



## ALTERNATIVE REPORT TO THE COMMITTEE ON THE RIGHTS OF THE CHILD ON THE IMPLEMENTATION OF THE CONVENTION ON THE RIGHTS OF THE CHILD IN CHILE

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**Recurring Acronyms and/or Abbreviations:**

CDN (CRC)	Convención sobre los Derechos del Niño (Convention on the Rights of the Child)
NNA (BGA)	Niños, niñas y adolescentes (Boys, Girls and Adolescents)
CASEN	Encuesta de Caracterización Socioeconómica Nacional (National Socioeconomic Characterization Survey)
INE	Instituto Nacional de Estadísticas (National Institute of Statistics)
MDSF	Ministerio de Desarrollo Social y Familia (Ministry of Social Development and Family)
INDH	Instituto Nacional de Derechos Humanos (National Institute of Human Rights)
SENAME	Servicio Nacional de Menores (National Service for Minors)
MINEDUC	Ministerio de Educación (Ministry of Education)

## INTRODUCTION

This report was jointly prepared by the institutions that make up the Bloque por la Infancia (Block for Childhood Protection)<sup>1</sup>. This is a group of non-profit organizations and networks<sup>2</sup> with presence throughout the national territory. It has been working since 2012 for the promotion and defense of the rights of boys, girls and adolescents, focusing on advocacy work for the legislative agenda on childhood. Other organizations with expertise on issues which are of special interest for the report have also joined for its preparation. Their contribution is noted in the respective chapters.

The objective of the Bloque has been to prepare an alternative report which builds on civil society's experience and perspective and which serves to contrast and complement the answers provided by the State in February 2021. This way, relevant information and recommendations are expected to be provided for this fifth review of the State of Chile by the Committee on the Rights of the Child (hereinafter referred to as the Committee).

Twelve sections summarize the main improvements, concerns and recommendations on: a) general implementation measures, b) civil rights and civil liberties, c) education, recreation and cultural activities, d) family environment and alternative care, e) general principles (including participation), f) right to health and g) special protection measures: boys, girls and adolescents with adults deprived of liberty, indigenous, migrant, homeless and LGBTIQ+ children.

The report should be read against the backdrop of a country that has experienced major social mobilizations calling for profound social transformations. This citizen process has resulted in the formation, by popular election, of a constituent convention, whose task is to draft a new constitution for Chile. Throughout this process, boys, girls and adolescents have played a leading role. It is particularly significant to note that simultaneously to this review by the Committee, Chilean society will be discussing a constitution that will lay the foundations for a new phase of this political community and, hopefully, the beginning as well of a new deal for children and adolescents living in the country.

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<sup>1</sup> The Bloque por la Infancia brings together institutions with different political, social, ideological and religious views. Their common concern is the urgency for Chile to have an Integral Protection Law that would give rise to an Institutional Protection System focusing on the territories, with a priority guarantor role for the State administration and with an effective participation by civil society and boys, girls and adolescents. <https://bloqueporlainfancia.cl/>

<sup>2</sup> List of Block members: ACHNU, Aldeas Infantiles SOS, World Vision, Comunidad de Organizaciones Solidarias, Raices, Fundación Gesta, La Caleta, Movilizándonos, Fundación Mi Casa, Roij, Asociación de Pediatría Social, En Marcha, MMI Chile, Hogar de Cristo, BICE, Chile Derechos, Paicabi, América Solidaria, Crea Equidad, Futuro para el Tenis.

## OVERALL CONTEXT<sup>3</sup>

In Chile, according to the 2017 Census, the number of boys, girls and adolescents aged 0 to 17 years amounts to 4,259,155<sup>4</sup>, a figure representing about a quarter of the country's total population (24.2%). Of the total number of boys, girls and adolescents registered in the census, 51% are boys and male adolescents, while 49% are girls and female adolescents. Regarding the areas in which they live, 87.4% live in urban areas while 12.6% live in rural areas.

The 2020 National Socioeconomic Characterization Survey (CASEN) shows an increase in the number of people living in poverty and indigence. As of 2020, poverty reaches 10.8%, which is an increase of 2.2% as compared to the figures of the 2017 survey, which in terms of population sizes totaled 8.6%. This 10.8% represents 2,112,185 people (income poverty), which is 583,901 more than in 2017. Extreme poverty also increased from 2.3% to 4.3% in the same period<sup>5</sup>.

People from 0 to 17 years of age experience poverty to a greater extent than the rest of the population. This trend is particularly high for early childhood (0 - 4 years)<sup>6</sup>. When processing the CASEN 2020 data<sup>7</sup>, an increase in poverty of boys, girls and adolescents is observed as compared to 2017: in the 0-3-year-old age group it went from 15% to 17.1% and in the 4-17-year-old age group it went from 13.6% to 15.3%.

The most recent application of this instrument showed that 13.9% of boys, girls and adolescents live in income poverty and 22.9% in multidimensional poverty<sup>8</sup>. Now, when considering boys, girls and adolescents who experience some type of poverty, whether income poverty, multidimensional poverty or both, the figure increases to 31.2%. That is, 3 out of every 10 live in poverty (Observatorio Niñez y Adolescencia, 2020). Quantitatively, 577,000 boys, girls and adolescents live in income poverty and 907,711 in multidimensional poverty.

Following the social and health crisis resulting from the COVID-19 pandemic, this situation has worsened. In this regard, the COVID-19 Social Survey (2020)<sup>9</sup>, prepared by the National Institute of Statistics (INE), the Ministry of Social Development and Family (MDSF) and the UNDP, shows that 66.1% of households with boys, girls and adolescents reported a decrease in income as compared to the period prior to the pandemic. This decrease is directly associated with the fact that 30.3% of

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<sup>3</sup> This section was prepared based on the following reports: a) Minutes: Situation of poverty affecting boys, girls and adolescents in Chile, prepared by Hogar de Cristo (Home of Christ) for this initiative, and b) Report: Childhood Counts in Chile, 2020, by the Observatorio de la Niñez y Adolescencia (Childhood and Adolescence Observatory).

<sup>4</sup> According to Projections of the National Institute of Statistics (INE) 2021, which are based on the 2017 Census, BGAs account for 4,477,523.

<sup>5</sup> [observatorio.ministeriodesarrollosocial.gob.cl/storage/docs/casen/2020/Resultados\\_Pobreza\\_por\\_Ingresos\\_casen2020\\_en\\_pandemia.pdf](https://observatorio.ministeriodesarrollosocial.gob.cl/storage/docs/casen/2020/Resultados_Pobreza_por_Ingresos_casen2020_en_pandemia.pdf)

<sup>6</sup> [http://observatorio.ministeriodesarrollosocial.gob.cl/storage/docs/casen/2017/Resultados\\_nna\\_casen\\_2017.pdf](http://observatorio.ministeriodesarrollosocial.gob.cl/storage/docs/casen/2017/Resultados_nna_casen_2017.pdf)

<sup>7</sup> The data processing was carried out by the Observatorio de la Niñez y Adolescencia.

<sup>8</sup> Income poverty refers to those households receiving insufficient monetary income to meet basic needs, whereas multidimensional poverty refers to deprivations related to well-being: education, health, work and social security, housing and environment, social networks and cohesion.

<sup>9</sup> <https://www.cl.undp.org/content/chile/es/home/presscenter/pressreleases/2018/encuesta-de-mds-ine-y-pnud-revela-impactos-de-la-crisis-en-el-de.html>

households with boys, girls and adolescents had at least one member who had lost his or her job, and 7.7% of these jobs had been discontinued.

With respect to living conditions, 6.5% of households in Chile live in overcrowded conditions. This increases significantly in households with boys, girls and adolescents, where the figure rises to 17.0%. The situation is even more serious in the case of early childhood, where 22.2% live in overcrowded households (CASEN, 2017).

Overcrowding has a negative impact on boys, girls and adolescents' development as it prevents them from having adequate spaces for privacy, recreation or studies, along with the possible increase of tensions in the family dynamics. Regarding housing, Greenpeace reports that 400,000 families in Chile do not have access to water, which must be supplied with water trucks. 147 communes in the country<sup>10</sup> have been declared with water shortage.

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<sup>10</sup> Chile has 346 communes.

## GENERAL IMPLEMENTATION MEASURES<sup>11</sup>

### Legislation

Partial progress has been made by the State of Chile with respect to changes in legislation aimed at complying with international commitments and the substitution of the Law on Minors. In 2018, the Under-Secretariat for Children was created (Law No. 21.090<sup>12</sup>), under the Ministry of Social Development and Family, and the Ombudsman for Children's Rights (Law No. 21.067<sup>13</sup>). Additionally, within the framework of the National Service for Minors (SENAME) reform, Law No. 21.032 was enacted, creating the Specialized Protection Service for Children and Adolescents, which will be located in the MDSF<sup>14</sup> and which will be operational as of October 01; and the Social Reinsertion Service for Adolescents, aimed at young people in conflict with the law, under the Ministry of Justice and Human Rights' mandate. SENAME will cease to exist.

However, **as at the date of this report**, the **first** General Law of Guarantees and Integral Protection of Children and Adolescents which is compliant with the standards of the Convention on the Rights of the Child (CRC) is still in its final stage of preparation. This deficiency has had a profound negative impact on the lives of boys and girls, on families and communities, on those working in the field, and on public policies that are over demanded. For the same reason, policies have not been capable of preventing, and this has had an impact even on the public institutions responsible for these issues, particularly the SENAME and the Family Courts, which have experienced constant crises, accusations and even investigations by Congress and the Committee itself. Therefore, it is evident that the State has incurred in inexcusable negligence by delaying for 31 years the **essential adaptation** of its legislation to the CRC<sup>15</sup>.

### RECOMMENDATION

To have an Integral Protection Law with the highest standards regarding the rights of boys, girls and adolescents. This is a debt that the State of Chile should settle by creating a National System of Integral Protection which is based on this law".

### Resource allocation

In the absence of a general basic law on children's rights, the state budget is not allocated from a child's rights-based approach. Budgets are not integrated into a **national policy** on children, and the amount and proportion of the budget allocated to this age group at the local, regional and national levels is not clearly defined. Budgets continue to be developed on a sectoral basis, without a comprehensive approach and analysis of public investment targeting this group, preventing a

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<sup>11</sup> Chapter prepared by the team that makes up the Spokespersons of the Bloque por la Infancia, with the support of the commission responsible for this report.

<sup>12</sup> <https://www.bcn.cl/leychile/navegar?idNorma=1117540>

<sup>13</sup> <https://www.bcn.cl/leychile/navegar?idNorma=1114173&buscar=21067>

<sup>14</sup> <https://www.bcn.cl/leychile/navegar?idNorma=1154203> effective October 1, 2021.

<sup>15</sup> And which, strictly speaking, will take more time, given that the Law of Guarantees and Integral Protection has been given a term of 5 years for its effective implementation.

planned approach to address demand, priorities and gaps over time. At the same time, access to budgetary data on plans, campaigns, programs or policies aimed at children is difficult and scarce. A transparent, participatory, dialogue-based and accountable policy and budget is required.

### **Definition of a Child**

The discussion on the minimum voting age has been opened, promoting the age of 16 as the most suitable, especially considering the significant participation of high school youth in the generation of a new constitution. The international experience has shown that encouraging voter turnout from the age of 16 at the municipal level generates greater involvement in community decisions.

In another area, the minimum age for marriage is kept at 18 years old. As well as marriage at 16 years of age with parental authorization.

### **Boys, girls and adolescents' Right to Participation**

There is an ongoing concern over the existence of opportunities for participation as a purely decorative feature, including forums for consultation that neither generate continuity nor information on the results or decisions.

Special attention should be paid to the events that took place within the framework of the so-called "Social Outbreak", where the criminalization of protests was evident. It is important to point out that the first call to protest to stop paying for public transportation was made by secondary and high school teenagers<sup>16</sup>.

Within the framework of the creation of a new constitution, the constituent assembly's regulations have not yet established how boys, girls and adolescents will participate. To date, there are neither established mechanisms nor working protocols for children to make their opinions known to the Constituent Convention. It is also unclear how the results of participatory processes that have already taken place will be taken into account.

In this regard, the Under-Secretariat for Children launched in 2019 the platform "**For a Good Childhood**", to guide citizens on existing methodologies to develop processes for dialogue and reflection. As a result of the October 2019 protests, the information from the dialogues of boys, girls and adolescents is incorporated into the process **The Chile We Want**. Between October 2019 and March 2020, more than "870 dialogues with BGAs were recorded, with the participation of more than 13,000 BGAs"<sup>17</sup>. Among the main needs mentioned by the participants were the lack of public spaces and green areas, better access to housing, education and health.

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<sup>16</sup> The National Institute of Human Rights<sup>16</sup> reported that the number violations to the human rights of boys, girls and adolescents affected by eye injuries, gunshot wounds and/or injuries from tear gas canisters stands at 282. 278 legal proceedings were filed in defense of girls, boys and adolescents.

<sup>17</sup> <http://www.porunabuenaninez.cl/noticias/nota4>



It is worth noting that current Chilean legislation establishes the age of discernment for criminal responsibility at 14 years of age (Law 20.084). However, this same capacity for discernment does not apply in political decision-making arenas, maintaining the **voting** age at 18 years old. This has meant that adolescents who were part of the social movement that promoted the constitutional change have been left out of the process; demands have been high for them to be considered in the exit plebiscite.

The General Comment to Article 12 **discourages imposing age limits** on participation. However, Exempt Resolution No. 4,082, related to the regulations of SENAME's Advisory Council, limits the participation of children under 10 years of age. Therefore, mechanisms should be explored so that children under that age can be part of such venues, according to their progressive autonomy.

