order to raise qualitative and quantitative information on children separated from their family of origin and who are in foster care. This allowed the identification of the reasons for family separation and to evaluate the quality of the system of foster care. This study showed several problems, among the more important are: insufficient financing sources, supervision of the State is limited only to the programs that receive state funds, psychosocial intervention of uneven quality, long periods of separation time from families of origin, insufficient and asymmetric coverage, deficit of specialization of the actors who intervene<sup>59</sup>.

In March of 2014 the report made by Deputies of the Parliament about the functioning of the National Service for Minors, was approved. The report reveals among other situations, cases unreported sexual abuse of children in Care System and lack of judicial control of legal measures that end in the children separated of their biological families, or regulate long-stays in residences, and the lack of preparation in the matter of putting together a child with an adoptive family recommending multiple actions in order to protect children in said circumstances<sup>60</sup>. Despite of the criticism towards the National Service for Minors, the Courts and the NGO's who work in residences, there are no explicit critic to the whole system which presents serious flaws, preventing in that way real possibilities of a long-term change in the residence system and its alternatives.

A good practice in the **judicial field** is the creation in Santiago, of a center of precautionary measures, which has allowed taking security measures in a speedy way and has generated a system of case follow-up. The civil society hopes that this modality is implemented in all the regions of the country.

In respect of adoption, valued are the initiatives taken since 2008 to improve the management of technical processes involved in adoptions, among which the Early Detection System, designed to implement the measure of adoption in an opportune way. On this subject, the subprogram "Search for Origins" stands out, created in 2008 by the National Service for Minors, geared to give support to adopted people who are adults or adoptive parents wishing to locate their biological families.

It is of concern the specially vulnerable situation in which children of same-sex couples are, whenever the civil union or marriage and bonds, rights and obligations of these couples is not regulated by law, which they will have only with the biological mother or father.

Yet, to date, little has been achieved by the State in the generation and implementation of indicators that effectively measure and monitor progress in the field of design and implementation of public

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<sup>55</sup> Study of lines of action of Residential Centers, Family Care, Specialized Programs. Fundación León Bloy; December 2009.

<sup>56</sup> Law that regulates transference of resources to private organizations with no lucrative ends, by SENAME.

<sup>57</sup> Due to the inexistence of an administrative system of protection, the admission to Residential System in Chile depends of a Court Decision.

<sup>58</sup> CISC – protección. ( Interinstitutional committee for supervision centers)

<sup>59</sup> Interinstitutional Report, in which participate Aldeas Infantiles SOS, CODENI, La Protectora, Hogar de Cristo, María Ayuda, Fundación Mi Casa y Koinomaldefia.

<sup>60</sup> See <http://www.camara.cl/pdf.aspx?prmID=10892--prmTIPO=INFORMECOMISION>

policies, legal reforms and development plans aimed specifically to the more vulnerable sector of the child population, who lack parental care or who for economic, social or cultural reasons are in precarious conditions.

**Recommendations:**

- 1. Encourage programs of prevention and support to families especially investing in the work of family relinking.**
- 2. Monitor the fulfillment of each of the measures that affect children separated from their family of origin, so as to maintain a periodic review of the appropriateness of each.**
- 3. Maintain an up to date diagnosis of children that are separated from their family of origin, due to a situation of violation of rights or because of access to education or health.**
- 4. Make concrete and effective actions in order to protect the rights of children and adolescents who have been victims of sexual violence, with special attention regarding pregnant adolescents and girls product of rape, incest and/or sexual abuse, establishing national mechanisms that facilitate early detection of this cases and national statistics disaggregated by sex, socio-economic situation and ethnic origin.**
- 5. Modify current legislation on the subject of adoption, and to adequate it according to international standards on equality and non-discrimination.**

## **Chapter 6. Basic Health and Well-being.**

On **basic health and well-being**, there are various positive actions carried out by the Ministry of Public Works in order to remedy the disparity in access to commodities such as potable water and sewerage. However, these developments have been coordinated mainly at the central level, without involving local or municipal authorities as the Committee had recommended in its previous report. Also troublesome is the limited coverage in rural areas of the country. According to a study conducted by Datavoz, for Andrés Bello University, in 2009 only 66% of households belonging to the rural world had an index of acceptable sanitation, compared to 98% of urban households<sup>61</sup>.

An important Step was the enactment of the National Health Strategy 2011-2020 (NHS), which prioritizes the perinatal, infant and adolescent periods. It is valued that, consistent with the recommendations made by the Committee, one of the main goals of the NHS is to include decrease of obesity in children under-6, though the high figures of obesity still present in the country are of concern. According to OCDE data, Chile is the sixth member country most affected by childhood obesity; with 27.1 % of girls and 28.6 % of boys above the weight corresponding to their age. National studies show that 40% of eighth grade students are overweight. In result, determinations are needed to heal the situation<sup>62</sup>.

The tendency to overmedicate children with learning disabilities by educational establishments is of great concern. The annual Diego Portales University's<sup>63</sup> Human Rights report signals the pressure that parents of children with learning disabilities receive in order to solve problems with medication or risk the stay of children in school. These coercive measures are the result of a concept of quality education based on indicators of overall results and not on the development of each child according to their own rhythm and skills.

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<sup>61</sup> See Datavoz (s/f) *Vivienda y urbanismo*. Andrés Bello.

<sup>62</sup> See OECD: Chile is the sixth country with more child obesity. La Tercera. February 24 Santiago of Chile.

<sup>63</sup> Diego Portales University *Annual report on Human Rights 2009*. Santiago of Chile.



Regarding adolescent health, norms have been established on information, orientation and services on fertility regulation<sup>64</sup>, aimed at giving the tools to adolescents to regulate conception and thus avoid unwanted maternity or paternity<sup>65</sup>. However, civil society has established in diverse instances that cultural barriers mostly hinder the attention of adolescent men in health establishments, with attention still being focused principally on women's reproductive health. For both adolescents boys and girls it is difficult to access contraceptive methods, due to the lack of adherence of protocols by officials, who choose not to provide birth control tools to minors<sup>66</sup>. It is worth to mention that according to an investigation carried by the Children Studies Centre of Corporación Opción, 40% girls and adolescents themselves believe in sexual education to be the best solution for underage pregnancies<sup>67</sup>. The low-quality programs of sexual education in schools, restricts their right to information of girls and adolescents and so the State should have a more active role in the matter.

