

COMPLEMENTARY REPORT INDH

REPORT TO THE COMMITTEE ON
THE RIGHTS OF CHILD (CRC)

March 2015

ENGLISH

General Considerations

1. The National Human Rights Institution of Chile, INDH - autonomous body of the State created by the Law 20,405, whose mission is the promotion and protection of human rights of people who live in the territory of Chile, presents this report to account for the progress and pending matters in terms of rights of children and adolescents in Chile between 2007 and 2012.

2. After 25 years since the adoption of the Convention on the Rights of the Child (CRC), it is possible to recognize both progresses and deficits by the State of Chile in terms of promotion, protection and guarantee of the human rights of Children and Adolescents. First of all, the INDH highlights a group of legislative advancements; that includes enacting the Law 20,609 (2012), which established measures against discrimination. It also includes the Law 20,545 (2011), which modifies the regulations of maternity protection and incorporates paternal postnatal leave. Law 20,536 (2011) about school violence. Law 20,539 (2011), which prohibits night time work for minors under 18 years old in industrial and commercial establishments. Law 20,507 (2011), which categorizes the felonies of smuggling of migrants and human trafficking. Law 20,519 (2011), which excludes minors from the regulations of Law 18,314 about terrorism. Law 20,422 (2010), which establishes the rules about equality in terms of opportunities and social inclusion of people with disabilities. And the Law 20,430 (2010), which gives protection to refugees, including regulations related to protection of children and adolescents. Finally, Law 20,405 (2009) which creates the National Human Rights Institution (INDH).

3. However, the State of Chile still lacks of a comprehensive policy for children, which addresses both promotion and protection of the rights of children and adolescents, nor it has adequate its institutionalism and rules in relation to the Convention on the Rights of the Child. In particular, the INDH has raised over the years its concern about the violent acts and the reports of sexual abuse against children and adolescents in both educational establishments and homes; the violation of the rights of indigenous children and adolescents in the context of police interventions in La Araucanía; the restrictions to the pacific demonstrations that have affected young students; as well as the violation of rights of young people deprived of freedom, among others. Violations to the rights of this part of the population are real and they are presented in this report.

4. Because of the space, in this report we are going to address a selection of matters of this area¹. It is presented in the same format of the report presented by the State of Chile, in order to facilitate the comparison.

Observations to the Fourth and Fifth National Report of compliance of the CRC

Regarding general measures of application

Article 4. Application of the rights

5. The State of Chile seeks to adapt its institutionalism in accordance with its international obligations through the bill that modifies the institution for children and adolescents (Bulletin No. 8487-07), which proposes to abolish the National Service for the Protection of Minors (SENAME) and the creation of two independent services. i) The National Service for Protection of Children and Adolescents, whose lines of action directs to the protection of those who have been violated in their rights, the administration of the adoption system and the development of targeted interventions for the prevention of violations of the rights of the children. And ii) National Adolescent Criminal Responsibility Service, whose mission would be to coordinate the system of sanctions for infraction to the juvenile criminal law (20,084) and contribute to the social reintegration of adolescents. As the INDH raised in the 2012 Annual Report, with respect to this bill there are "critiques specifically to the limited functions and responsibilities that would endow the new services, the limited coordination mechanisms with the courts, the emphasis on centralized management tools as the National Plans, the limited autonomy of the Advisory Committee, among other features. That in its opinion 'do not present a real guarantee of overcoming the existing shortcomings'"². The complaint is formulated regarding the lack of a law for comprehensive protection of children and adolescents³ which establishes the approach that must be considered when, for example, reformulating the institution of protection for children and adolescents⁴.

¹ The opinion of the INDH in terms of children and adolescents has been developed mainly through the Annual Reports (2010 to 2014), which are available at www.indh.cl

² INDH, 2012 Annual Report, p.120.

³ In addition to the bill contented in the bulletin 8487-07, on April 30th, 2013, the Government submitted the bill on protection of rights of children and adolescents (Bulletin No. 8911-18); which seeks to establish a law framework focusing on the promotion and protection of the rights of children and adolescents through – among other measures- the creation of the National System for the Protection of Minors whose axis is oriented to the management of the sectors of rights protection. This initiative highlights the concept of children and adolescents as subjects of rights and recognition of the exercise by themselves, taking into account their age and maturity and according to the provisions of law. The last performance on this bill was the removal of its simple urgency in August 2013, maintaining its first category of constitutional debate.

⁴ As for the future of the regulatory changes, it should be taken into consideration how the recent National Council for Children will act. On March 14th, 2014, the Chilean government established the National Council for Children (Decree No. 21/2014 of MINSEGPRES) as a presidential advisory body composed of various public agencies, including the Ministries of General Secretariat of the Presidency, Social Development, Justice, Education, Health, Finance, and the National Service of Women, among others. The Council coordinates and directs the actions towards the design and establishment of a comprehensive system of guarantees of the rights of childhood and adolescence, where the state fulfils the role of guarantor.