Regarding access to information, Internet is currently one of the most widely used media for such purposes. In the context of the Covid-19 pandemic, there has been evidence of a significant increase in the digital divide, widening the gap between different socioeconomic levels. Data from the Ibero-American Observatory of Communications<sup>18</sup> show that communes with greater resources such as Las Condes and Vitacura have connectivity figures close to 95%. While in communes with lower incomes such as La Pintana, access is close to 30%. According to the local authority, the participation of girls, boys and young people in virtual education opportunities during the pandemic has been close to 13%<sup>19</sup>.

It is important to understand that many boys, girls and adolescents recognize and put participation into practice through recreation and culture. It is therefore distressing to note how, after more than a year and a half of the pandemic, the State and its agencies have not generated strategies that guarantee the enforcement of rights, failing to facilitate times or permissions to favor meetings of boys and girls. Nor have communication channels been made available to listen to children's opinions and to collaborate in guaranteeing rights.

Although the existence of venues such as CECREA is positively valued, it is important that these have a component of intersectoral and community articulation. Furthermore, their creation in different regions and localities should be encouraged so as to bring this device closer to more boys, girls and adolescents, favoring as well the link with the community

## RECOMMENDATIONS

- i. Eliminate the minimum age restriction for joining the Councils of Boys, Girls and Adolescents; promote the representativeness of different groups and increase transparency by making it mandatory to prepare public minutes of their meetings.

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<sup>18</sup> <https://radio.uchile.cl/2021/01/04/la-pintana-al-nivel-de-afica-instituciones-preparan-primer-ranking-comunal-de-vulnerabilidad-digital-en-chile/>

<sup>19</sup><https://www.elmostrador.cl/noticias/2020/09/28/alcaldesa-de-la-pintana-y-el-complejo-panorama-estudiantil-por-clases-online-tenemos-13-de-cobertura-de-internet/>

- ii. Measure the impact of children's opinions on municipal development plans and local government protection systems.
- iii. Incorporate children and youth in the constituent process through transparent participation mechanisms, both in the elaboration as well as in the implementation of the new constitution.
- iv. Facilitate the access of girls, boys and adolescents to quality Internet services; incorporating technological devices that facilitate their access to information.

### **Independent Monitoring**

Following the approval of Law 21.067, the Ombudsman for Children's Rights is created as a public law corporation, with autonomy from other State bodies. There is concern over the framework within which this institution is working, as it currently operates without an **integral rights protection system**, thus jeopardizing the monitoring of rights and even its autonomous nature. This is evidenced by the request by parliamentarians of the government coalition<sup>20</sup> to remove the current Children's Ombudsman, Patricia Muñoz, which was finally rejected by a large majority in the Supreme Court.

### **Data management**

Regarding the availability of data, there are several sources of information that monitor the reality of boys, girls and adolescents at the national, regional and communal levels. The MDSF has created the portal "Creciendo con Derechos" (Growing up with Rights), as a system of indicators regarding children's living conditions so as to monitor the implementation of the Convention and other international commitments. However, even though this platform aims at making information and indicators available to citizens, the disparity of criteria when distributing the age cohorts of the different entries (health, education, etc.) is a matter of concern. This hampers the analysis of boys, girls and adolescents' living conditions and a comprehensive evaluation of the enforcement of their rights.

The main instrument for public policy decision-making continues to be the CASEN survey, which has had no community representation in its last two versions. On the other hand, this tool does not ensure monitoring of the universal guarantee of child's rights, since it is a survey that leaves out a group of the population; even data collection is targeted.

There is concern over the effective use of data for making investment and public policy decisions aimed at overcoming gaps in the enforcement of the rights of this population group, inasmuch as the National Policy and Plan for Children have not been structured for overcoming gaps.

The pandemic has highlighted these weaknesses. Thus, boys, girls and adolescents have remained largely ignored in the measures taken for the population as a whole. Likewise, the lack of

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<sup>20</sup> <https://www.latercera.com/nacional/noticia/corte-suprema-inicia-revision-de-la-solicitud-de-remocion-de-patricia-munoz-de-la-defensoria-de-la-ninez/QMLWDZEPGNHD5EZIKPLPCA73BY/>

institutional structures for administrative protection at the territorial level and the absence of a system itself, makes it very difficult to identify violations of any kind, to collect data, to take measures, to articulate initiatives and to manage timely and effective responses with the communities, the families and the organizations in the field. The absence of prevention, as a priority line of action in the territory, has also meant tardiness in the face of the pandemic.

Finally, the lack of regularity in the production of official figures is a matter of concern. The measuring instruments proposed by State agencies are not always replicated, which does not allow for a robust follow-up of rights' monitoring.

## **RECOMMENDATIONS**

- i. Provide data that would allow identifying gaps in the exercise of rights in the different domains for those groups whose rights have been largely violated, such as migrant boys, girls and adolescents; children with disabilities, and children belonging to indigenous peoples, among others.
- ii. Standardize the quality and the age range of the data that public institutions generate through the various available instruments; data production shall be oriented by a territorial approach that covers the communal and sub-communal levels and with a stable periodicity that allows for follow-up and comparison

## CIVIL RIGHTS AND CIVIL LIBERTIES<sup>21</sup>

This chapter refers to freedom of association and peaceful assembly in the context of human rights violations against boys, girls and adolescents occurring during the October 2019 Social Outbreak.

During these demonstrations, the State responded in a repressive manner and the institutions in charge of national security made excessive use of force against the population, including boys, girls and adolescents. This situation has been recorded in many reports of national and international organizations<sup>22</sup>. Boys, girls and adolescents were not merely precursors, protagonists and witnesses of the demonstrations, they were also victims and direct witnesses of excessive violence mainly perpetrated by State agents.

From 2006 to the present, student demonstrations are being held to protest for changes to the educational, social and economic system. This situation became even more serious in October 2019, when hundreds of students organized a massive fare evasion in the Santiago Metro in protest against an increase in the fare of public transportation. It was the beginning of the process known as the Social Outbreak, in which a large part of the citizenship took part in demonstrations to express the need for profound changes.

According to data of the National Institute of Human Rights (INDH in Spanish) – which were updated on May 04, 2021 – since October 18, 2019 it has received a total of 550 complaints for violations to the human rights of boys, girls and adolescents in the context of the Social Outbreak<sup>23</sup>. For its part, the police (Carabineros) reported the detention of more than 15,000 people in the course of two days, among them 2,200 boys, girls and adolescents<sup>24</sup>.

According to data from the Children’s Ombudsman, between October 18, 2019 and June 30, 2020, 818 cases of violations to the human rights of boys, girls and adolescents were documented in the same context:

- 22% of the cases were female victims and 78% were male victims.
- Of the total number of cases, 471 involved physical injuries caused by a device or equipment; 145 involved physical injuries caused by firearms; 71 involved sexual violence, torture and other cruel, inhuman or degrading treatment; 91 involved other violations suffered during arrests, demonstrations or in police vehicles; and 40 involved unidentified violations.

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<sup>21</sup> This chapter has been prepared by PIDEE Foundation.

<sup>22</sup> Office of the United Nations High Commissioner for Human Rights (OHCHR) – Inter-American Commission on Human Rights (IACHR) – Human Rights Watch – Amnesty International – National Institute of Human Rights (INDH).

<sup>23</sup> INDH Assessment: 1 year and 7 months after the social crisis. Universidad Diego Portales

<sup>24</sup> Amnistía Internacional 2020. Eyes on Chile: police violence and command responsibility during the social outbreak (page 11 on contingency for days 18 and 19 of November 2019).

- Regarding the time and place where the violations were committed, 53% were committed during demonstrations; 26% in everyday situations; 15% in the eventual commission of a crime; and 6% there's no information on the matter.
- In 92% of the cases, responsibility lies with Carabineros; in 2% with the military; in 2% with the Policía de Investigaciones (Investigation Police - PDI); and in 4% there's no information on the matter.
- The number of complaints represents an increase of 541% over the average number of cases received by the Children's Ombudsman before the outbreak (51 cases per month).
- 50% of the cases of violations to the human rights of boys, girls and adolescents are or were related to the SENAME Network, 59% were linked to the area of protection, 35% to the area of adolescent criminal responsibility and in 6% there is no information on the matter<sup>25</sup>. This indicates systematic violence, mainly perpetrated by state agents and institutions.

The Public Prosecutor's Office has reported that 1,315 cases of boys, girls and adolescents who have been victims of institutional violence have been filed between October 18, 2019 and March 31, 2020. An update of this figure to date has been requested by the Children's Ombudsman but is still pending response.

On October 20, 2020, the Chilean Medical College publicly alerted the authorities about several cases of people with eye injuries, which included minors.<sup>26</sup> Two 9- and 10-year-old children had been wounded by a projectile and one of them had to undergo surgery; another 14-year-old boy required emergency surgery due to the impact of a projectile in the thorax. Faced with this increasing trend, the international press would describe the 20 days of protests as "an epidemic of **eye injuries**"<sup>27</sup> and the Eye magazine published an article reporting this explosive increase of cases<sup>28</sup>.

Overall, the perception is that the State agents' response to the demonstrations by boys, girls and adolescents has been an excessive use of police force in the dispersal of protests.

In other areas, laws have been implemented that hinder the exercise of boys, girls and adolescents' rights. An example of this is Law No. 21.128 of 2018, known as Aula Segura (Safe Classroom Act), which authorizes the immediate expulsion of students who have participated in the demonstrations. This situation has been highlighted by the Committee on the Rights of the Child and by the Children's Ombudsman.

According to statements gathered by Fundación Gesta, several boys, girls and adolescents from the southern outskirts of Santiago that were linked to its community program were physically attacked and detained in the context of the social outbreak. A 17-year-old adolescent was hit by a tear gas

<sup>25</sup> Annual Report 2020. Human Rights of boys, girls and adolescents in Chile. Children's Ombudsman.

<sup>26</sup> Registry of complaints of attacks received by the Human Rights Department of the Chilean Medical College, October 20, 2019.

<sup>27</sup> BBC. Protests in Chile: the "epidemic" of eye injuries that brings Piñera's government into question. See: <https://www.bbc.com/mundo/noticias-america-latina-50354968>

<sup>28</sup> Rodríguez, Á., Peña, S., Cavieres, I. et al. Ocular trauma by kinetic impact projectiles during civil unrest in Chile. *Eye* 35, 1666–1672 (2021). <https://doi.org/10.1038/s41433-020-01146-w>

canister in the buttock and another young man was hit by a rubber pellet in his nose, just a few centimeters from his eye. Another 13-year-old boy was beaten in the back and stomach while outside a looted supermarket in La Pintana commune. In all these cases injuries were not registered nor were the facts denounced for fear of arrest and police violence: "fear that we would be arrested or beaten". Another group of ten teenagers was arrested and beaten on March 13, 2020<sup>29</sup> while participating in students' protests. In the testimony collected, one of the 17-year-old adolescents said: "one of my pals was beaten by 5 police officers... they threatened him with guns... they hit him in the head with a pistol, kicked him, he had a fractured nose, marks of police truncheon and a cut on his head".

According to data from the Children's Ombudsman, as of June 2020, more than 500 queries had been received by the institution's email account, all of them related to violations to the rights of boys, girls and adolescents during the outbreak. On the other hand, citizens used social networks to publish complaints of the same type by tagging the Children's Ombudsman, whose mentions on Twitter, for example, doubled during October 2019, reaching a peak of 27 thousand in November of the same year.

The Universidad Diego Portales Annual Report on Human Rights in Chile 2020, states that out of the 818 complaints reported by Children's Ombudsman, 16 correspond to bullet injuries, 129 to injuries by pellets or ball bearings, 365 to physical injuries by blows, 64 to physical injuries by gases used by the police (pepper spray and/or tear gas), and 25 to physical injuries of other kinds. There were also 17 cases of eye trauma, 10 cases of degrading treatment, 9 cases of threats of a sexual nature, 29 cases of stripping, 13 cases involving being forced to undress and squat naked, 8 cases of inappropriate touching and 2 cases of rape. It is reported that 92% of these aggressions were committed by a Carabineros officer<sup>30</sup>.

As regards the detention of boys, girls and adolescents in the context of the social protest, between October 19 and December 31, 2019, 6,420 adolescents between 14 and 17 years of age were detained by Carabineros, significantly increasing the number of adolescents under the Adolescent Criminal Responsibility Act with interim protection measures.

For its part, the INDH reports having visited 2,146 police centers between October 17, 2019 and March 19, 2020, recording 1,580 detained boys, girls and adolescents who had been subjected to violations such as excessive use of force, torture, cruel and degrading treatment, harassment and sexual violence. The visits included hospitals, where the number of injured boys, girls and adolescents totaled 288 (239 male and 49 female), with a significant percentage in the Atacama and Metropolitan regions. More than a third of the boys, girls and adolescents visited had injuries caused by firearms, almost all of them perpetrated by Carabineros.

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<sup>29</sup> <https://www.fundaciongesta.cl/single-post/comunicado-p%C3%BAblico-violencia-policial>

<sup>30</sup> Annual Report on Human Rights in Chile 2020, Universidad Diego Portales.

According to the data provided, it is pertinent to conclude that the Chilean State has systematically violated the rights of boys, girls and adolescents in the context of the Social Outbreak; this information has been witnessed, substantiated and reported by the aforementioned national and international organizations.

Since the right to vote is restricted to those over 18 years of age, the boys, girls and adolescents' political and social participation has focused on the exercise of the right to mobilization, to freedom of expression, and to peaceful assembly and association; all of them rights that are enshrined in the current constitution as well as in international human rights legislation.

In light of the situation referred to above, it is possible to affirm that the State has not taken on board the observation made by the Committee in 2015, where it voiced its deep concern over the repressive attitude of the State towards demonstrations and urged it to develop procedures, police protocols and guidelines that comply with human rights standards.