Another subject of concern is that according to the National Service to Prevent and Rehabilitate Drugs and Alcohol Consumption (SENDA), 35,6% of adolescents consume alcohol at least once a month and of those 62,8% indicates that they consume 5 or more drinks per occasion during the last 30 days<sup>68</sup>. This figures have remained high despite the diminish since 2005, consequently actions are needed to attend this issue. Regarding other kind of drugs, it can be observed in scholar population a lower consumption of tobacco per month (of 42% in 2003 to 26,7% in 2013) and an increased monthly consumption of marihuana (of 7,9% in 2001 to 18,8% in 2013).<sup>69</sup>

Especially alarming is the suicide rate of young people between 10 and 19 years old. The rate has doubled since 2000, making Chile one of the countries with the greatest increase in youth suicide around the world<sup>70</sup>. The State does not have a clear answer to this issue. Articulated public policies are required centered on both prevention and response to cases of attempted suicide<sup>71</sup>. In this consideration it becomes necessary to guaranty an adequate approach to adolescent suicide through effective public policies and concrete plans of action, taking in consideration particularly vulnerable groups such as underage LGBTI population.

The State does not have a monitoring and evaluation system, therefore interfering with monitoring the effectiveness of the programs and intersectoral coordination required to promote mental health of children.

Today it is required to have articulated public policies, focused in both preventing and the response on suicide attempts<sup>72</sup>. No residential psychiatric attention to children exists within the protection system, only law offenders have access to a very limited number of vacancies.

Highly disturbing is the situation that affects intersex or ambiguous sex newborns, whom due to the absence of protocols, is the doctor who takes the decision to mutilate justified in "normalization of an abnormal body". Mutilating affects directly to the gender identity of the newborn. This arbitrary judgment does not respect the superior interest of the child.

Regarding the environment, in 2011 high concentrations of copper and arsenic in the classrooms of an elementary school, La Greda<sup>73</sup>, were found where a copper smelter and a thermal power plant function. However, despite the dangers of a contaminated environment to child development, the polluting

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<sup>64</sup> Law N° 20.418 January 2010

<sup>65</sup> According to the Health Ministry's figures, were 34.900 cases of children born of girls and adolescents (of 10 to 19 years of age) in 2012. It is of concern that 3.200 of those cases correspond to second sons.

<sup>66</sup> See interview to Alejandra Obach, Director and Research of Culturasalud Organization.

<sup>67</sup> Centro de Estudios de la Niñez CEN (2013) "*Aspirations and expectations of girls and adolescents: the transformation of traditional roles despite structural limitations*" Corporación Opción – Humanas. Santiago Chile

<sup>68</sup> SENDA (2014) 10<sup>th</sup> National Study about drugs in scholar population. Main national results.

<sup>69</sup> Idem.

<sup>70</sup><sup>70</sup> In 2009, suicide became first cause of external death among adolescents, exceeding in figures death by accidents. Chile and Corea take two first places of OECD members.

<sup>71</sup> See "*teenage suicide rate is the higher in Latin America*" Radio U Chile. March 24, 2012.

<sup>72</sup> See Dr Paris's interview, President of the Chilean Order of Doctors,

<sup>73</sup> La Greda is a coastal town located in the central area of Chile

plants were allowed to continue, opting instead to move the school some kilometers away<sup>74</sup>. In April 2007 there were reports of high concentrations of lead linked to its transportation from Bolivia to Antofagasta in the so-called "path of lead". The main victims of this contamination are children, since prolonged exposure generates varied irreversible disorders in unborn babies and young children. Nevertheless, until now the necessary measures have not been taken to decrease contamination levels, even if these actions do not imply high investments<sup>75</sup>.

One of the major breakthroughs was the ratification of the Convention on the Rights of Persons with Disabilities (2008). In this context, it is also worth emphasizing the promulgation in 2010 of the law<sup>76</sup>, which sets standards on equality of opportunity and social inclusion of people with disabilities and creates National Service for Disabled (SENADIS). Another progress in 2011 is the creation of a Forum of Childhood and Disability, the objective being coordination and optimization of public and private resources for the care of children 0 to 6 years old led by the Ministry of Social Development through SENADIS.

It is of concern that on a public policy level the approach is still one of assistance. The definition of disability is far from the international standards; a regulation law on is still pending; all State support services delivers are aimed towards the more vulnerable sectors of society, but there are no policies that cover all children with disabilities<sup>77</sup>. Also, NGOs are disturbed by the fact that mentally disabled and deaf girls are sterilized, affecting their reproductive and sexual rights.

#### **Recommendations:**

- 1. Regarding health policies, consider on a priority basis the treatment of child obesity and overmedication as support to school performance, and, regarding adolescents, the issue of consumption of drugs and alcohol, teenage pregnancy and psychiatric care of children.**
- 2. Elaborate protocols based on international standards of human rights for the appropriate care of intersex/ambiguous sex newborns.**
- 3. Generate environmental prevention policies protecting children's rights effectively.**
- 4. Adapt public policies on disability extending its coverage to all children, and execute them in accordance with the CRC.**
- 5. Develop intersectoral public policies to approach mental health of children, with appropriate funding.**
- 6. Gather valuable statistic information that helps to elaborate public policies for mental health.**

## **Chapter 7. Education, cultural and recreational activities**

In Chile, there are three types of educational establishments: municipal schools through which free public education is provided, subsidized schools which are run by the private sector with financial

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<sup>74</sup> See "niños de escuela de Puchuncaví son afectados por sustancias tóxicas" <http://www.elciudadano.cl/2011/03/10/33208/ninos-de-escuela-de> last see march 2011

<sup>75</sup> See government will make new studies in the Plomo route. [http://www.ambiental.vl/web/index.php?option=com\\_content&view=article&id=63%3Aruta-del-plomo&itemid=120](http://www.ambiental.vl/web/index.php?option=com_content&view=article&id=63%3Aruta-del-plomo&itemid=120) Last See July 2010

<sup>76</sup> Law N° 20.422 of 10 February 2010.