Regarding the definition of children and general principles

Article 2. No discrimination

6. In 2012 the State of Chile enacted the Law that established the measures against discrimination (20,609). However, - according to that regulation - the largest debt for the INDH is the absence of special measures, such as affirmative actions. In that sense, the law in question refers to establish a legal action, it means to take an ex post measure against possible discrimination. For this, preventive measures are needed to help in the removal of obstacles, as well as discriminatory practices, by both objective and result. This measures could be a major help for children and adolescents. The INDH has manifested that "different international agreements establishes the obligation of State Parties to adopt this actions under two requirements: that they are temporary (during a discriminative situation) and that they do not create a new discrimination (that they are proportional). The current gap between formal and substantial equality can be partly closed by the adoption of measures of this nature; as they allow any discriminated person or group (migrants, women, sexual diversity, domestic workers in private household, children, indigenous peoples, among others) to exercise their rights in equal conditions to those who are not discriminated. This human rights standard was not included into the law"⁵.

7. Another point discussed is the mechanism used by the Law to solve the tension among the rights. The law considers that "distinctions, exclusion or restrictions are reasonable if there is justification of acting in legitimate practice of another fundamental right, especially for those content on the numbers 4, 6, 11, 12, 15, 16 and 21 from the article 19 of the Constitution"⁶. Regarding this, the INDH expressed that "in front of a discriminatory act that alleges conflict of rights, the judge is who analyses the specific case and decides if there is discrimination or not. It is not possible for the legislator make a decision abstractly and in any event which situations will not be understood as discrimination. The ponderation shall be made in equal conditions of rights and without normative advantages in favour of one party"⁷.

8. It is of concern to the INDH that even though the Law 20,584 on the rights and duties of patients establishes the right of every person to receive adequate, timely, accurate and understandable information by the public or private health institution, the law does not contain a specific paragraph related to children nor adolescents. Taking into consideration that children and adolescents are subject of rights and, moreover, that adolescents have progressive autonomy, the existing legislation should include mechanisms to ensure the participation of adolescents in decisions concerning their health. In addition, the

⁵ INDH, 2012 Annual Report. Status of human rights in Chile, p. 111.

⁶ INDH, 2012 Annual Report. Status of human rights in Chile, p. 111. The numerals there presented correspond to the following rights: honour to private life both personal and family; freedom of thought; freedom to manifest beliefs and free exercise of religions; to education; freedom of opinion and expression, without previous censure, in any form and by any media; to form and join trade unions; to work and its protection and the right to develop any economic activity.

⁷ INDH, 2012 Annual Report. Status of human rights in Chile, p. 111.

organized civil society identifies that this Law does not contain the right of information about diagnosis and treatment of children and adolescents, whose decision is in charge of their legal representatives,⁸ situation that violates this guarantee.

Regarding civil rights and freedom

Article 7. Birth, name and nationality registration

9. Referred on article 22 about "birth, names and nationality".

Article 8. Identity preservation

10. Article 8 of the CRC establishes the obligation of the State Party to "represent the rights of children for the perseverance of their identity, including nationality, name and family relationships". The State of Chile complies with this obligation mainly through the Origins Search of the SENAME, whose objective consist of giving technical advice to adopted people of legal age who wants to have access to their origins background, so then they can decide if they will get in touch or not with their biological family. Although since 2009 there was a significant increase on the cases handled; since 2012 the cases have decrease. Most of the cases of this programme are presented by women⁹.

Total of people handled by Origins Search Programme (2007-2013)

Year	Total of people	Women	Men
2007	95	73	22
2008	72	48	24
2009	262	167	95
2010	324	223	101 ¹⁰
2011	238	167	71
2012	207	135	72
2013	194	119	75

Source: National Service for the Protection of Minors, SENAME.

11. Noteworthy in the period under review is the sentence of the Constitutional Court (Tribunal Constitucional, TC) in which states that, despite the absence of a right to identity in the Constitution of the Republic, this may be indicated by a harmonious interpretation of this text in the light of international human rights. Specifically, the TC noted that "the right to personal identity is closely linked to human dignity, in terms of value, from its consecration in Article 1, first paragraph, of the Supreme Law, which is the cornerstone of all fundamental rights enshrined in the supreme law. Also, even though the Chilean constitution does not recognize, in its text, the right to identity, it can not constitute an obstacle to the a constitutional judge to provide adequate protection precisely because of

⁸ Chilean Forum for Rights of Infancy, Rights of Children in Chile (CRC alternative report), March 2012, p.12.

⁹ SENAME, Official letter N° 2347 in response to INDH, Appendix No.1 about beneficiaries' statistics, Origins Search Programme, Adoption Department.

¹⁰ Appendix 1 attached to the SENAME official letter, gender totals present an adding mistake, as the figure shows 99 men and 220 women. However, the right addition is showed on the table (223 women and 101 men) which equals the amount of people attended that year (324).

its close link with human dignity and because it is expressly protected in various international treaties ratified by Chile and in force in our country"¹¹. It also added that "the recognition of the right to personal identity - as emanation in human dignity - implies the possibility that any person can be him or herself and not another, which means that people have the right to be registered immediately after birth, to have a name from that moment and, as far as possible, to know their parents and that they take care of him or her"¹².