#### **RECOMMENDATIONS**

- i. Increase funding for the legal department of the Children's Ombudsman to expand the number of lawyers who work on cases of violence and detention of minors.
- ii. Implement training plans on the human rights of children and adolescents aimed at the police and armed forces, preventing the excessive use of force and correcting existing shortcomings in the protocols, so as to eliminate the discretionary nature of the actions of riot control agents.
- iii. The Ministry of Education should strengthen the Citizenship Education Plans taught in schools, including an orientation guide with content related to the right to demonstrate.

## RIGHT TO EDUCATION AND RECREATION<sup>31</sup>

Access to education for boys, girls and adolescents is established as a basic right that, as such, must be guaranteed by the State. The general comment of the CRC in this regard indicates that the objective of this right is to "maximize the child's capacity and ability to participate fully and responsibly in a free society," an objective that, under current conditions, is far from being achieved. The social and health crisis has directly affected access to this right and, therefore, the possibility of complying with the objective proposed by the CRC.

Accordingly, one of the main demands of the student movements that originated in 2006 and which resulted in the Social Outbreak of 2019, refers precisely to free and quality education, available to all. In this respect, the demands aim at pondering social proposals and political wills regarding the transformation of market-based education systems and their link with the social reproduction of poverty and the integral development of boys, girls and adolescents.

Since the Social Outbreak, face-to-face attendance of boys, girls and adolescents to schools began to decrease. Whereas, in the territories, the concept of education was strongly linked to local political participation. Boys, girls and adolescents were active protagonists in local dialogues, taking part in local forums and town committees and in debates around self-convened educational venues. They also took part in educational spaces and activities that were presented as the basis for horizontal experiences and dialogues. The social crisis from the perspective of children and youth put forward reconsidering the educational systems taking into account the territories and grassroots organizations.

Subsequently, new restrictions imposed as a result of the pandemic and the health crisis have increased the gaps in socioeconomic terms, while at the same time new difficulties have been encountered in accessing and exercising the right to education. The restrictive health measures imposed on the population included the suspension of face-to-face classes<sup>32</sup>, shutting down parks and squares, and important restrictions in terms of mobility (curfew, mandatory confinement), measures that have affected both the educational and the social development of boys, girls and adolescents.

### **Access to Internet, hardware and ICT management**

The material conditions for distance education – access to Internet, availability of a computer or tablet, household characteristics – represent a significant gap in access to education. According to figures provided by the Center for Public Studies (CEP in Spanish), 29% of schoolchildren do not have access to a computer at home and 13% do not have any type of access to Internet, while 1 out of 4 schoolchildren live in disadvantaged households and 15% live in overcrowded conditions. When

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<sup>31</sup> This document was prepared with the collaboration of the Red Educacional Marista (Marist Educational Network).

<sup>32</sup> Since March 16, 2020, face-to-face classes were suspended and have been resumed only in exceptional cases, establishing distance education as the main mode of access to school education.



examining these data by socioeconomic level, the figures show that 68% of schoolchildren in the first income quintile live in disadvantaged households and do not have access to Internet and/or to a computer, while the figure for schoolchildren in the fifth quintile is 10% in the same dimension<sup>33</sup>.

The skills required by boys, girls and adolescents and their families for learning through distance education, such as the use of ICTs and reading comprehension skills, represent another significant gap in the access to education and the full exercise of the right to quality education. Distance classes demand greater preparation and autonomy from students since they do not have the direct support and guidance of teachers and other education workers. According to data from the Ministry of Education, students between year 6 of primary education and year 4 of secondary education did not reach 60% of the minimum learning requirements<sup>34</sup>.

In addition to the difficulties in access to education as a result of the social and health crisis, there are the negative effects of the lack of face-to-face classes on the physical and mental health of boys, girls and adolescents. Of particular concern are the food deprivation for students in public schools, since 60% of them receive their main meals in schools through the food program of the National School Support and Scholarships Board (Junta Nacional de Auxilio Escolar y Becas - JUNAEB), whose coverage exceeds 1.5 million boys, girls and adolescents that benefit from it. In order to address this situation, the State, through the Ministry of Education and JUNAEB, has organized the delivery of food baskets for the aforementioned population; however, the scope of this measure is not comparable to the delivery of food on the basis of a programmed food plan in the schools.

### **School dropout and retention in the system**

The distance education process has generated a significant increase in school dropout. According to data from the Ministry of Education, in Chile, up to 2020, there were more than 186 thousand boys, girls and young people between 5 and 21 years of age who had dropped out of the school system, while another 39,498 boys and girls did not enroll in any school during 2021<sup>35</sup>.

### **Educational curriculum**

Although in 2016 Law No. 20.911 was enacted, which created the Citizenship Training Plan for educational establishments recognized by the State, in practice the plans have encountered significant difficulties in their implementation. Additionally, there are no oversight mechanisms nor orientation for its implementation (see Study on the implementation of the Citizenship Training Plan, UNDP, 2018). On the other hand, there are no plans and programs in the Chilean school curriculum that give shape to an education in human rights, beyond the implementation of the first National Human Rights Plan, in which human rights education is one of the 15 topics to be addressed. Mandated by Law 20.885 and targeted to the respect, promotion and protection of

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<sup>33</sup> Centro de Estudios Públicos (Center for Public Studies) - (2020). *Education in pandemic times: background information and recommendations for the debate in Chile*.

<sup>34</sup> <https://www.agenciaeducacion.cl/noticias/estudiantes-de-ensenanza-media-no-alcanzaron-el-60-de-los-aprendizajes-necesarios-en-2020/>

<sup>35</sup> <https://www.mineduc.cl/mineduc-entrega-detalles-de-cifras-de-desercion-escolar-2021/>

Human Rights, this plan establishes a period of implementation from 2018 to 2021. With only a few months to go, no concrete actions have been taken that relate to citizenship training and the incorporation of the rights approach within the school curriculum in educational institutions and establishments.

As for sex education, the current law (Law 20.418), which was enacted in 2010, has a strong biological and morally conservative character, which focuses on the prevention of teenage pregnancy, sexually transmitted diseases and sexual violence. It does not consider the gender perspective nor affective education, and places the right of parents and/or caregivers to free education over the right of boys, girls and adolescents to comprehensive sex education. In October 2020, an Integral Sex Education Draft Bill was introduced, but it was rejected due to lack of quorum in the Chamber of Deputies.

With regard to violence in educational settings, the Observatorio de Niñez y Adolescencia has worked on an index of violence in educational establishments that includes seven situations of violence, according to which only 1 out of 10 boys, girls and adolescents has not experienced any of the described situations of violence, while 8.1% has experienced all of them. On the other hand, 2 out of 10 boys, girls and adolescents report having been insulted and/or humiliated by a teacher, while 37% report having been bullied by their classmates<sup>36</sup>.

### **Right to Recreation**

In the context of the pandemic, the right of boys, girls and adolescents to recreation and leisure has been seriously affected. Health policies did not consider children in their responses to the emergency, closing schools and leaving the responsibility for their care largely restricted to their homes.

The creation of a television channel with programs exclusively aimed at boys, girls and adolescents of different ages and with national coverage is valued. Subsequently, this venue also became a space for the delivery of academic knowledge for different age groups.

But the long quarantines have made it impossible for children to have access to the outdoors in the cities of the country, and throughout the entire response to the pandemic, there has NEVER been a permit that would allow them to go outdoors for defined periods of time with the necessary care, as there was indeed for pets. Finally, what currently exists is a permit for physical exercise which extends from 6:00 to 9:00 a.m., and which also fails to respond to the real needs of boys, girls and adolescents to have access to outdoor spaces. Parks and squares were closed during 2020, which prevented their use for the physical and mental well-being of children.

The long periods of confinement, the narrow living spaces in which boys, girls and adolescents live, the absence of outdoor spaces where they can rest and exercise their right to recreation and leisure,

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<sup>36</sup> Observatorio Niñez y Adolescencia, (2020). *Childhood Counts in Chile, 2020*.

were factors that aggravated the mental health of boys, girls and adolescents in the experience of the pandemic in our country.

## **RECOMMENDATIONS**

- i. Set the obligations of the State bodies for the implementation of the Citizenship Training Plan and the common minimum requirements, so that it fully responds to international human rights standards.
- ii. The agencies regulating the rights of children should supervise and advise educational institutions in the educational process in order to prevent situations of violence.
- iii. Approve an Integral Sex Education Law from early childhood, with a program which adjusts to the degree of maturity, and which is in line with the definition of sex education set forth by UNESCO.

## FAMILY ENVIRONMENT AND ALTERNATIVE CARE<sup>37</sup>

### FAMILY ENVIRONMENT

In 2017, 48.9% of women integrated the labor force, as compared to only 36.5% in 1996 (CASEN 2017<sup>38</sup>). According to the ELPI 2017 survey<sup>39</sup>, in 95.8% of cases the mother is the main caregiver in the household, whereas in only 1.4% is the father and in 2.3% is the grandmother/grandfather. According to the latest Survey on the Use of Free Time 2015<sup>40</sup> (INE), Chilean men spend 2.7 hours a day on domestic work, as opposed to 5.9 hours spent by women.

During the pandemic, the situation has not changed: men dedicate between 1 and 7 hours per week to household chores, while women dedicate between 15 and 19 hours. On the other hand, men had not spent any minutes of their time in supporting their sons and daughters in academic tasks; while women spend 14 hours in caring for boys, girls and adolescents versus 1 hour of men; and women spend 4 hours in joint activities with boys, girls or adolescents versus 0 of men (UC 2020)<sup>41</sup>. The changes that have occurred due to the health crisis have increased the need for care of dependent persons (children, sick people, elderly people), perpetuating a profound gender inequality, which has an impact on the dynamics and relationships within families. It is possible to see an increase in stressors and risk factors outweighing the protective factors that would prevent situations of domestic violence and violence against boys, girls and adolescents ( UNICEF/ECLAC<sup>42</sup>).

The pandemic has clearly shown that the initiatives taken by the State so that mothers and fathers share equal parental responsibilities, by promoting an active parenting approach, have not been fruitful, and this is evidenced by the results seen in times of health emergency. The State's responses on the actions taken between 2015 - 2020 are insufficient, and most of them have been set at the end of the period and are even announced for the year 2021. The state provision of enhanced family support services for the care and protection of boys, girls and adolescents is not enough; nor is the disposal of comprehensive programs to support their caregiving tasks.

One of the features highlighted by the executive when approving the "Distance Working and Teleworking Law"<sup>43</sup>, was that this should be seen as an opportunity to change the cultural patterns of care. Working at home has also been a source of family tension, even more so considering the current distribution of domestic and caregiving tasks between men and women within the family group. Added to this is the fact that boys, girls and adolescents do not have face-to-face classes and that tele-education is primarily in charge of women.

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<sup>37</sup> Chapter prepared by Aldeas Infantiles SOS (SOS Children's Villages), with the collaboration of the organizations that make up OBSERVA: the right to live in a family - Hogar de Cristo (The Home of Christ), La Sociedad Protectora de la Infancia, (Children's Protection Society), Fundación María Ayuda, COANIL.

<sup>38</sup> [http://observatorio.ministeriodesarrollosocial.gob.cl/storage/docs/casen/2017/Resultados\\_trabajo\\_Casen\\_2017.pdf](http://observatorio.ministeriodesarrollosocial.gob.cl/storage/docs/casen/2017/Resultados_trabajo_Casen_2017.pdf)

<sup>39</sup> ELPI – Early Childhood Longitudinal Study. [http://www.creciendoconderechos.gob.cl/docs/ELPI-PRES\\_Resultados\\_2017.pdf](http://www.creciendoconderechos.gob.cl/docs/ELPI-PRES_Resultados_2017.pdf)

<sup>40</sup> [https://www.ine.cl/docs/default-source/uso-del-tiempo-tiempo-libre/publicaciones-y-anuarios/publicaciones/documento\\_resultados\\_enut.pdf?sfvrsn=cf66dad0\\_7](https://www.ine.cl/docs/default-source/uso-del-tiempo-tiempo-libre/publicaciones-y-anuarios/publicaciones/documento_resultados_enut.pdf?sfvrsn=cf66dad0_7)

<sup>41</sup> <https://www.uc.cl/site/efs/files/11504/presentacion-estudio-longitudinal-empleo-covid19-10-septiembre-2020.pdf>

<sup>42</sup> [https://www.cepal.org/sites/default/files/publication/files/46485/S2000611\\_es.pdf](https://www.cepal.org/sites/default/files/publication/files/46485/S2000611_es.pdf)

<sup>43</sup> Law 21.220: modifies the labor code regarding distance working. <https://www.bcn.cl/leychile/navegar?idNorma=1143741>

## RECOMMENDATIONS

- i. The State should define a legislative framework for the effective promotion of gender equality, as well as the recognition of caregiving as a social right.
- ii. Create a public-private network of day care services in the territories, available to the families that need them, with support for the caregiving and protection abilities.
- iii. Implement family-work conciliation policies, especially aimed at reducing or making the working day more flexible for families with children.

## ALTERNATIVE CARE

Between December 2015 and December 2019, the number of children in residential care decreased by 34.9%, from 7,125 to 4,636 (considering SENAME's partner agencies only), a trend that has been observed since 2010. Along with the decrease in the number of BGAs in residential care, there has been an increase in the coverage of Foster Families. Between December 2015 and December 2019, the number of BGAs in foster families increased by 65.3%, from 3,847 to 6,358, with a clear upward trend compared to the 2010-2015 period. The total number of BGAs in alternative care remained practically the same (10,972 in 2015 and 10,994 in 2019).

Progress was observed in the period regarding the promotion of foster care (foster families) as an alternative modality of care, with a strong contribution and resources from civil society (promotional campaigns, recruitment and selection processes, for example) **rather than from the State**.