<sup>77</sup> Evaluation of law N° 20.422, Department of Law Evaluation, Chamber of Diputies, November 2012.

support of the State and the students' families, and paid private schools that represent the private education system.

In preschool education, one of the major legislative developments of the period is the constitutional reform establishing mandatory education for children 5 to 6 years, giving the responsibility to the State for ensuring access and financing<sup>78</sup>. This is a step forward as long as it ensures universal access to education in the early stages of children's lives, giving them tools for their future development. An advance is also the commitment announced by the National Board of Pre-School Education (JUNJI) to extend its coverage from 40 % to 60 % of vulnerable children, thus extending preschool education to a greater number of children in the country.

Although we have observed an increase in the coverage of pre-school education and nurseries or creches, the quality service provided by the latter "can be more detrimental to the children to attend a nursery with zero quality than to stay at home, because it is the peak in language development."<sup>79</sup> In this context it is especially alarming the training received by the nursery educators and the function ascribed to nurseries which is more of care and not of learning

There is little clarity on the role of the State in the field of early childhood education. JUNJI is responsible for overall supervision, but at the same time it designs and implements childcare facilities. Also authorized to design and implement kindergartens are the municipalities and INTEGRA Foundation, an agency dependant on the Presidency. All initiatives are aimed at lower income population, with no public and free facilities for middle and higher income groups.

At central level, the National Co-ordination of Pre-school, led by the area of pre-school education of the Ministry of Education (MINEDUC), has a regional and provincial structure for monitoring at the municipal level. It seeks to coordinate these three instances to generate agreed policies. Faced with this reality the generation of a single State structure becomes necessary to establish clearer responsibilities in this area<sup>80</sup>.

To central level, the National Coordination of Pre-Schools, directed by pre-scholar area of MINEDUC, seeks to coordinate the three levels of regional, provincial and municipal education. It becomes necessary to generate a unique state structure to clearly set up responsibilities.

On the subject of quality of education, an important progress is the creation of the National System of Quality Assurance<sup>81</sup> for preschool, middle and high school education. It is formed by the Quality of Education Agency and the Education Inspectorate (Superintendence), thus completing the reforms initiated with the General Law of Education (LGE)<sup>82</sup>.

Civil society appreciates implementation of the Teacher's Vocation Fellowship, which encourages admission of students with high academic performance to teaching careers; nevertheless the quality problems of the educational offer tied to the socioeconomic level of the students are of concern. Dependency on municipalities of educational establishments determines its resources to the economic reality of the district, producing strong inequalities between more and less affluent sectors and impacting on the quality of the education provided, especially in low-income schools. Therefore schools are for poor and rich, which create a segregated system that prevents the establishment of a minimum floor in terms of educational quality.

In the subject of sexual education, absence of articulation of public policies can be observed and it has not been evaluated the impact of programs that seek to lower the rates of adolescent pregnancy. Neither has been established a specific policy to meet the needs of their scholar permanence. Additionally, education does not contemplate sexual diversity, nor secular counseling and guidance to

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<sup>78</sup> Modification introduced by the Law 20.162 of february 16 of 2007, added as annex to this report.

<sup>79</sup> See interview with Manuel Sepúlveda, in charge of Public Educational Policy 2020.

<sup>80</sup> Idem.

<sup>81</sup> Law N° 20529 August 2011

<sup>82</sup> Law N° 20370 September 2009 General Law of Education (LGE)

gay, lesbians, transgender or for those adolescents with doubts about sexual orientation or gender identity.

Regulation of the educational system based on the market has led to the creation of educational centers focused on obtaining profits rather than the educational development of students. This has resulted in an expensive educational system and of low quality. The idea prevails that to obtain quality education the only indicator of excellence is the educational establishment, yet it has been proven that the socioeconomic conditions of the families are the variables that influence the most. Thus there is an existing competition between the two types of institutions financed by the State: municipal and subsidized schools. Rather than enhancing the educational offer, this has led to these two sectors competing over the number of registrations and the results obtained, which negatively affect students who start putting aside their career needs for increased State funding<sup>83</sup>. In this context, it is also alarming the screening of students in municipal, subsidized and private schools, although this is expressly prohibited in the General Law of Education (LGE). Thus, children's rights to enter an educational establishment according to their needs are curtailed.

It is necessary to point out that in accordance with the results of the 2011 SIMCE test (national system of Evaluation of learning results of the Chilean Department of Education), applied to 4th grade students, the low socioeconomic group presents the highest percentages in the initial level (reading 44%, math 48% and natural sciences 57%) whereas children from high socioeconomic level are mostly located in the advanced category (reading 71%, math 66% and natural sciences 66%); trend that is repeated for the same test applied to the 8th grade (which marks the end of elementary school). This is also maintained in the test results of university selection (PSU), which is given at the end of secondary education, with results showing that the higher the income of the family group, the greater the score obtained<sup>84</sup>.

In this sense, the Program of Support for School Retention carried out by National School and Scholarship Assistance Council (JUNAEB) since 2011 is another step forward, because it contributes to the continuity in the educational system of students in a situation of social vulnerability by allowing its permanence and trying to ensure completion of the 12 years of compulsory schooling. However, facing the complexity of the causes that generate dropout this cannot be the only solution by the State. It is necessary to visualize the problem, to generate innovative and adequate programs for every child and to articulate sectoral policies to strengthen them in this matter<sup>85</sup>. A study conducted by Children Studies Center of Corporación Opción, shows that regarding to educative reintegration, traditional models have not similar results compared to alternatives centered on the person, school and social environment<sup>86</sup>. According to this study, the decision made by adolescents to drop out of school, is related to internal factors of the educative system: structural problems of classrooms (27,1%), repeating grades (19,4%), low grades califications (12,3%). In addition, the reiterated repeating school years (94,4%) and the frequent change to other schools (52,8%), becomes necessary to approach new alternatives of educational models to regularize the issue of de-schooling.

In the area of school life, the definition through a law<sup>87</sup> of responsibilities and measures to be taken by parents and professionals in cases of school violence is to be highlighted. While recognizing advances in the field of school coexistence still concerning are the high rates of violence present in educational establishments. A study carried out by the Ministry of Education points out that 86% of the students declared frequently seeing insults and mockery in the schools. Also, 50% has identified threats or harassment and 71%, fights<sup>88</sup>. It is disturbing the lack of educational campaigns to prevent homophobic, lesbophobic and transphobic bullying.

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<sup>83</sup> See interview with Manuel Sepúlveda, Chief of Educational Politics 2020.

<sup>84</sup> For more information see Estadistics 2010 (year 2009) DEMRE: [www.demre.cl](http://www.demre.cl)

<sup>85</sup> See interview with Liliana Cortés, Excutive Director, Súmate Foundation

<sup>86</sup> Centro de Estudios de la Niñez CEN (20149) *"Educational resinsertion: Schools of second opportunities as a way to restore the right to an education"*. Corporacion Opcion Santiago Chile.

<sup>87</sup> Law Nº 20.536.

<sup>88</sup> See Mineduc Survey give alrming figures of Bullying. SEPEC Foundation 25 April 2011.

Regarding special educational policies, in the field of juvenile justice, the lack of specialized school programs as part of the universal education policy is of concern because it does not distinguish between out-of-school children in conflict with the law and those who have not committed a crime. The lack of pedagogical preparation that would allow the adolescent insert himself or herself in the educational system mean that there will be cases of 3 or more years of non-schooling, without a state offer for people with severe school delays existing for people with a severe disability<sup>89</sup>.

Special education for people with disabilities is not adapted to the different types of disability that children present; also no initial education programs exist for children with disabilities. In particular, inconsistencies between the law 20.422 and the approaches of the Convention on Rights of Persons with Disabilities are noticed. Due these inconsistencies, rights are limited such as the right to an inclusive education, of high quality and with equal opportunities for disabled people. Public policies should be oriented by an inclusive approach<sup>90</sup>, and consider the sign language as official.

Educational system must adopt an approach of an inclusive education for everyone. Education should be just one for all, and the differential education agents are should not be the only responsible for special education.

With regard to indigenous boys and girls, a step forward is the establishment of the State's responsibility in the promotion of educational policies that recognize and strengthen indigenous cultures through measures such as the learning of indigenous languages in establishments with high percentage of children belonging to indigenous cultures (Bilingual Intercultural Education Program). Also positive is the signature in 2007 of a convention between National Pre-school board (JUNJI) and the National Corporation of Development for Indigenous Population (CONADI) for the creation of at least 30 intercultural daycare centers in the country.

The school curriculum also shows deficiencies. One of these is the lack of a consistent, cut-across and recurrent approach for education on human rights. This prevents students from having specific knowledge, developing skills and having a specific attitude towards the issue. A study conducted by the CEN<sup>91</sup>, with the support of NIHR, indicated that 77.1% of children are unaware of the existence of the CRC as a legal instrument ratified by Chile. Furthermore most textbooks make reference to the 1959 Declaration when mentioning the rights of the child.

Another area of great concern has to do with the absence of sex education in the basic education curricula and programs, existing only in middle school. The lack of the subject in this educational stage leads to lack of knowledge and bad practices, which is alarming when taking into account the high rate of teenage pregnancy which exists in the country.

There is a lack of teacher training in human rights issues. Only about 8% of the classes taught in teaching training programs raise tangentially the subject. In addition, the absence of a human rights plan prevents the creation of an educational plan around this theme, which places the subject in a very marginal plane. Although human rights are addressed in the education system curricula frames, they are not developed in the programs that guide teaching to students. Because of this, they are encapsulated only in certain areas of learning, specifically history, geography and social sciences, without that teachers having training to address the issue properly. Thus, the levels of learning and knowledge concerning human rights are superficial and restrictive, based principally on recent historical facts and not on an integral dissemination of the concept<sup>92</sup>.

A subject to point out is the disrespect to gender identity of Trans children and adolescents, making them wear uniforms corresponding their registered sex and not the social one, school desertion product of discrimination and absence of inclusive public policies. These elements constitute violations to fundamental human rights such as equality and the right to have an identity.

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<sup>89</sup> See interview with Miguel Luarte, Coodinator Justice Juvenil Programs.

<sup>90</sup> CIMUNIDIS data: only 6% of disabled people ends basic studies

<sup>91</sup> Centro de Estudios de la Niñez CEN, *"Boys, girls and Human Rights: New actors, new visions"*, Santiago 2012.

<sup>92</sup> See interview with Enrique Azúa, Chief of Education and Promotion Unit, and María de los Ángeles Villaseca, Professional of Education and Promotion Unit, of National Institute of Human Rights (NIHR)

## Recommendations:

1. Strengthen progress in preschool education, ensuring quality and accessibility of the education provided.
2. Ensure that all children receive quality education without discrimination based on socio-economic conditions of their families.
3. Improve the school curriculum on human rights and especially on the CRC, as well as on sex education.
4. Develop a program of sexual education under the paradigm of Human Rights, including sexual diversities. The education should concord with the secularity of the State.
5. Elaborate inclusive public policies while respecting gender identity of Trans (transsexual, transgender, travesties, and intersex) children and adolescents, loosening the use of school uniforms in order to respect gender identity.
6. Include in school programs for teachers, issues on Human rights and sexual diversity.

## Chapter 8. Special protection Measures

On children's social protection, a step forward was the creation of the program "Chile Grows with You" (CHCC) in 2006, institutionalized in 2009 by Law N ° 20.379. Yet this policy is not universal, since it only reaches 40% of children 0 to 6 years, who live in conditions of poverty, leaving aside the remaining 60%.as well as all boys and girls belonging to high and middle income sectors. For the latter, the set of rights protected by the CHCC may be exercised to the extent that the resources and the will of the parents to do so allow.