According to a study conducted by CELCIS (2016)<sup>44</sup>, in Chile, foster care is mainly in the extended family, with 80% of foster families corresponding to the children's extended family. This is already a first issue to be examined, in terms of its effectiveness, suitability and relevance. The fact that the Foster Family line is expanding as an effective alternative care arrangement is recognized as an advance, "though it should be noted that the lack of a recruitment program or resources for this process limits its occurrence". One of the difficulties of the extended foster family relates to the application of the standards and procedures set forth in SENAME's technical bases; given the ties of consanguinity and the proximity to the family of origin<sup>45</sup>, which, in addition, usually presents multiple and complex needs, and is not always a safe resource for protection, thus demanding a high burden of work with the family<sup>46</sup>.

In the area of residential care policies, since 2018 the State has been closing the 11 Specialized Redress Centers under Direct Administration (CREAD in Spanish), transforming them into family-style residences, in which boys, girls and adolescents live in smaller groups and at the same time are

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<sup>44</sup><https://www.observaderechos.cl/site/wp-content/uploads/2013/12/Cuidado-Infantil-Alternativo-desinstitucionalizacion-ES.pdf>

<sup>45</sup> [https://www.observaderechos.cl/site/wp-content/uploads/2013/12/INFORME\\_FINAL.pdf](https://www.observaderechos.cl/site/wp-content/uploads/2013/12/INFORME_FINAL.pdf) Pages 148 and 189.

<sup>46</sup> Universidad San Sebastián. "Foster Families as a means of alternative care within the framework of the new institutional structure of the National Specialized Protection Service, year 2019; UC - External foster family, a public policy challenge. <https://politicaspUBLICAS.uc.cl/wp-content/uploads/2020/03/CAP-1.pdf>

segmented by age: childhood (0-8 years), early adolescence (9-13 years), and adolescence (14-18 years). The State' strategy is to extend this model to all residential care. This change is valued, but concerns remain over the restrictive approach to structuring alternative residential care, overlooking the importance of diversifying the modalities of alternative residential care.

The closure of the CREADs is positively valued, but their transformation into family-type residences has had a stressful impact on the functioning of the system, due to the pressure on the Accredited Partner Agencies (OCAS in Spanish), which have taken over the coverage needs. On the other hand, the High Specialty Residence model (RAE in Spanish) has not yet yielded results and is having difficulties to function as a specialized short-stay facility, considering that the RAEs' objective is: "To contribute to sustaining the psychoemotional stabilization of boys, girls and adolescents who are discharged (medical discharge) from a Psychiatric Intensive Care Hospital Unit".<sup>47</sup>

The aforementioned transformations have not been accompanied by adequate human, technical and financial resources to provide high quality alternative care, thus disregarding one of the committee's recommendations. In addition, there is no public policy for the education, training and care for the specialization and continuous improvement of teams.

In the legislative field, it should be noted that Law No. 21,302<sup>48</sup> has been approved, creating the Specialized Protection Service for Children and Adolescents, which will start operating on October 1 of this year, and which will replace the current SENAME. This law does not change SENAME's funding structure, retaining the notion that the State should provide a subsidy, and does not finance care on the basis of the standards established by the regulations. It is a system that continues to have to resort to charity (implementation of fundraising strategies) to finance care according to the standards and requirements of the State itself. BGAs who have lost parental care and who are being cared for in residences, have "**different costs**" as compared to those who are cared for through the direct administration of SENAME, since the funds received by these agencies are much lower than those allocated to SENAME's family residences under direct administration.

Regarding mistreatment and abuse, there are no programs or mechanisms for reporting rights violations in the residences through independent channels. Similarly, nothing has been done to recognize and provide emotional and financial compensation to victims of institutional violence, as recommended by the Committee. There are no opportunities for listening nor for financial compensation, if required.

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<sup>47</sup> And as supplementary information: "and that require comprehensive care, a specialized mental health approach, and intensive rehabilitation in a period not exceeding 6 months", and whose target of care is "boys, girls and adolescents between 14 to 17 years 11 months and 29 days, (except for RAE Providencia that will work with boys, girls and adolescents between 10 to 14 years 11 months and 29 days and those RAE that might include pre-adolescents of CREADs or RFs) and that exist in some regions of the country only, serving adolescents who have been admitted to protection residences, who at some point in their life cycle require care in a Psychiatric Intensive Care Hospitalization Unit (UHICP for its acronym in Spanish) of the public health network".

<sup>48</sup> <https://www.bcn.cl/leychile/navegar?idNorma=1154203>

## **RECOMMENDATIONS**

- i. Reform the funding system, so as to have comprehensive and flexible funding of the various services, which is based on strategic alliance agreements between non-profit collaborators and the State.
- ii. The State should be responsible for the specialization of the specialized protection system, offering ongoing training to professionals and technicians working in the programs; facilitating the SENAINFO information system to enable decision-making; and having evaluations on the performance of the programs for their continuous improvement.
- iii. There should be different types of residential care with different levels of specialization according to the characteristics and specific needs of boys, girls and adolescents. We urge the State to redesign the Foster Family care modality, and expand the availability of alternative care services.
- iv. Ensure timely and relevant mental health care for boys, girls and adolescents in alternative care.

## BOYS, GIRLS AND ADOLESCENTS' RIGHT TO HEALTH <sup>49</sup>

According to data from the CASEN 2017, 84% of households with boys, girls and adolescents have a health center within twenty blocks of where they live. Beyond geographic access, the same survey shows that 81.3% of boys, girls and adolescents are affiliated to the National Health Fund (FONASA) system, whereas 14.2% are affiliated to some Health Insurance Institution (ISAPRE), and there is evidence of differences in access to medical services<sup>50</sup>.

Even though Chile has shown improvements in global health indicators<sup>51</sup>, there is still, as compared to OECD countries, a relatively low public investment in health (45.7% of total national investment), a deficit in the number of physicians (1.7 x 1,000 inhabitants) and nurses (4.8 x 1,000), in the number of hospital beds (2.1 x 1,000), and in the availability of generic drugs in the market (30%) (Goic, 2015).

Some of the specific areas where these gaps are most relevant are described below:

### **Subsystem of Integral Protection for Children**

The subsystem Chile is Growing with You (Chile Crece Contigo) has experienced an 8.59%<sup>52</sup> decrease in its budget for the year 2021, which makes its progressive expansion up to the age of 17 very difficult to achieve<sup>53</sup>. On the other hand, it can be observed that, despite indications regarding the identification of other vulnerabilities (related to housing, safe environment, parental work, etc.), these are not systematically detected, or if they are, the necessary steps are not taken to correct them, since the integration of the various actors (intersectoral work involving health, education, social, housing, etc.) is not sufficient.

It should also be noted that the extension of the pediatric age to 19 years (recommended by WHO) has not yet been implemented. This means that *male and female adolescents* are clinically treated by adult physicians, and that in many ways they are not recognized as subjects of rights. Even from the statistical point of view, under which older adolescents are included in the 15-65-year-old age group, thereby increasing the lack of recognition and awareness of their needs.

### **Well-treating environments**

A large number of situations of physical, psychological and sexual abuse continue to take place during childhood and adolescence and, in most cases, these are perpetrated by people who are known to them, with a large percentage of the aggressors being part of the family group<sup>54</sup>. In this

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<sup>49</sup> Chapter prepared by the Chilean Society of Social Paediatrics and the BGA's Committee of the Chilean Society of Family Medicine.

<sup>50</sup> Data from the Observatorio de Niñez y Adolescencia.

<sup>51</sup> Downward trends in infant and maternal mortality or upward trends such as life expectancy at birth.

<sup>52</sup> For an analysis of the budget earmarked for children, for the year 2021, see: [https://www.defensorianinez.cl/observatorio/wp-content/uploads/2021/02/nota\\_tecnica\\_1.pdf](https://www.defensorianinez.cl/observatorio/wp-content/uploads/2021/02/nota_tecnica_1.pdf)

<sup>53</sup> This is worrisome because not all boys, girls and adolescents have sufficient and necessary opportunities to achieve a biopsychosocial development appropriate to their life cycle.

<sup>54</sup> <https://radio.uchile.cl/2021/02/12/frente-al-abuso-sexual-infantil-es-realmente-la-mejor-solucion-el-encierro?/>



regard, there are grounds for questioning the effectiveness of the different programs implemented, both from a preventive as well as from a restoration point of view.

### **Boys, girls and adolescents in programs of specialized protection**

With reference to boys, girls and adolescents who are in a specialized protection system, in outpatient or in alternative care programs, since 2017 the Intersectoral Comprehensive Health System (SISI in Spanish) has been in operation, whose purpose is to strengthen and articulate the competencies of the teams that work with boys, girls and adolescents of the network. Three years after its implementation, it has not been evaluated. Its articulation is very heterogeneous throughout the country, and access gaps persist, both to Primary Health Care (PHC), and to secondary level services, mainly to Mental Health services. This is one of the major deficiencies of the State.

### **Mental Health**

Several programs have been implemented in this area that address some of its components. Among them, the Mental Health Prevention Pilot Program for Primary Health Care (PASMI), the Psychosocial Support Program, the Life Skills Program and programs implemented by SENDA<sup>55</sup> in the preventive, treatment and rehabilitation areas. However, the lack of integration of these programs and approaches should be highlighted, which at the primary level often generates confusion due to different funding, teams, goals and technical referents, sometimes implying excess interventions and disorganization of such interventions aimed at the most vulnerable boys, girls and adolescents.

The mental health of boys, girls and adolescents in the country is being affected at really alarming levels. This was evidenced by a study conducted in 24 countries worldwide, where Chile ranked first for the worst mental health in children under 6 years of age<sup>56</sup>. In Chile, the rate of depression in this group is between 12 and 15%, while in other countries it is between 5 and 6%. As for youth suicide, it is the third leading cause of death among 15 and 19-year old youth<sup>57</sup>.

Indeed, one of the factors significantly affecting mental health relates to the level of violence to which boys, girls and adolescents<sup>58</sup> are exposed, and in the country it is high. For example, results of the Early Childhood Longitudinal Survey<sup>59</sup> indicate that 63% of caregivers have used some method of violence to educate their children. These figures support what we have been pointing out related to the fact that this way of relating has been normalized and forms part of our social and cultural matrix, and therefore requires a thorough, intersectoral and integral approach.

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<sup>55</sup> SENDA. National Service for the Prevention and Rehabilitation of Drug and Alcohol Use, under the Ministry of the Interior.

<sup>56</sup> [https://www.cnnchile.com/tendencias/ninos-chilenos-peor-salud-mental-mundo\\_20190621/](https://www.cnnchile.com/tendencias/ninos-chilenos-peor-salud-mental-mundo_20190621/)

<sup>57</sup> <https://ciencias.uaautonoma.cl/noticias/suicidio/>

<sup>58</sup> Studies show that the onset of mental health issues is multi-causal, resulting from a combination of family history and environmental, biological and psychosocial factors. Among the most common are family history, and primarily, stressful situations, trauma, sexual and physical abuse, abandonment, mistreatment, neglect.

<sup>59</sup> [http://www.creciendoconderechos.gob.cl/docs/ELPI-PRES\\_Resultados\\_2017.pdf](http://www.creciendoconderechos.gob.cl/docs/ELPI-PRES_Resultados_2017.pdf)

There are poor specialized mental health care services, leaving boys, girls and adolescents on waiting lists and without timely care; this is even worse in the case of boys, girls and adolescents who are in programs of the specialized protection system, once again violating their rights. On the other hand, when looking at the funds allocated to mental health, it is observed that, of the total health budget, about 2.4% is allocated to address this problem; which places us well below the standards set by the WHO.

### **Child Nutrition**

Malnutrition by excess is an epidemic that has worsened, affecting younger and younger children. The efforts made by the State are insufficient, and the theoretical framework on which programs such as Choose to Live Healthy (Elige Vivir Sano) are based is far from what is actually supported by international evidence. The individual approach to risk factors is not enough if the social determinants of health, access to affordable healthy food, transgenerational family patterns, marketing, school nutrition and infrastructure to increase physical activity, are not addressed. The impact on cardiovascular health is very high and requires a multidimensional approach in which the health sector can bear only a small part.

### **Boys, girls and adolescents with disabilities**

In the 2015 report, the Committee welcomed the measures taken by the Chilean State to promote the rights of people with disabilities. However, it expressed concern that the State policy continued favoring a welfare approach and that boys, girls and adolescents were only vaguely mentioned in the National Plan on Disability. The Committee was also concerned about the lack of updated and disaggregated data on boys, girls and adolescents with disabilities and raised other related issues.

Despite efforts in this area, the target has been focused on physical disabilities, and the definitions of the National Disability Service (SENADIS) fail to acknowledge the existence of boys, girls and adolescents with significant clinical needs. On the other hand, the challenge is to implement timely actions to prevent a disease – especially if it leads to serious complications or even death – through the implementation of an Expanded Neonatal Screening test to detect Congenital Metabolic Disorders of the Newborn<sup>60</sup> and the implementation of neonatal screening for alterations that include hearing disorders, with special emphasis on congenital deafness, whose coverage as of 2018 reaches 50%<sup>61</sup>.

### **Sexual Health**

Despite efforts in this area, there are important gaps in sex education and in access to fertility regulation (preventive or emergency), primarily affecting in a disproportionate manner the lower socioeconomic level groups. Also, the quality of the drugs and their availability are far from the

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<sup>60</sup> This examination makes it possible to identify in only 10 days any possible disorder which, although infrequent, if not detected and treated in time, can cause severe complications to the child intellectual development as well as damage to other organs.

<sup>61</sup> [https://scielo.conicyt.cl/scielo.php?pid=S0718-48162018000100009&script=sci\\_arttext&tlng=n](https://scielo.conicyt.cl/scielo.php?pid=S0718-48162018000100009&script=sci_arttext&tlng=n) according to this article of 2018 there would already be 50% of Otoacoustic Emissions (OAE) coverage.

scientific recommendations. Finally, barriers to access that undermine the progressive autonomy of adolescents still persist.

### **Healthy environments**

Healthy environments are fundamental for the proper development of boys, girls and adolescents. The existence of sacrifice zones, and the deficient management of environmental risks (air and water pollution, pesticides, heavy metals), are still pending issues that need to be address for the affected boys, girls and adolescents, who once again are in a greater proportion in the most marginalized groups. Not only have the existing problems not been solved, but preventive measures to avoid new risk situations have been totally insufficient.

### **Effects of the pandemic on boys, girls and adolescents' health**

Prolonged confinement and the various measures implemented by the State of Chile to prevent infection by the coronavirus have had a significant impact on boys, girls and adolescents, both due to the interruption or reorganization of health and education services and to the fear of families to exposing their sons and daughters<sup>62</sup>. The following health issues stand out:

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- Failure to attend health check-ups (preventive), vaccinations, rehabilitation services for BGAs with disabilities, treatment of boys, girls and adolescents in specific programs at all levels of care. This has meant an additional workload in the public health care sector, which would add to the increased demand due to the physical and psychological after-effects of the epidemic.
  - Decompensation of uncontrolled chronic diseases.
  - Decrease in expected diagnoses for cancer, autistic spectrum disorder (ASD), food allergies, neurological disorders, hearing or visual deficits, language disorders, etc.
  - Exacerbation or development of mental health disorders, due to confinement and poor management regarding safe outdoor activities, massive mournings, suspension of school activities and relationships with peers, and poor management to ensure a safe return to classes, exposure to situations of vulnerability in their homes (domestic violence; ill-treatment, sexual abuse), which have increased during the pandemic. Moral damage due to inconsistency and contradiction in implemented measures (malls and theme parks are open, but schools, parks and squares remain closed).

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### **RECOMMENDATIONS**

It is therefore necessary to solve the structural problems that affect the health of BGAs in the country, using a multidimensional approach that should include:

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- i. Ensuring the proper implementation of the Subsystem of Integral Protection for Children, considering universal coverage both regarding age (0 to 19 years) and effective coverage.

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<sup>62</sup> COVID 19 and Childhood: Visibilization of structural barriers to address the pandemic and its effects. Observatorio Niñez y Adolescencia.

- ii. Developing evidence-based programs and public policies for boys, girls and adolescents, that involve all culturally and territorially relevant stakeholders and that include the participation of boys, girls and adolescents in the design and evaluation of programs and public policies for them.
- iii. Ensuring the coordination of health care levels and the intersector in the implementation of programs and public policies for boys, girls and adolescents, guaranteeing coverage, access and opportunity to meet their health needs.
- iv. Recommending the implementation of a comprehensive and intersectoral national mental health program for boys, girls and adolescents, and the urgency of comprehensive and timely care for those in specialized protection programs.

## BOYS, GIRLS AND ADOLESCENTS WITH SIGNIFICANT ADULTS DEPRIVED OF LIBERTY<sup>63</sup>

in Chile, it is estimated that one out of every 100 boys, girls and adolescents has a father or a mother deprived of liberty. According to information gathered by the Abriendo Caminos (Opening Paths) Program implemented by the State, in 2020 an estimated 17,450 boys, girls and adolescents had a father and/or a mother deprived of liberty as a convicted offender. However, a study conducted in 2019 by Church World Service (CWS) estimates that in Chile there are 59,921 boys, girls and adolescents with at least a father or mother deprived of liberty<sup>64</sup>, once again demonstrating the current deficit in the country to be able to measure the extent of the situation.

### **Girls and boys living in jail**

In Chile, women's prisons have mother-child sections, where pregnant women and their children up to 2 years of age can live together while they are serving their sentence or awaiting sentencing. As of June 30, 2019, 198 women were being held in mother-child sections nationwide (83 were pregnant and 115 were nursing mothers with their children); 84 of them had been convicted, 112 were under indictment and 2 were in detention. Regarding the type of crime, most of them relate to drug trafficking and micro-trafficking, robbery and theft.

Each one of these spaces inside the prisons is different, providing services of different quality according to the penitentiary center being consulted. Since 2015, these spaces are managed both financially and administratively by Gendarmería de Chile (Chilean Prison Service). It was only in 2017 that, through a modification to Circular No. 187 of the Division of Administration and Finance, Gendarmería recognized the children of the mother-child sections as subjects who should receive the institution's care.

As for adolescents who are in Provisional Internment Centers (CIP) while the investigation lasts, and those who are serving custodial sentences both in Closed Centers and Semi-closed Centers (CSC in Spanish), according to SENAME, in June 2019, 4 pregnant adolescents were admitted and there were no children in such centers. This is explained by the fact that Regulation of Law No. 20.084 which "Establishes a System of Adolescents' Responsibility for Criminal Law Violations"<sup>65</sup>, in its Article 97, determines the possibility of "maternal temporary release", by which pregnant adolescents may, from six weeks prior to delivery and up to twelve weeks after, request a permit from the director of the center to serve the custodial sentence in their own home. This has to be authorized by the judge.

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<sup>63</sup> Corporación La Caleta was responsible for drafting this chapter. NGOs En Marcha, Cristo Joven, SODEM, Vicaría de la Pastoral Social y los Trabajadores, Galerna, Corporación de Apoyo a la Niñez y Juventud en Riesgo Social "Llequen", Universidad de Atacama, Fundación Tierra Esperanza participated in the preparation of this chapter.

<sup>64</sup> Church World Service (2019) "Childhood that matters: The impact of drug policies in Latin America and the Caribbean" First Edition, Buenos Aires.

<sup>65</sup>Text of law No. 20.084, <https://www.bcn.cl/leychile/navegar?idNorma=244803>

## **Girls and boys visiting the prisons**

Since 2016, BGAs who carry out visits to the prison must be "registered" since this action establishes the bond of penitentiary centers with the visiting boys and girls<sup>66</sup>. A child must be registered along with the significant adult who was left with custody or with another adult bearing a power of attorney issued by the legal guardian.

Searches during visits are regulated in a protocol that expressly prohibits inhuman and degrading acts, including boys and girls. However, this is at the discretion of the prison warden or of the guard on duty. At present, there are complaints about the fact that prison guards do not disclose their identity, so the possibility of filing complaints is almost nil for the families of boys and girls.

In general, it can be stated that the physical, material and socio-environmental conditions under which boys, girls and adolescents visit their mothers or fathers deprived of liberty in the prisons do not comply with the criteria or the standards that favor the quality of the meetings between boys, girls and adolescents and their progenitors (overcrowding, lack of privacy, hygienic conditions of the venue, implementation of leisure activities). This entails a sustained violation of the rights of boys, girls and adolescents to a family, in terms of their capacity to nurture and develop the mother/father-child relationship.

The two pilot initiatives reported in the country report; namely, the "right of boys, girls and adolescents to indirect communication with their parents deprived of their liberty" project and the "farewell rooms" project, were not implemented and were only expressed as recommendations in the document "protocols for access to justice by vulnerable groups"<sup>67</sup>.

The Committee's concern as set out in its recommendations number 26, regarding the **long sentencing periods for progenitors** as well as the long periods of pretrial detention is shared.

## **Support Programs for boys, girls and adolescents with Fathers or Mothers Deprived of Liberty**

The existence of the Gendarmería de Chile's Creciendo Juntos (Growing Together) program is positively valued. This program provides support to fathers and mothers deprived of liberty in order to preserve the bond with their children up to the age of 12. These policies should be strengthened and expanded to achieve a real impact.

The Opening Paths (Abriendo Caminos - AC) Program serves 2,500 new boys, girls and adolescents with a significant adult deprived of liberty each year and is implemented in 37 locations in 16 regions. It is important that the program's coverage be expanded to other regions of the country.

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<sup>66</sup> Registration refers to the act of identifying and registering the boy, girl and/or adolescent who enters the detention centers always with a responsible adult under his/her care. On December 30, 2016, Resolution No. 11352 was approved aiming at "Regularizing and Approving the Procedures for Registering the Visits to Inmates and Setting its Provisions". The resolution standardizes the requirements to allow the entry of minors under 18 years of age in any of the detention centers of our country.

<sup>67</sup> Chile's Judicial Power, "Protocols for access to justice by vulnerable groups, 2020, available in: [https://servicios.pjud.cl/protocolo/PROTOCOLO\\_DIGITAL\\_FINAL.pdf](https://servicios.pjud.cl/protocolo/PROTOCOLO_DIGITAL_FINAL.pdf)

The work of the AC program focuses its intervention on supporting the main caregiver who remains responsible for the boys, girls and adolescents, and not necessarily on working with the significant person deprived of liberty. Besides, it excludes the families of those deprived of liberty in conditions of pretrial detention<sup>68</sup>.

In its country report, the State indicates the existence of the Mental Health Care Support Program to provide mental health care in centers of the Public Health Network for boys, girls and adolescents with a significant adult deprived of liberty and for their caregivers. Unfortunately, this initiative is implemented in only 4 communes of the Metropolitan Region and not in 8 as reported by the State. It is not implemented in any other region of the country.

### **COVID in the prison context**

The **risk of Covid-19 infection** is six times higher in prison. For this reason, the words of the United Nations High Commissioner encouraging states to release persons deprived of their liberty under controlled conditions, whenever possible, are very positive, so as to reduce the prison population, facilitate social distancing and thus reduce the risk of mass infection, morbidity and mortality. In this regard, the prison population with *boys, girls and adolescents under their care* should be a priority.

It is of concern that children under 14 years of age have not been able to make face-to-face visits during the pandemic. Since March 2020, male and female inmates have not been able to see their children. Likewise, during the pandemic, communication with families has been very poor, with no way of even knowing if "parcels" are reaching their relatives. We endorse UNICEF's recommendation calling for access to timely and accurate information about responses to the pandemic both within and outside the prisons.

Given that this is a time of heightened anxiety for boys, girls and adolescents and for their fathers and mothers, there is a risk of serious effects on the mental health of boys, girls and adolescents due to the elimination of visitation rights during the Covid-19 pandemic; therefore, it is suggested that this type of contact should be frequent and flexible to reduce boys, girls and adolescents' anxiety and anguish<sup>69</sup>.

As of the date of preparation of this report, 65,300 adult prisoners nationwide had received at least one dose of the coronavirus vaccine, considering a population of approximately 100,000 adults deprived of liberty.

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<sup>68</sup> In the last 10 years, the number of people held in pretrial detention and then acquitted increased by 90%. Between 2007 and 2017, the application of pretrial detention increased by 40.7%, from 63.1 to 88.8 people held in pretrial detention per 100,000 inhabitants. For its part, this precautionary measure increased its relevance within the criminal justice system, from representing 21.9% of the total number of persons deprived of liberty in 2007, to 36% in 2017. Of the 2,800 people unjustly imprisoned in 2016, 27% spent less than 10 days in prison, 53% spent between 10 days and 6 months, and 20% spent more than 6 months in a prison. (Ciper 2018 is available at <https://www.ciperchile.cl/2018/04/06/abuso-de-la-prision-preventiva-y-su-impacto-empobrece-a-los-pobres/>).

<sup>69</sup> Covid -19 and the rights of boys, girls and adolescents with adults deprived of liberty. Impacts and Recommendations. Child Rights Connect. 2020

## RECOMMENDATIONS

- i. Improve the protocols that expressly prohibit inhuman and degrading acts against boys, girls and adolescents so that their implementation or application is not left to the discretion of the warden or of the guard on duty; in addition to establishing standards that regulate the conditions that must be guaranteed in the visiting facilities.
- ii. Social reinsertion programs for persons deprived of liberty should include training programs to acquire knowledge and tools related to the exercise of maternity and paternity, as well as information to facilitate communication with their children.
- iii. Security policies should consider consulting adults about the existence of boys, girls and adolescents under their care at the time of detention, in order to be able to set up a support system for those boys, girls and adolescents who experience the detention of a significant family member.



## ADOLESCENT OFFENDERS<sup>70</sup>

### **Characterization of adolescents deprived of liberty 2016-2019**

The use of provisional internment remains a matter of concern. According to the bulletin "Infancia Poder Judicial", the number of adolescents admitted to provisional internment was 1,985 in 2017 and 1,881 in 2018. However, only 1% of the total number of adolescents with this precautionary measure finally had a custodial sanction in a closed regime and 11% in a semi-closed regime (Children's Ombudsman).

### **Measures taken by Chile**

In general, it is considered that the State of Chile has not taken concrete measures in relation to the Committee's various recommendations, though it has presented draft bills and guidelines that are in line with the Committee's expectations.

The draft bill called "New National Juvenile Social Reinsertion Service" presents some advances in relation to the design of the service, since it divides its functions, sets up an accreditation system, creates an educational model, generates the single execution dossier, among others. There are a series of issues at the design level in which progress has been achieved. This project aimed at establishing an independent judiciary that was at the level of international standards, but this aspect was not approved.

New prisons have been opened with significant improvements in infrastructure, replacing others whose conditions were clearly insufficient according to the recommendations made by the Committee. Two new centers in line with quality standards were built in the Maule and Los Lagos regions, and the Antofagasta center was refurbished. At present, there are works that have been halted as a result of the pandemic and the difficulties it entails, such as the increase in the price of construction materials, among others.

There is no information available regarding improvements in access to health and to education for adolescents deprived of liberty. Initially, the draft legislation considered the creation of schools, workshops and plans for access to health services in all prisons, but the current status or level of compliance with these parameters is unknown.

As for an independent specialized juvenile justice system that develops and applies protocols and guiding criteria to ensure consistency in the application of punitive measures, it is of concern that current Law No. 20.084 on Adolescent Criminal Responsibility is not a truly specialized system for the particularities of its target group, but rather it can be understood as a criminal justice system for adults with slightly attenuated sanctions.