In the Metropolitan and Valparaiso regions a good practice has been the installation of inter-institutional forums between the judiciary and the National Service for Minors (SENAME) who have agreed to improve information exchange and share data bases about children whose rights have been violated. It is expected that this initiative will be replicated throughout the country.

With regard to **Migrant and Refugee Children**, the estimates of foreign population for 2014 by the Department of Foreigners and Migration of the Ministry of Interior shows **415.540** persons of foreign origin live in Chile. Foreigners come mainly from Peru, Argentina, Bolivia and Colombia<sup>93</sup>.

Some of the main legislative advances on the issue of refugees are the enactment of Law No. 20.430 of 2010 that lays down rules on the protection of refugees and Law No. 20.507 of 2011 establishing the offenses of migrant smuggling and people trafficking, setting standards for its prevention and a more effective criminal prosecution.

However, there are still issues that the civil society notes with concern. Chilean legislation does not conform to the current migration scenarios because it is limited to Executive Decree 1,094 of 1975, the Regulation of Aliens (Supreme Decree 597 of 1984) and Supreme Decree 5,142 of 1960. In addition to being anachronistic, this is particularly serious given that immigration has grown over the years.

In 2013, the government presented an immigrants law project, but the project is not consistent with the international human rights standards that should be applicate in the country. It becomes highly important that the government modify the original project in order to meet the migratory reality of Chile with the international standards required.

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<sup>93</sup> Information obtained on April 11, 2014. Though Access Request to information N° AB001W000257 to the Department of Foreigners and Migration.

Rather than an integral public policy for migrants focused on rights, In Chile are practiced a series of actions, instructions and collaboration commitments adopted by the Interior Ministry with other ministries to facilitate immigrants integration and to promote education for school-age children<sup>94</sup>.

Regrettably, in serious number of occasions those agreements have failed, denying children the possibility to obtain student visas despite them being matriculate to an educational institution.

However there is concern that the existing weak regulation allow in practice that the entrance to the educational system or the care by the health system are hampered and sometimes impossible to access due to obstacles of an administrative nature, such as parents not having documents proving family relationship, children do not have previous school certification or do not have identity cards that allow them to validate studies, the family has no fixed residence, among others<sup>95</sup>.

It should be create a new law for immigrants, in which the possibility for children to attend services and regularize their migrant situation was real, with no dependence of their parents situation.

In addition, of concern is the denial of citizenship by the Service for Foreign and Immigrants to children of foreigners in illegal immigrant status, since they are classified as "children of foreign non-residents" and the situation of children non-residents who become stateless. Mentioned Department has proceeded multiple times to expulse off the country to foreigners, regardless of the knowing the existence of children qith Chilean or foreign nationality residing and/or studying in Chile<sup>96</sup>. This seems inadequate specially if taking into account the Consulting Opinion N°21 of the Inter-american Court of human Rights recently published. Therefore, it becomes necessary to include children and adolescents rights in it, recognizing their situation in any action taken by State.

It is imperative to design a migratory policy and legislation according to the new realities of Chilean society, which will guarantee the rights of all children residing in the national territory regardless of their immigration status.

Regarding **economic exploitation, including child labor**, noteworthy is the adaptation of Law N° 20.189 from 2007 to international standards on the age for entrance to work<sup>97</sup>. Also Law N° 20.539 from 2011 prohibits all night work in industrial and commercial establishments for children under 18.

Regarding the actions of Prevention and Progressive Eradication of Child Labor, the Ministry of Labor and Social Security (MINTRAB) has continued leading the National Consultative Committee for the Prevention and Progressive Eradication of Child Labor formed in 2006. During 2007-2010, the Committee worked on the review and monitoring of the progress of the National Plan 2001-2010.

In the last three years the National Committee had a lower frequency operation and visibility. On May 30 2012 they resumed session, and so far their work has been focused on building a new national plan. It should be noted that the National Plan 2001-2010, had no resources to operate and was focused on Child Sexual Exploitation, so it is expected that this new plan contemplate a diversity of actions and has the necessary resources for its operation and implementation. Moreover, all regions have a Regional Committee for the Prevention and Elimination of Child Labor, which also have had an irregular operation.

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<sup>94</sup> For example: the Agreement of Collaboration signed in 2008 by the Ministry of Health with the Ministry of Interior through the exempt resolution N° 1914, regarding migrant regularization and attention in equal conditions with Chileans to foreigners under 18 years of age; special action to access education in which Ministry of Education seek to promote and facilitate access to schools for all inmigrants children living in Chile, with no dependence of the migratory situation of their parents (so it says explicitly resolutions in the matters, on the website of the Department of Foreign and Migration: <http://www.extranjeria.gob.cl/acciones-de-integracion/>) the circular N° 6232 of May 2003, Department of Foreign and Migration (amplified the Circulating N° 1179 of January 2003), and the ORD N° 07/1008 (1531) of of Education. Also in August 2014, Municipality of Santiago and the Ministry of Interior, signed an agreement to regularize the migrant situation of children of migrant parents in schools of Santiago. August 2005 of the Ministry

<sup>95</sup> See [www.lanacion.cl/haitianos-luchan-para-que-hospital-san-jose-les-devuelva-a-su-hijo/noticias/2012-04-17/200358.html](http://www.lanacion.cl/haitianos-luchan-para-que-hospital-san-jose-les-devuelva-a-su-hijo/noticias/2012-04-17/200358.html).

<sup>96</sup> For example see Supreme Court resolution in case rol N° 23480-14, In considering 6° y 7°

<sup>97</sup> Establishes the requirement for children over 15 years to be hired and establishes the regulations cataloguing activities considered dangerous for health and development

Among the most worrying aspects is the increase of working children from 5,4% (2003) to 6.9%. Those children are mostly working in dangerous jobs (125.000 children) or under the admissible age to be employed (94.000 children)<sup>98</sup>.