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<sup>70</sup> Chapter prepared by the Observatorio para la Confianza (Observatory for Trust), of the Fundación para la Confianza. Focus group and interviews to experts were conducted.

There has been no progress in the specialization of juvenile justice services, except for some specific measures throughout the country, and there is no structural and systemic response on the part of the State to improve and strengthen the required specialization. Therefore, what can be highlighted in this area are some isolated initiatives, such as specialized rooms for this population; however, there is no clarity regarding structural measures that point in this direction.

On the other hand, the committee recommends that alternatives measures to imprisonment be effectively applied so that the deprivation of liberty be used as a last resort and for the shortest possible time, and that there be a system of periodic review of the measure with a view to revoking it and replacing it with a non-custodial sanction (depending on the length of the sentence).

Juvenile delinquency was expected to decline and this has been the case, both because of the decrease in youth population as well as due to the reduction of factors that could cause criminal behavior, but there is no evidence that custodial measures are effectively applied as a last resort; therefore, there is consensus that no progress has been made on this point, nor are there policies that aim to make deprivation of liberty a measure of last resort.

It is noted with concern that some of the observations and recommendations made by the Committee, such as the referral of cases to other services, are not in fact applicable in the current system. Mediation and reparation measures are not really so, but rather are established as sanctions. In general, there is great resistance to allowing young people who have been sentenced to custodial sanctions to serve them in a non-custodial system. On the contrary, the tendency is to incarcerate, and the application of Law No. 20.084 serves purposes that are alien to a fair and proportionate penal response, and even less to the social reinsertion of adolescents. The State seems to understand that rehabilitation is achieved through punishment, a position which is opposed to the CRC. On the other hand, there are no alternatives in the law for non-custodial sentences or for other types of release, therefore, in this sense, there are not many possibilities to comply with the Committee's recommendation.

In conclusion, this system is targeted in a very unequal and discriminatory way to the popular sectors of large urban cities. The likelihood of being prosecuted by the (criminal justice) system depends greatly on the social background of the adolescents.

With regards to the revision of precautionary measures imposed on boys, girls and adolescents, it is noted that, to the unusual volume of admissions to provisional internment – although there is a downward trend: from 2,110 cases in 2016 to 560 as of June 30, 2020<sup>71</sup> – it should be added that the average length of stay has remained the same. It is known that deprivation of liberty generates harm in adolescents, especially in those with low degree of delinquency. The improper use of this measure undermines the objectives of juvenile justice systems and prevents its application in accordance with current regulations in Chile. Therefore, "the use of non-judicial diversion measures

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<sup>71</sup> Transparency - Public Defender's Office

should be promoted and/or the duration of criminal proceedings should be minimized, especially in cases where the crime is not of a serious nature"<sup>72</sup>. In this sense, we see a clear absence of a rights perspective and an urgent need for it.

Another aspect associated with specialization from a human rights perspective relates to the fact that the absence of a system for unifying sentences affects the adequate compliance with sanctions on the part of adolescents. Current legislation does not provide for a system to unify sentences or a comprehensive system to determine the consequences of non-compliance with sanctions. 19.3% of adolescents who entered into the criminal justice system between 2008 and 2018 registered more than 3 cases, accounting for 54.6% of the total number of cases filed in the period. The absence of a system for unifying sentences implies that many adolescents must simultaneously or consecutively serve the sentences corresponding to each of the cases being prosecuted, thereby impairing an effective human rights-based social reinsertion process<sup>73</sup>.

Regarding independent mechanisms, the existence of the Children's Ombudsman is considered to be an advance in this area; however, it is insufficient, since it does not specialize in adolescent offenders. In addition, the dynamics of prisons as institutions are so strong that the few existing supervision mechanisms are insufficient: They are not even effective, as they are bureaucratic and lack credibility.

*"Whenever they were going to conduct raids, they would always tell me 'hurry up, you motherfucker, hurry up' and all that kind of stuff. They treated us very badly. They would throw gas in our faces if we laughed. Orange-flavored pepper spray. Sometimes they hit us with sticks to hurry us up. None of them had a name, there was no way to identify them" (Report of K.U, 16 years old, who was remanded in custody for 72 days at the Provisional Detention Center of San Bernardo).*

## RECOMMENDATIONS

- i. Promote and regulate alternatives to the deprivation of liberty, so that it can be rationally applied, as well as the periodic revision of temporary confinement, and its rational application.
- ii. Establish effective social reinsertion models that seek to restore the rights of boys, girls and adolescents that have been infringed, strengthening the implementation of ambulatory precautionary measures that do not hinder the social reinsertion of adolescents, and ensuring that they comply with the obligations and restrictions imposed on them by the criminal process.

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<sup>72</sup> Public Defender's Office and UNICEF - Adolescent criminal justice system 2008-2018: figures, progresses and pending challenges; page 124, <https://www.unicef.org/chile/media/4596/file/Sistema%20penal%20adolescente%20.pdf>

<sup>73</sup> Public Defender's Office and UNICEF - Adolescent criminal justice system 2008-2018: figures, progresses and pending challenges; page 129, <https://www.unicef.org/chile/media/4596/file/Sistema%20penal%20adolescente%20.pdf>

- iii. Improve management of the interventions aimed at adolescent offenders, incorporating aspects related to the infrastructure of prisons and a comprehensive and quality intervention model, with a view to effectively interrupting the criminal careers.
- iv. Optimize the technical training of the parties involved, as well as improve their working conditions, to guarantee access and quality of health and education services in prisons.

## VIOLENCE AND MAPUCHE CHILDHOOD<sup>74</sup>

The number of boys, girls and adolescents who consider themselves as belonging to a native people totals 596,582, representing 14.0% of the population between 0 and 17 years of age. Of these, 79.1% state belonging to the Mapuche people, 8.0% to Aymara, 4.4% to Diaguita, 1.3% to Quechua, 1.6% to Colla, 1.0% to Lican Antai, 0.5% to Rapa Nui, 0.1% to Kawésqar, 0.1% to Yagán or Yamana. The regions with the highest concentration of boys, girls and adolescents belonging to an indigenous people are the Metropolitan Region with 39%, Biobío with 20%, Libertador Gral. Bernardo O'Higgins 9.9% and La Araucanía with 5.7%, reflecting the concentration of the indigenous population in the central-southern part of the country (CENSUS, 2017).

19.7%, i.e., 2 out of 10 indigenous boys, girls and adolescents live in income poverty, a higher incidence than that observed at the national level for boys, girls and adolescents, which reaches 13.9%. When analyzing multidimensional poverty, it is noted that 3 out of 10 boys, girls and adolescents belonging to indigenous peoples live in this situation; a figure which is once again higher than the national (22.9%). This indicates that a very significant number of indigenous children grow up in living conditions that are insufficient to guarantee the basic welfare rights that the child population requires (CASEN, 2017).

Chile is currently in the process of drafting a new constitution. Expectations are that the new Charter will recognize indigenous peoples and their rights, as recommended by the Committee to the State of Chile in 2015. For the first time, the drafting body of the new constitution reserved seats for the participation of representatives of indigenous peoples.

Indigenous boys, girls and adolescents, especially the Mapuche children, experience a constant violation of their rights that is based on two fundamental axes: on the one hand, racist violence exercised by police officers and State agents in the context of conflicts related to the defense and occupation of ancestral lands, and on the other hand, environmental and socioeconomic exploitation of those territories.

The Inter-American Court of Human Rights has observed serious failures to comply with international treaties<sup>75</sup> with respect to the judicial decisions of the Chilean State on cases in which there have been serious violations of the rights of persons of the Mapuche People.

Between 2011 and 2019, the INDH of the southern area has filed 22 appeals for protection for Mapuche BGAs who had been victims of acts of violence that included raids, illegal detentions, attacks in the context of peaceful demonstrations, interrogations, with components of racism and

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<sup>74</sup> This document has been prepared with the participation of the Red por la Defensa de la Niñez Mapuche (Mapuche Childhood Defense Network) and is mostly based on its March 2021 Report: VIOLENCIA INSTITUCIONAL HACIA LA NIÑEZ MAPUCHE (INSTITUTIONAL VIOLENCE AGAINST MAPUCHE CHILDHOOD) (Lienqueo, O., Pizarro, R., González, C., and Chávez, M., 2020). It has been reviewed and commented by Onésima Lienqueo, Rodrigo Pizarro and Claudia González.

<sup>75</sup> Article 37, Convention on the Rights of the Child; Universal Declaration of Human Rights; American Convention on Human Rights; ILO Convention 19.

discrimination, on grounds of their belonging to the Mapuche People. Additionally, other appeals for the protection of constitutional rights have been filed<sup>76</sup>.

In a period of 7 months, from June 2020 to January 2021, the Red por la Defensa de la Infancia Mapuche (Mapuche Childhood Defense Network) registered 8 events<sup>77</sup> that violate the rights of boys, girls and adolescents. The most recent, which took place on January 7, 2021, refers to the illegal detention of the 7-year-old minor, G. P. C. A., daughter of the community member Camilo Catrillanca, who was killed by police officers in November 2018. The arrest occurred when the girl was on her way to the reading of the case sentence, accompanied by her mother and her paternal grandmother. The three were strongly intimidated with firearms, thrown to the ground and finally arrested with extreme violence<sup>78</sup>.

The effects of these levels of state violence are possible to observe through the damages that are repeatedly seen in Mapuche children and adolescents, such as: "feelings of intense fear towards police agents, generalized distrust towards State institutions, feelings of sadness and anguish, conciliation and sleep-maintenance insomnia, nightmares and flashbacks (reliving the trauma) related to the infringing events. All the above can be consistent with post-traumatic stress, and depressive and anxiety disorders"<sup>79</sup>.

In this regard, "the phenomenon of parentification can also be seen, as these children have had to grow up earlier than expected, having to deploy individual resources to survive with their families and communities in the context of recurring institutional violence"<sup>80</sup>. "A high level of school dropout can also be detected, which can be associated with the already described emotional effects"<sup>81</sup>, the criminalization of their families and the work they have to do to take charge of farm work.

At present, there are no concrete measures from the Chilean State in terms of reparation and justice for violations of the rights of Mapuche boys, girls and adolescents, leaving this task in the hands of the spiritual authorities of the Mapuche people themselves. The above is in line with the recommendations delivered by the Committee in 2007 and 2015, where it recommends the State to: i) take immediate action to put an end to police violence of all kinds against indigenous boys, girls and adolescents and their families, including in the context of development activities, and ii) promptly investigate and prosecute all cases of violence against indigenous boys, girls and adolescents perpetrated by police officers.

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<sup>76</sup> The following are some examples: ROL 1136-2011 (Temuco Court of Appeals) upheld by the Supreme in ROL 35-2012 / ROL 449-2012 (C.A. Tco) upheld by the Supreme in ROL 5441-2012. Among others: ROL 604-2012; ROL 907-2012; ROL 435-2013; ROL 982-2013; all from the Temuco Court of Appeals; among others.

<sup>77</sup> 'Institutional Violence against Mapuche Childhood', Red por la Defensa de la Infancia Mapuche, 2021.

<sup>78</sup> <https://www.cnnchile.com/pais/fiscalia-investiga-apremios-ilegitimos-hija-catrillanca-pdi-20210215/#:~:text=El%20pasado%207%20de%20enero,edad%20tendida%20en%20el%20piso>

<sup>79</sup> Red por la Defensa de la Infancia Mapuche - Report on Institutional Violence against Mapuche Childhood. Page 16.

<sup>80</sup> Ibid, page 17.

<sup>81</sup> Ibid, page 17.

The Chilean State has failed to protect this specific group and to guarantee the protection of their rights, not only by failing to take measures of reparation and justice in the face of police abuse and by making it invisible, but also by the lack of programs and policies that guarantee their rights. In this context, Mapuche children and adolescents have had to grow up in a hostile, racist and violent environment, in which their basic rights are violated on a daily basis, in a systematic, multidimensional and intergenerational manner.

#### **RECOMMENDATIONS**

- i. Put an end to the militarization in the Araucanía Region, in order to stop institutional violence against Mapuche children, their families and communities, and create policies to repair the damage caused.
- ii. Raise awareness among public institutions on institutional violence and ways to address it.
- iii. Demand that the police forces respect the international treaties to which Chile has subscribed and the internal regulations of the country regarding not infringing the rights of Mapuche boys, girls and adolescents, their families and communities.

## MIGRANT CHILDREN<sup>82</sup>

### Information on migrant boys, girls and adolescents.

Information from the CASEN 2017<sup>83</sup> shows the increase of the population born outside Chile in the period 2006 - 2017; from 154,643 (representing 1% of the total population) to 777,407 (4.4% of the total population) as of 2017. They come mainly from Venezuela (24.2%), Peru (22.2%), Colombia (14.9%) and Haiti (9.8%). Of the total number of migrants, 12.7% are under 14 years of age (figures that do not include children of immigrants born in Chile) and 34.6% are in the 15-29 age group.

With reference to the incidence of income poverty, it is higher in those born outside Chile (8.5% in those born in Chile and 10.8% in those born outside Chile); in the 0-17-year-old age group it is practically twice as high: 13.9% in those born in Chile and 22.8% in those born outside Chile. As for multidimensional poverty, it continues to be the case that those born outside Chile have a higher incidence of this poverty. In the 0-17-year-old age group, the ratio is 23.1% and 31.6%. (CASEN 2017<sup>84</sup>)

### Economic, civil, social and cultural rights

One of the rights that have been infringed is the right to nationality of migrant BGAs, "given that, if their parents are in an irregular migratory situation, or in the category of transient foreigner, they are prevented from obtaining Chilean nationality, regardless of their length of stay or residence, and are therefore exposed to the condition of statelessness" (UNICEF, World Vision et al, 2020<sup>85</sup>). However, through the 2017 "Chile recognizes" project, Chilean nationality has been granted to children born in Chile to fathers or mothers in an irregular migratory situation, which is an important step forward for the prevention and eradication of statelessness.

The data on school attendance rate of boys, girls and adolescents born outside Chile is also noted with concern, since figures are significantly lower than those for BGAs born in Chile, reflecting problems of access:

	Attendance rate of 6-13-year-old BAs in primary education	Attendance rate of 14-17-year-old adolescents in secondary education
<b>Born in Chile</b>	91.9%	73.7%
<b>Born outside Chile</b>	76.4%	59.6%

Source: CASEN 2017, Chapter on Immigrants

According to data from the Ministry of Education, the number and proportion of foreign students in the Chilean school system has increased by 271% in the period between 2015 to 2018, from 30,625

<sup>82</sup> Chapter prepared by the Coordinating Committee of the Alternative Report of the Bloque por la Infancia- Interviews were conducted to the Colectivo Sin Fronteras.

<sup>83</sup> Results on migrant people in

[http://observatorio.ministeriodesarrollosocial.gob.cl/storage/docs/casen/2017/Resultados\\_Inmigrantes\\_casen\\_2017.pdf](http://observatorio.ministeriodesarrollosocial.gob.cl/storage/docs/casen/2017/Resultados_Inmigrantes_casen_2017.pdf)

<sup>84</sup> [http://observatorio.ministeriodesarrollosocial.gob.cl/storage/docs/casen/2017/Resultados\\_nna\\_casen\\_2017.pdf](http://observatorio.ministeriodesarrollosocial.gob.cl/storage/docs/casen/2017/Resultados_nna_casen_2017.pdf)

<sup>85</sup> <https://www.unicef.org/chile/informes/estudio-exploratorio-de-caracterizaci%C3%B3n-de-ni%C3%B1os-ni%C3%B1as-y-adolescentes>



foreign students to 113,585<sup>86</sup>. Some studies, however, "have shown that in practice schools and their officials exercise their own criteria for admitting or not admitting immigrant students, with the socioeconomic level of the families being the main obstacle to inclusion. And the irregular migratory status of the parents continues to be an obstacle for the admission of their children to the educational establishments"<sup>87</sup>. The latter happens even though the Ministry of Education has developed a National Policy for Foreign Students to guarantee the right to education of migrant boys, girls and adolescents. This policy, along with the Provisional School Identifier (IPE in Spanish), guarantees enrollment, benefits and certification of studies for all levels for boys, girls and adolescents regardless of their migratory status.

Likewise, boys, girls and adolescents born outside Chile have problems of access to health care. 21.4% of children under 14 years of age are not affiliated to any social security health system (15.8% of all immigrants are not affiliated). Although in 2017 the State issued a Health Policy for International Migrants, containing adjustments and improvements for the effective use of their right to health, this has not been sufficient: "Despite progress in this area, some studies have highlighted the reduced access of immigrant boys, girls and adolescents to the health system", pointing out that the causes are associated with the "lack of information both among the migrant population and among health workers, especially with respect to the care that migrants in an irregular situation are entitled to, and the technical and administrative difficulties that this entails"<sup>88</sup>.

In the area of participation in organizations, a difference is also observed between those born in Chile and those born outside Chile. In the 12 to 14-year-old group, 12.7% of those born outside Chile participate versus 24.4% of those born in Chile (CASEN 2017<sup>89</sup>).

Regarding the housing situation, "in the rates of overcrowding presented by households with and without migrant boys, girls and adolescents, a difference of more than 24 percentage points can be seen between households consisting on Chilean boys, girls and adolescents that live in overcrowding conditions and those in which there is at least one migrant boy, girl or adolescent. Thus, overcrowding is one of the most serious housing problems in households with boys, girls and adolescents in the context of migration<sup>90</sup>.

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<sup>86</sup> UNICEF et al. - "Exploratory study on the characterization of migrant boys, girls and adolescents from Latin America and the Caribbean and their families in Chile". Sep. 2020.

<https://www.unicef.org/chile/media/4361/file/Estudio%20exploratorio%20de%20caracterizaci%C3%B3n%20de%20ni%C3%B1os,%20ni%C3%B1as%20y%20adolescentes%20migrantes%20de%20Am%C3%A9rica%20Latina%20y%20el%20Caribe%20y%20sus%20familias%20en%20Chile.pdf>

<sup>87</sup> Some schools would demand documentation or requirements outside the norm, while others would simply deny enrollment under the excuse that there are no places left or that they cannot receive foreign students.

<sup>88</sup> Ibid.

<sup>89</sup> [http://observatorio.ministeriodesarrollosocial.gob.cl/storage/docs/casen/2017/Resultados\\_Inmigrantes\\_casen\\_2017.pdf](http://observatorio.ministeriodesarrollosocial.gob.cl/storage/docs/casen/2017/Resultados_Inmigrantes_casen_2017.pdf)

<sup>90</sup> UNICEF, 2021

## Regulatory framework

The fact that the State of Chile enacted in October 2018<sup>91</sup> the accession to the 1954 Convention relating to the Status of Stateless Persons and to the 1961 Convention on the Reduction of Statelessness is welcomed. However, it is of concern that the State did not subscribe to the **Global Compact for Safe, Orderly and Regular Migration**<sup>92</sup> (2018), which seeks among other things to prevent, combat and eradicate human trafficking in the context of international migration. Among the reasons, the Government pointed out that "the text discussed in the United Nations conflicts with Chile's norms for a safe, orderly and regular migration"<sup>93</sup>.

In April 2021, a new Migration and Alien Law (Article 156)<sup>94</sup> was finally approved, repealing a 1975 regulation. The Law creates **the National Migration Service**, whose main functions, among others, are to implement the National Policy on Migration and Aliens and the actions, plans and programs required for its execution. Authorize or deny the entry, the stay and the exit of foreigners to the country; resolve the granting, extension, rejection and revocation of residence and stay permits and determine their validity (art. 157). Additionally, it creates a complementary protection statute (**art.10**).

However, several specialized organizations and experts have formulated serious criticisms to this Law<sup>95</sup> in terms of its consistency with human and migrant rights treaties and the respect and guarantee of the rights of boys, girls and adolescents. Among many criticisms, it is important to highlight the one related to children's rights.

- The principle of non-refoulement of boys, girls and adolescents was not clearly established, "explicitly stating that it should be accepted as a general rule and never as an exception. Furthermore, it should be made clear that the aforementioned obligation of non-refoulement of migrant boys, girls and adolescents assumed by the Chilean State applies regardless of the social actors to whom the serious violations of the rights of those boys, girls and adolescents are attributed – whether or not they are State agents"<sup>96</sup>, and "we will have to wait for the regulations to know how unaccompanied boys and girls will be treated"<sup>97</sup>.

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<sup>91</sup> Decree 112 Enacts the Convention Relating to the Status of Stateless Persons.

<https://www.bcn.cl/leychile/navegar?idNorma=1124641>

<sup>92</sup> The Global Compact presents a non-legally binding framework for cooperation - i.e., it does not bind the countries that sign it -and its purpose is "to foster international cooperation on migration among all relevant stakeholders", while recognizing that "no State can address migration alone, while respecting the sovereignty of States and their obligations under international law. <https://www.latercera.com/nacional/noticia/los-23-puntos-del-pacto-migratorio-la-onu-chile-no-guiso-firmar/438568/>

<sup>93</sup> <https://www.bbc.com/mundo/noticias-america-latina-46524358>

<sup>94</sup> Law No. 21.325, on Migration and Aliens, April 2021. <https://www.bcn.cl/leychile/navegar?idNorma=1158549>. It is structured in two parts. It establishes, on the one hand, a set of provisions that delimit the legal status under which foreigners reside, and on the other hand, a set of mechanisms that allow them to overcome this limited legal status and have full and equal access to citizenship.

<sup>95</sup> <https://www.ciperchile.cl/2021/04/27/nueva-ley-de-migraciones-por-que-precariza-el-trabajo-y-la-residencia-de-los-migrantes-y-puede-promover-mas-ingresos-clandestinos/>; <https://www.elmostrador.cl/noticias/opinion/2021/04/18/nueva-ley-migratoria-promueve-una-migracion-desordenada-insegura-e-irregular/>

<sup>96</sup> Isaac Ravetllat Ballesté, Prof. of Civil Law at the University of Talca. Migrant boys, girls and adolescents in Chile. Critical comments on the law on migration and aliens from a child's perspective. 2021

<sup>97</sup> Interview to Patricia Loredo, from Fundación Sin Fronteras.

- Along the same lines, concern has been expressed<sup>98</sup> about the lack of information on the living conditions of boys, girls and adolescents who are unaccompanied or separated from their parents or caregivers, and the lack of information on measures to protect the sons and daughters of migrant workers, including those who are in an irregular situation.
- Although Article 4 literally states that "the full exercise and enjoyment of the rights of boys, girls and adolescents, as enshrined in the Political Constitution of the Republic, and in the laws and international conventions ratified by Chile and currently in force, shall be guaranteed from the moment they enter the country and regardless of the migratory situation of their parents or the adults who are in their care, it can be seen that throughout its articles it is difficult to find practical expression of the same."<sup>99</sup>.

The absolute prohibition of the detention of migrant boys, girls and adolescents (accompanied and unaccompanied), in accordance with Joint General Comment No. 4 of the Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families and No. 23 of the Committee on the Rights of the Child (2017).

### **Access to migration services**

Migrants' various problems to access migration services can be seen on a daily basis, "the most common refers to the excessive time required to process a visa or residence permit (58%)"<sup>100</sup>. In addition, the study conducted by UNICEF and associates also points out problems of discrimination: "in one out of every five migrant families (19%), adults report having felt discriminated against or mistreated during the visa processing stage" (UNICEF, p. 97).

### **Migrants in irregular situation**

According to estimates made by the Government of Chile (2019), there are around 300 thousand foreigners in an irregular situation in the country. At present, there is no official document that presents the methodology used for this estimate, nor has the data been disaggregated in order to know the number of boys, girls and adolescents in this situation, which is serious due to the risks of violation of their rights that could expose them to significant situations of vulnerability<sup>101</sup>.

## **RECOMMENDATIONS**

- i. Providing a RUN (Unique National Identity Card) to all migrant, refugee and asylum-seeking boys, girls and adolescents, regardless of the immigration status of their parents. It is imperative to establish clear and simple procedures to regularize the immigration status of boys, girls and adolescents.

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<sup>98</sup> Concluding observations on the second periodic review of Chile  
<https://docstore.ohchr.org/SelfServices/FilesHandler.ashx?enc=6QkG1d%2fPPRiCAghKb7yhshT5zsOGAktLwj8hRZOJLOmFxrHk%2fH%2bHxSZNfj4Udci0sJrV%2b4n5kXOTSK46gBGzF4WC2I2SBJiMVPYmgIglsvdP%2bQMmRTfiZ11UtyBLCBPG>

<sup>99</sup> Isaac Ravetllat, already referred to, see footnote 14.

<sup>100</sup> Ibid.

<sup>101</sup> Aliens and Migration Department <https://www.extranjeria.gob.cl/noticias/gobierno-hizo-importante-anuncio-para-inscritos> Study by UNICEF et al, Sept. 2020

- ii. Improve information and access to social services and benefits to which migrant boys, girls and adolescents are entitled, regardless of the migratory status of their families, and their access to social benefits (taking into account the 2-year moratorium), aimed at guaranteeing the right to education, health, housing, state benefits and other provisions.
- iii. Endorse the recommendations of the ***Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families***<sup>102</sup> making the relevant adjustments to the Law on Migration and Aliens to guarantee the absolute prohibition of the detention of migrant boys, girls and adolescents (accompanied and unaccompanied) and the protection of the right to nationality of all children born in Chile, including those whose fathers and/or mothers are in an irregular migratory situation.

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<sup>102</sup> Page 3, Concluding observations on the second periodic review of Chile  
<https://docstore.ohchr.org/SelfServices/FilesHandler.ashx?enc=6QkG1d%2fPPRiCAqhKb7yhsh5zsOGAktLwj8hRZOJLOmFxrHk%2fH%2bhxSZNFj4Udci0sJrV%2b4n5kXOTSK46gBGzF4WC2I2SBJiMVPYmgjGlsvdP%2bQMmRTfIz11UtyBLCBPG>

## HOMELESS CHILDREN<sup>103</sup>

The situation of homeless boys, girls and adolescents is characterized by the violation of their rights associated with highly complex situations: exclusion from schooling and health services; negligence or lack of adult care in their growth and integral development; nutritional deficiencies; lack of access to resting, recreation and culture; mistreatment; sexual abuse; commercial sexual exploitation and the worst forms of child labor; drug use and involvement in illicit behaviors, in many cases being used by adults to commit crimes. These boys, girls and adolescents have often gone through countless programs of the SENAME specialized protection network, both in the area of protection and adolescent criminal responsibility, with no significant change in their situation. The failure of the system often results in family strain and in the emergence of mistrust towards the professional intervention teams that work with them.

According to data provided by the census of Homeless Boys, Girls and Adolescents (NNASC in Spanish), by the end of 2018 there were 547<sup>104</sup> throughout Chile. 53% of which had experienced breakdowns in their family relationships, 19% had deserted the residential system and 18% presented some drug use issue. As a result of this, in 2020 the MDSF created a new program for NNASC that complements, from a new intervention model approach, the protection programs of the SENAME network. These have been operating since 2005, and their objective is to reduce the presence or permanence in the streets of homeless boys, girls and adolescents, thus interrupting their exposure to serious violations of their rights.