Although currently SENAME has a single Intersectoral registration system on Worst Forms<sup>99</sup>, which receives advice from the ILO, covering the whole country, it is not enough and is beginning to cause underreporting of cases, because of inconsistencies of the data entered or lack of training on the system of operators. On the other hand, the limited intervention carried out with these children is of great concern, due to the lack of protocol, the limited supply of specialized intervention program in ESCI (Commercial Sexual Exploitation of Children) and the total lack of programs to serve a child who is in the Worst Forms of child labor in mining, fishing, agriculture, construction, street vendors, garbage or domestic labor<sup>100</sup>. Currently, there is a lack of an intervention circuit to eradicate child labor, in which each institution and organization can assume a defined role in this task.

On the subject of **street children** it is possible to point out that in the year 2011 there was a national register that registered 12.423 people who live in street situation, 785 being children. As result of this, the Social Development Ministry is conducting a pilot program to incorporate 200 children to the Chile Solidarity Program in 5 regions of the country.

A national strategy does not exist on the subject of early detection, prevention and attention of children in street situation. The National Service for Minors (SENAME) projects only work in the Metropolitan Region. In addition there is no public /private Dialogue Forum (Mesa) in this area. However the private world<sup>101</sup> works in research, monitoring of data, coordination of actors and generation of strategies to interrupt the situation of street children.

On the issue of **sexual exploitation and sale of children** the Ministry of Justice and SENAME, with the support of the International Labor Organization (ILO) have developed the second framework for action against commercial sexual exploitation of children 2012-2014 by convening institutional actors and civil society, with the purpose to unite and coordinate efforts for its eradication. In addition SENAME generated an Observatory on Sexual Exploitation.

ESCI programs of the SENAME network are the specialized offer designed to address the situations of Commercial Sexual Exploitation of Children in the country, having as its main objective to contribute to the reparation of harm caused and restoration of children's rights to victims of commercial sexual exploitation. In 2013, the offer consists of 15 programs, located in most of the regions, with the exception of five. The amount and distribution of the offer has been increasing and has become more targeted according to the extent of cases detected and, consequently, is characterized by a greater concentration in regions particularly vulnerable to the occurrence of sexual exploitation of children following the productive or geographical dynamics, especially such as mining, ports and borders.

Today there is no updated information of this violation of rights; the last study was realized in 2003<sup>102</sup>. In addition, the difficulty in planning the care offer seems to have meant that some regions, even showing the characteristics and dynamics usually associated with ESCI, lack programs. In these cases, the detection of cases of children affected by sexual exploitation has been resolved including them in other programs of the SENAME network (not specialized in ESCI). This implies that an infringement of rights of maximum complexity, not only by the depth and vastness of the damage but also for the possible implications of networks and criminal organizations, among others, does not have a specialized offer nor the inter-institutional coordination required at the national level.

The protection of **child victims of sexual offenses** has known legislative advances in the period:

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<sup>98</sup> Centro de Estudios de la Niñez, (2014). Childhood and adolescence in Chile: the figures. Ob cit.

<sup>99</sup> According to these registers, between January 2007 and December 2011, 1728 new situations were registered totalling 4.034 children registered between June 2003 and December 2011.

<sup>100</sup> Document by Opcion Consultin of Regional Plans.

<sup>101</sup> San Carlos del Maipo Foundation created in 2007 a Metropolitan Observatory of children and adolescents in Street situation of Metropolitan Region.

<sup>102</sup> Study about Commercial sexual exploitation of children and adolescents. Chile OIT/SENAME 2003



A contribution is the change in the accounting of the prescription of the action, in the case of sexual offences, whose term shall be calculated from the moment that the victim reaches adulthood<sup>103</sup>, these awards more time to victims to process their experience and report it. However the non prescriptibility of this type of crime was not implemented. In the same line there has been progress in the fight against sexual harassment of children, establishing specific penalties for those who send, deliver or display child pornography<sup>104</sup>. Likewise the inability for-life to exercise functions directly related to children has been instituted for those convicted of sex crimes against children<sup>105</sup>. The age of victims of violation has been increased from 12 to 14 years of age, with no benefit of parole for the author until having served at least two thirds of the sanction<sup>106</sup>. Finally and as a means of preventing secondary victimization; anticipation of proof by minors has been allowed<sup>107</sup>.

In relation to the phenomenon of child abuse, it is not possible to measure its magnitude. Estimations made by UNICEF and the Institute of Criminology of the PDI, estimated that the number of crimes not reported, could raise the number of complaints by seven times.

A study conducted by UNICEF<sup>108</sup> indicates that 8.7% of children reported having been sexually abused. On the other hand, a nationwide study conducted by Corporation Opción, on a sample of 1.103 children admitted to specialized programs of reparation for abuse and mistreatment, found that 70.1% of the numbers correspond to situations of child sexual abuse (29.9% corresponds to serious abuse) and that an 80.9% of cases of abuse took place within the family.

The programs implemented by NGOs and funded by the State have 6,025 places nationwide. These are totally occupied, with 1854 NNA (30 %) on the waiting list. Without a doubt the existing coverage is not enough to contain the magnitude of the problem.

On the other hand, criminal investigations conducted by the Public Prosecutor's Office, but developed to a large extent by the police must be appropriate and adapted to the needs of children. It is not enough to focus on the accused of the crime, but it is also necessary to give proper protection to the victim generating due safeguards to prevent his or her identification from third parties that are unrelated to the trial, so that they may declare feeling secure and having appropriate spaces and support that allows them to sustain their statement and avoid retractions.

In the **Administration of juvenile justice** the exclusion of minors of the implementation of Law No. 18,314 on terrorist crimes has meant a step forward, having come after a hunger strike of young Mapuche in prisons<sup>109</sup>. Similarly in 2012, an important milestone in national jurisprudence took place: for the first time the genetic print of a minor who violated the law was excluded from the records on the grounds that the incorporation of children's DNA to the registers violates the Law of Criminal Responsibility for Adolescents (LRPA) standards and is contradictory to the approach based on children's rights<sup>110</sup>.