With reference to the Committee's recommendation on the need to advance in a new census of NNASC, there is evidence of achievements. In 2018 an Intersectoral Working Group (State-Academia-Civil Society) was formed to define the criteria and parameters for a new survey of homeless children. It was carried out in December 2018 and the results were delivered the following year<sup>105</sup>.

Additionally, during 2018 and 2019, the experience of the NNASC Support Program was systematized and recommendations were issued<sup>106</sup>. One of the advances in this area was that towards the end of 2019, a Committee of Experts was convened to hold meetings with different institutions implementing programs focused on homeless children, and to prepare a report that was delivered to the MDSF.

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<sup>103</sup> Chapter prepared by the Asociación Chilena Pro Naciones Unidas - ACHNU (Chilean Pro-United Nations Association).

<sup>104</sup> Ministerio de Desarrollo Social y Familia. Resumen.Ejecutivo\_Conteo\_NNASC\_05.05.2019.pdf [https://www.desarrollosocialyfamilia.gob.cl/storage/docs/Resumen.Ejecutivo\\_Conteo\\_NNASC\\_05.05.2019.pdf](https://www.desarrollosocialyfamilia.gob.cl/storage/docs/Resumen.Ejecutivo_Conteo_NNASC_05.05.2019.pdf)

<sup>105</sup> The survey results were published in the first quarter of 2019 and are available on the website: [Resumen.Ejecutivo\\_Conteo\\_NNASC\\_05.05.2019.pdf \(desarrollosocialyfamilia.gob.cl\)](https://www.desarrollosocialyfamilia.gob.cl/storage/docs/Resumen.Ejecutivo_Conteo_NNASC_05.05.2019.pdf)

<sup>106</sup> Focusing the Homeless Children Program in regions and communes where the usual profile of NNASC is concentrated. Installing Proximity Routes as a complement to the Homeless Children Program. Delivery of warm clothing, food and hygiene kits, and allow NNASC to come whenever they need to (When it is said "... come when they need to", the text refers to the fact that homeless boys, girls and adolescents will be able to approach the Calle Niños (Homeless Children) program, since it is available 24x7. Design of a registration system to gather information from all the sectors where NNASC are taken care of, in order to visualize their trajectory. Opening of night shelters together with SENAME to protect their lives and provide protection and basic services.

During 2019, the Red Calle Niños (Homeless Children Network) Program was designed with the objective of reducing boys, girls and adolescents' permanence on the streets, interrupting the exposure to serious risks that have an impact on their development. In the second half of 2020, the MDSF carries out the bidding process for the Red Calle Niños (Homeless Children Network) program in three regions: The Metropolitan, the Valparaíso and Los Lagos regions, which begins to be implemented in January 2021. The low-threshold shelter and shared housing quotas might not cover all the demand of the NNASC, since each Integral Support Service (3) has a coverage of 42 NNASC. This situation will be corroborated or contested as the program is implemented.

As for the information registration system, it should be noted that there is still no registration system that would make it possible to unify the information available regarding the programs working with homeless children.

However, in the area of the protection of the Rights of Homeless Children and Adolescents, an administrative and technical friction can be observed between the MDSF and SENAME with respect to the implementation of public policies in accordance with the new regulatory frameworks for the protection of the rights of children and adolescents.

In the context of the pandemic, some of these boys, girls and adolescents report having been victims of discrimination and ill-treatments by police and municipal public security agencies, particularly during curfew hours. Similarly, the pandemic and the humanitarian health crisis have seriously affected their physical and emotional health. There is little visibility of them as subjects of rights by the society at large, as well as by the competent police and public security authorities. Homeless boys, girls and adolescents have used survival strategies associated with the realization of illegal acts, accentuating discrimination and social stigmatization towards them.

## **RECOMMENDATIONS**

- i. Promote and sustain the initiatives of the MDSF to generate an integrated public policy aimed at homeless children and adolescents, based on human rights and specifically on the CRC.
- ii. Focus the production of information and quantitative-qualitative data from a human rights, territorial, intercultural and gender approach that facilitates dimensioning the social and cultural reality of homeless boys, girls and adolescents.
- iii. Promote public policies aimed at favoring networked and articulated community protection responses to the violation of the rights of homeless boys, girls and adolescents.

## LGTBIQ+ CHILDREN<sup>107</sup>

### Information and characterization

According to the exploratory study on discrimination and violence towards LGBTIQ+ people<sup>108</sup>, as of 2020 more than 60% of respondents believe that the rights of the community are not respected in Chile. Additionally, more than 60% declared having been victims of personal discriminatory experiences only during that year, a figure that increases to at least 80% if focused on the trans or non-binary community. These responses, from people aged 15 or older, serve to reflect the reality of the experience of being LGBTIQ+ in Chile.

According to the last report of Hora Segura de Todo Mejora Program<sup>109</sup>, a helpline aimed at LGBTIQ+ children and adolescents, 82% of users report presenting psychological symptoms and 53%, suicidal behavior; 30% report having experienced harassment or abuse (38% for those between 10 and 14 years of age). Among those who report having experienced abuse, the domestic area is the predominant place where these violent situations occur (59%), although 32% indicate that it was at school (30% in the case of LGBTIQ+ users, vs. 19% in the case of heterosexual cisgender users). Those who are most likely to report experiencing victimization at school are those who are exploring or discovering their gender identity (46%) and/or sexual orientation (48%). Additionally, both groups report almost equivalent levels of violence at home and at school (46% and 50% in the first case, 47% and 48% in the second). 71% report that the violence comes from an adult, and only 7% report that the aggressor is a stranger. Finally, the incidence of suicidal behavior is significantly higher among those who experience harassment or abuse (62%) than among those who do not (50%).

On the other hand, according to the Survey on Sexual and Reproductive Rights of Trans Adolescents<sup>110</sup>, 66% of those surveyed said that the contents of sex education in their schools did not have any relation with their own experiences, even if they were considered useful. Likewise, one out of every four states feeling rejection towards himself/herself or other trans people because of their identity, and the percentage of respondents who strongly agree or agree with statements such as "I feel uncomfortable showing my body" (84%), "I feel rejection towards my body" (80%), "I feel uncomfortable about the possibility of having sex because of my identity" is a matter of concern. Some 90% have never used hormones in relation to their identity, and when asked why, 46% say they have not done so because of different types of access issues (not because they do not plan to or have not decided yet). Some 44% state having no one to talk to about their transition process, and although a high percentage have accessed mental health services (64%), between 36% and 43% perceive that their therapist did not have an affirmative attitude towards their identity and

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<sup>107</sup> This chapter was prepared by the Fundación Todo Mejora (Everything Improves Foundation), which supports children, adolescents and young people who experience violence based on their sexual orientation, gender identity or gender expression. <https://todomejora.org/> During June 2021, two interviews were conducted with representatives of NGOs working with trans and intersex children, two identities that present specific difficulties regarding their rights.

<sup>108</sup> Subsecretaría de Prevención del Delito (Under-secretariat for Crime Prevention), (2021). Exploratory study on discrimination and violence towards LGBTIQ+ people. Ministry of the Interior and Public Security.

<sup>109</sup> Todo Mejora, (2020). Report Programa Hora Segura 2019-2020. Santiago, Chile.

<sup>110</sup> Todo Mejora, (2021). Presentation of results of the Survey on Sexual and Reproductive Rights of Trans Adolescents.

eventually pathologized it, which could account for the prevalence of conversion therapies, which are not legally prohibited in Chile.

In the school environment, according to 2017<sup>111</sup> data, 70.3% of LGBTIQ+ students state feeling unsafe in their schools; 94.8% having heard LGBTIQ+-phobic comments in their schools; 56.9% of which from school staff, whether teachers or assistants; finally, 68.7% of students who had revealed incidents of violence to the person responsible for their care (guardian), stated that the latter did nothing about it.

On the other hand, in relation to the Gender Identity Law, according to a note published in the digital newspaper El Mostrador, as of March 10, 2021, 96 young people have rectified their birth certificate to reflect the gender with which they really identify. 40% of these cases are 16-year-old young people, and 9.4% are 14-year-old young people, the minimum age to be able to carry out this procedure.

At the time of the writing of this document, the President of the Republic has granted maximum urgency to the Equal Marriage bill currently in Congress, and a modification to the adoption law that would allow same-sex couples to adopt children is being discussed. Both initiatives have received media attention and the different positions that persist in society regarding these issues have been made known. The fact that these issues continue to be a matter of debate means that, as of June 2021, LGBTIQ+ children and adolescents grow up knowing that their dignity is not guaranteed or protected. Initiatives by conservative groups to block social assistance unless the urgency of the Equal Marriage bill is withdrawn, or by the government itself to present indications that give preference to heterosexual couples in the adoption law, are examples of this.

### **Discrimination and violence based on sexual orientation and gender, among other reasons.**

In this regard, the Committee recommended Chile to redouble its efforts to combat negative attitudes and eliminate discrimination against boys, girls and adolescents based on their sexual orientation, gender identity or sexual characteristics, real or supposed.

The State's efforts have focused on schools, so that the educational space favors inclusion and is free of any type of discrimination. In the report prepared by Chile with the responses to the "List of Issues Prior to Reporting", it is noted that MINEDUC is developing the Plan to Support Inclusion within the framework of Law 20.845<sup>112</sup> (Inclusion Law). This regulatory body establishes the basic principles that provide guidelines for educational establishments in the area of inclusion.

In specific matters related to sex-gender diversity, the two main advances in the period are not legislative; they are rather administrative or technical initiatives: the issue of the Local Education

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<sup>111</sup> Todo Mejora, (2017). National Survey on School Climate. Experiences of violence and school insecurity by lesbian, gay, bisexual and trans students.

<sup>112</sup> <https://www.bcn.cl/leychile/navegar?idNorma=1078172>



Authority Circular 0768<sup>113</sup> in 2017 on the rights of trans girls, boys and students in the field of education; and the guidelines for the inclusion of LGBTI people in the Chilean education system, presented by the Ministry of Education the same year.

A bill is currently being discussed to amend the General Education Law, which seeks to include in matters related to school coexistence the obligation of schools to respect the gender identity of students; criminalizing and punishing discrimination, aggression or harassment based on gender or sexual orientation; forcing schools to include within their staff a person in charge of school coexistence and to effectively comply with the obligations and observations of the Local Education Authority and the Ministry of Education on the matter, which so far have not been generally implemented.

### **Right to Identity**

In 2015 the Committee noted its concern about limitations to the right to identity on various grounds, which involved homosexual, bisexual, transgender and intersex children. It recommended the State party to take the necessary legislative, policy and administrative measures to ensure recognition of the right to identity of homosexual, bisexual, transgender and intersex children, and in particular to the gender identity of transgender children.

Although Law 21.120<sup>114</sup> is an advancement in the matter, it seems to be insufficient, mainly because of the age limitation it establishes, which exclude children under 14 from the right to gender identity. This is serious for two reasons. First, because it forces children under 14 whose gender identity does not coincide with their biological sex to spend their childhood with a name and sex that do not identify them, and which can significantly harm their full development and especially their mental health. Secondly, because the exclusion of boys and girls under 14 years of age contravenes the very principles of non-pathologization, progressive autonomy, non-arbitrary discrimination and the best interests of the child recognized by law.

With regard to the implementation of the law, there have been problems of coordination between different institutions, which has meant that the correct gender does not appear in the database of the Ministry of Education, Internal Revenue Service or the Social Registry of Households. An integrated system is required that updates the registered legal name and sex of trans boys, girls and adolescents, so that the right to identity and name does not continue to be infringed.

### **Education in Rights**

The Committee expressed concern over the poor incorporation of human rights and children's rights in school education. It recommended the State to develop and implement a plan of action for education in human rights. From the point of view of sex-gender diversity, a particular area of

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<sup>113</sup> <https://www.ayudameduc.cl/ficha/inclusion-de-los-ninos-ninas-y-estudiantes-lesbianas-gays-trans-bisexuales-e-intersex#:~:text=Circular%200768&text=Este%20documento%20define%20principiosorientadores%20para,y%20la%20buena%20convivencia%20escolar>

<sup>114</sup> <https://www.bcn.cl/leychile/navegar?idNorma=1126480>

concern in this regard refers to sex education, especially in the Chilean context, where the current constitution enshrines freedom of education, without counterbalancing it with human dignity and human rights.

As indicated in the chapter on education, a draft bill on integral sex education was rejected in congress; therefore, progress on such a relevant issue is still pending. For children who perceive themselves or are perceived as LGBTIQ+, such comprehensiveness would ensure that sex education were truly inclusive, in the sense that the information provided was not "heterocisnormative", but free of prejudices and discriminatory stereotypes, safeguarding equal access to knowledge without distinction. An integral sex education favors disclosure, reporting and early recognition both of LGBTIQ+ phobic bullying as well as of sexual abuse and gender-based violence, and furthermore prevents its occurrence by educating on gender and diversity, and on respect for the difference from an early age.

### **Health**

The main problem in the health field is the lack of training of medical teams and the pathologization of intersexuality, in addition to the lack of official statistics on children that have undergone genital reassignment surgery, a practice that we know is still prevalent in Chile. When inquiring about the areas of discrimination, respondents pointed out that discriminatory practices continued to exist within the health system and the families, mainly in relation to body appearance and/or sexual characteristics.

### **RECOMMENDATIONS**

- i. Prohibit "normalizing" surgical interventions on intersex boys, girls and adolescents.
- ii. Modify the current Gender Identity Law to allow children under 14 years of age to change their name and sex according to their progressive autonomy.
- iii. Implement with budgetary sustainability the program of companionship for trans and gender non-conforming children and adolescents as set forth in the Gender Identity Law.
- iv. Approve and implement an integral sex education law and oversee compliance with Circular 768 of the Ministry of Education, to guarantee respect for the right to identity and social name of trans children and adolescents.