In June 2007 the Law No. 20,084<sup>111</sup> which established a special adolescent penal system for offenders came into effect. To account for the magnitude of the attended population, it is necessary to point out that SENAME attended between January and December 2012, 34,161 children in Juvenile Justice, of which 89.7 % correspond to the male sex. Regarding measures and sanctions, 3679 were assisted in Temporary Internment Centers, 1741 in Closed Regime Internment Centers, 1754 in Semi-closed Internment Centers, 5650 in Ambulatory Precautionary Measures, 4222 in Assisted Freedom Programs, 7397 in Special Assisted Freedom Programs, 5756 Services Benefiting the Community and Reparation of

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<sup>103</sup> Law Nº 20.207 August 2007

<sup>104</sup> Law Nº 20.526 August 2011

<sup>105</sup> Law Nº 20.594 June 2012

<sup>106</sup> Law Nº 20.230 year 2007

<sup>107</sup> Law 20.253 of 2008

<sup>108</sup> Fourth Study of Child Abuse 2012 UNICEF Chile

<sup>109</sup> See more information in Report Annex of mission of observation of Temuco y Cholchol, January 2010.

<sup>110</sup> Case rol 4760-2012, 2º courtroom Supreme Court, 31 July 2012.

<sup>111</sup> The Law 20.084 was approved in 2005 but came into effect in 2007 because of the difficulties that presented themselves for its implementation

Damage, 3962 in Alternative Programs. These figures exceed the existing averages at the level of the Latin American region.

Decree of Justice N° 1.378 in 2006 creates in its article 90 the Inter-institutional Monitoring Commission of Centers (CISC) under Law N°. 20.084 on adolescent criminal responsibility. These commissions are supervision observers of the Reclusion Centers of youth charged and sentenced according to the aforementioned law, and their reports are public<sup>112</sup>.

The enactment of the LRPA constituted a significant advance over the old system. It allowed our legal system to provide a special criminal system of juvenile justice, with express recognition of guarantees within the framework of due process. Along this, the LRPA incorporates de principles of the best interest of the child, of proportionality of punitive interventions by the State and of responsibility of the adolescents for crimes committed. From there the LRPA contains a broad catalogue of socio-educational sanctions, both in closed as well as in open media.

However the law is centered in a system of sanctions and does not form a specialized system as such. It does not contemplate courts, advocates or prosecutors specialized in the subject, let alone establishes the possibility of courts of second instance or a Penal Enforcement law. Law 20.084 article n°29 only establishes that those involved should be trained in the subjects, but in the following paragraph makes it explicit that any judge, advocate or prosecutor with experience in criminal law can intervene<sup>113</sup>.

In the implementation of the law, some degree of specialization has been afforded as a consequence of initiatives by the respective institutions, so that a court in Santiago, one in Valparaiso and another in Talca have realized experiences as Specialized Courtrooms in Juvenile Justice. Likewise, the Advocates Office has created a specialized area.

In the same line, our legislation does not contemplate, in its juridical order, process alternatives specialized for RPA that allow diversified responses according to the evolution of the adolescents, having to use in place the Penal Process Code, established for adults, for cases regarding reparation agreements (as direct negotiations between the prosecutor and the advocate without any participation by the victim or the offender) and conditional suspension of the proceedings<sup>114</sup>. This situation has prevented the use of alternative measures with socio-educational content as a first response to the pyramidal base present in the penal youth systems.

Another deficient aspect continue to be the intersectoral articulation and of policies in order to satisfy the needs of social integration of the adolescent boys and girls in conflict with the criminal law, with the general policies of protection of rights. It is of concern in matters of Criminal Justice for Adolescents, the lack of appropriate introduction of protocols, orientations and techniques to prevent discrimination towards LGBTI children and adolescents.

In the area of access to health programs regarding the need and rights of adolescents of treatment due to drug abuse, the judicialization of these situations has been an obstacle through the figure of the accessory sanction<sup>115</sup> and by including treatment as a condition for the Conditional Suspension of the Process. During 2010 the number of young people assisted by the specialized programs of Drugs Control Program CONACE (present SENDA (National Program of Drugs and Alcohol Prevention and Rehabilitation) through the accessory sanction and conditional suspensions was only 12.8% of the

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<sup>112</sup> See <http://dosvias.minjusticia.gob.cl/>

<sup>113</sup> This ideas are developed in greater detail in evaluation document of the 5 years of the RPA that Opcion presented to the Senate on 19 July 2012, attached as annex.

<sup>114</sup> Conditional suspensión, penal process can be suspended under the condition for this to fulfil an agreement made by the judge in case of reparatory agreements, penal process, the accused and the victim reach satisfying agreement regarding the offence made. Which, once accepted by the judge, the penal action could be extinguished.

<sup>115</sup> An accessory sanction is that depends on a main penalti, but in case of LRPA it has been translated in the possibility of access to the treatment of drugs.

cases<sup>116</sup>. The young people in Community Services (SBC) and alternative leave could access treatment through precautionary guarantee actions<sup>117</sup>.

Another deficit is that at the moment of determining a sanction, there are practical difficulties because the judge does not have information from experts or technical advisers, though article 40 of LRPA allows for it, to determine sanctions that are appropriate and proportional to efficiently fulfill the ends announced. The latter has generated that sanctions determined do not take into account the needs and capacities of adolescents, breaching the principle of appropriateness of the sanction to comply with article 20 of the LPRA, easing its failure, enabling declarations of breaches of sanctions, non compliance (for the cases of alternative leave) and in all increase the rate of reincorporation to the system.

From an educational-responsibility point of view of the LPRA, it has not been possible to establish, in the execution phase, the difference with the ends of the adult system. Thus the adversarial dynamics has been present in the operators of the judicial system and in the juridical practices, extending to the stage of control of execution, impeding flexible and diversified responses centered in the best interest of the adolescents. Likewise, there has been a distance from what is stated in article 40.4 of the CRC which requires the judge to have at his or her disposal a broad repertoire of instruments to facilitate a flexible intervention that allows an individual response as per the needs and interests of each child. This inhibits the use of juridical mechanisms that will allow adequate resolutions on substitution, suspensions, remissions, criteria of sanction unification, threat of infringement, infringements, among others.

It should be noted that certain modifications LPRA (done in 2007, after the enactment of the LPRA and others) are contrary to the CRC. In 2007 the duration of detention was increased from 12 to 24 hours, conditions for provisional internment were broadened, and the obligation to apply two years of closed internment was established before being able to apply semi-closed regime in the highest echelon of the sanction system. Today, a legal reform is being discussed to enable the establishment of permanent guards from Gendarmería<sup>118</sup> in youth prisons.

Likewise, a permanent knot refers to the simultaneous and superimposed sanctions. An important number of adolescents find themselves with successive or parallel, sentences which make it difficult to fulfill the end of the sanctions. It is necessary to promote the unification of sanctions, as an agreement by the judiciary but it would be of vital relevance to count with a Law of Execution of Sanctions of the RPA (that among others solves the issue of substitutions and/or remissions of sentences).

Pending since 2008 are the creation of 10 new centers of high standard in RPA, today only 5 are approved and of them, 3 are under construction. One center in the district of Tiltil was delivered to SENAME and it started to operate in 2012.

Deprivation of liberty as last resort and for the least time as per article 37 of the CRC and in the declaration of principles of the LPRA not only has not been followed, but it has been abused with excess, an example being what comes out in the study on DPP<sup>119</sup> whereby more than 65% of those indicted who were in preventive prison were sanctioned to open regime or their case was finished through Alternative Exit or other means.

Adding to the above, the increase in the average days of provisional internment is worrying, which according to the study mentioned above there is a significant increase in the internment of adolescents, 46.5%; while with adults it is 30.6%<sup>120</sup>.

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<sup>116</sup> Source Presentation to Committee of Constitution, Legislation and Justice of the Senate, by the National Defender. Valparaíso 2012.

<sup>117</sup> According to Corporación Opción registers, in 2012 were presented 18 action.

<sup>118</sup> Armed service which is responsible for the custody of the accused and convicted, and in the case of adolescents watch over the outer perimeter of the enclosures.

<sup>119</sup> Penal Defense Unit with technical cooperation UNICEF "3 years of validity law of penal responsibility for adolescents", April 2011

<sup>120</sup> 90% of adolescents is condemned to a non-custodial systems, but those do not have a specialized level required to fulfill the ends pursued.

With regard to **indigenous children**, in September 2008 the Chilean state ratified ILO Convention No. 169.

Mapuche boys and girls are a sector of children that is particularly vulnerable to institutional violence. Still pending is the constitutional recognition of the indigenous peoples, presented to Congress by parliamentary initiative in 2007. On the other hand, it is necessary to broaden the intercultural bilingual program to urban sectors and not leave it only in the rural areas. Also necessary is the establishment of a protocol for police action which will prevent that children are interrogated as witnesses without the presence or authorization of their legal representatives.

After the presentation of 3 periodic reports, the Committee on the rights of the child is still observing the State of Chile:

- Law of minors (in 1928, renovated in 1967) and its replacement by a protection law, according to the principles and standards of the CRC and its optional protocols (all ratified by Chile).
- The creation of a national institution independent of human rights to ensure the promotion and protection of the rights of the child in accordance with the Paris principles.
- It will count on a stable institutional framework, sufficient financial and human resources to take care of the effective coordination and complete realization of the rights of the child at the national level.

Without a doubt, law, institutionality and Defender are the great challenges of today. Not only because the Committee recommends it, but because the reality of children and adolescents demands it.

To achieve this is requires a profound cultural change, which installs children and their rights as a priority group for Public Policy, that understands the human rights as universal, comprehensive and interdependent and that the realization of human rights (cointaned in the ratified commitments by the State of Chile) is the essential part of these public politics.

#### **Recommendations:**

1. A Legal protection system: consisting of the set of juridical regulations, in which the rights protection law must be central axis.
2. A system of judicial protection composed of a justice system, specialized and easy access for children, adolescents and their families.
3. A system of protection or social composed of:
  - The set of universal policies (education, health, work, etc). These policies should consider the rights of children and adolescents as strategic elements of its design.
  - A protection system focused, enabling you to generate high quality processes for the repair and restoration of rights, as well as programs that allow equal opportunities to children and adolescents who have been threatened or violated in their rights.
  - A juvenile justice system, specialized, with a wide range of penalties or sanctions for compliance in the free Middle, where effectively the deprivation of liberty is the last resort.

## **Annexes**

Chapter 1 Propuesta del Comité Consultivo 2009

Ley de división del SENAME

	Nudos críticos y propuestas de comisión de justicia juvenil
	Nudos críticos y propuestas comisión de protección
	Propuesta Foro Chileno para candidatos presidenciales 2009
Chapter 2	Acuerdo político legislativo en materia de seguridad pública
	Entrevista a Alejandro Astorga
	Informe libertad y desarrollo
Chapter 3	Interés superior caso tuición 620-2010
	Minuta resumen caso CCM
Chapter 4	Querrela joven desnudada
	Respuesta a director SENAME por torturas
	Resumen ejecutivo situación Derechos Humanos 2012 INDH
Chapter 5	Resumen ejecutivo EVA final 2010
Chapter 6	Derechos del niño UDP
	Entrevista doctor Paris
	Entrevista Culturasalud
Chapter 7	Entrevista Miguel Luarte Opción
	Entrevista Enrique Azúa INDH
	Entrevista Manuel Sepúlveda Educación 2020
	Entrevista Liliana Cortés Súmate
	Ley 20.162 16 febrero 2007 (obligatoriedad de la educación parvularia)
Chapter 8	Evaluación 5 años de la ley 20.084 de responsabilidad penal adolescente, Opción
	Causa rol 4760-2012
	Misión Chol Chol