12. On legislative terms, the National Congress is debating the bill that recognizes and gives protection to the right of gender identity (Bulletin 8924-07), which aims to establish a judicial mechanism for legal recognition of gender identity. Although the project originally did not contemplate the possibility of children and adolescents requesting this type of recognition, in the parliamentary debate the possibility of an underage requesting both change in the name and change on the gender register was included. In relation to this, the INDH stated that "the indication presented to allow minors to submit [...] the application for change of name and gender register is in harmony with international standards as they recognize them as autonomous subjects and in virtue of their progressive development, they have the capacity to adopt measures concerning the development of their identity"¹³. Also, in the case of children born intersex there is no existing protocols to prevent that there are subjected to unnecessary surgery without their consent.

Article 15. Freedom of peaceful assembly and of association

13. *Students demonstrations.* During the period under review, Chile has seen many student demonstrations demanding changes in education, which were mainly concentrated in 2011. The INDH found that the detention of adolescents in the demonstrations sought to "stop the demonstrations and not [...] arresting those who commit flagrant crimes. Indeed, the criminal prosecution system operates in a preventive, random and arbitrary way to control –illegitimately- demonstrations"¹⁴. This conclusion was based on the finding that 23.2% of all complaints received by public disorder by the Public Ministry between 2009 and July 2011 ended in conviction, while "the majority of cases did not even go to trial because there was not enough evidence, there was no crime or the facts did not constitute a serious effect of public interest"¹⁵.

14. During those demonstrations, the INDH, through its Programme for Human Rights and Police Service, conducted a series of visits to police stations where detainee students were being held. On those visits, it was observed that "the detainees were not informed of the reasons of the arrest, their rights were not read and they were not informed about the

¹¹ Constitutional Court, ID 1340-09, September 29th, 2009, recital 9.

¹² Constitutional Court, ID 1340-09, September 29th, 2009, recital 10.

¹³ INDH, Report about bill that recognizes and protects the right of gender identity (Bulletin 8924-07), approved by the INDH committee on June 10th, 2014, par. 38.

¹⁴ INDH, 2011 Annual Report, p. 77.

¹⁵ INDH, 2011 Annual Report, p. 77.

procedure. This extends to the family, to whom police did not inform the state of health of their detained relatives, leaving up to the discretion of each police station the allowance of entry of the family, the delivery of messages to the detainees or give food and shelter"¹⁶. In the same way "statements regarding excessive force in the arrest and physical and psychological abuse received on the police bus on the way to the corresponding station"¹⁷. Also, acts of violence against girls and adolescents consisting of body groping by police personnel were observed during the eviction of an occupation, and a situation in which they were kept in underwear on the police station"¹⁸.

15. In the same period, the INDH detected lack of coordination between the Police and the Public Ministry about the arrest of children and adolescents. As the INDH stated in its 2011 Annual Report, there is a lack of protocols that "have an impact in the hours of confinement of detainees, since it is the prosecutor who gives the order to free those detained and often it is not possible to find the prosecutor or the police does not have the information on who is the prosecutor on duty, so at non-business hours it is difficult to get in contact in order to release the detainees. The Public Ministry is directing the actions of police in these situations, so it is critical that there is fluid communication between these actors to avoid excessive hours of confinement for detainees, who have to be released in freedom once they have complied with the procedure of arrest"¹⁹. On March 2013, the INDH requested the police to deliver the protocols to keep public order, which were delivered 13 months later, on April 2014 with a "reserved" nature. Finally, in August of the same year, police disclosed the protocols, allowing to monitor that the performance of the agency follows the criteria provided therein. Regarding children and adolescents, the protocol reiterates the right to demonstrate, adding that the force may be used "in a differentiated and gradual manner" and its use "should be limited to the minimum necessary considering two principles: the legitimate purpose of restoration of order and the interests of the children"²⁰.

Regarding family environment and alternative care

Article 5. Family environment and parental guidance.

16. The State of Chile address parental skills in programmes developed by the National Service for the Protection of Minors (SENAME), both in the residential mode and during the adoption process²¹. What stands out of the first mode, in all residential institutions, is the need to ensure family reintegration of children and adolescents, in addition to psychosocial and family assistance "directed to strength paternal/maternal skills of the adults of the biological family, who presumably can take care of children"²². In the second

¹⁶ INDH, 2011 Annual Report, p. 78 and 79.

¹⁷ INDH, 2011 Annual Report, p. 79

¹⁸ INDH, 2011 Annual Report, p.77-78.

¹⁹ INDH, 2011 Annual Report, p. 79.

²⁰ Carabineros de Chile, Protocol to Keep Public Order, page 36. Available at <http://www.indh.cl/wp-content/uploads/2014/08/PROTOCOLO-PARA-EL-MANTENIMIENTO-DEL-ORDEN-PUBLICO.pdf>

²¹ SENAME, Official letter N° 2347, p.1

²² SENAME, Official letter N° 2347, p.1

mode, it stands out the affirmation of the Adoption Department of SENAME regarding that "appropriately qualified interested in adopting received and participated in some meaningful activity of parental empowerment"²³ through various formal talks and workshops of preparation.

17. The NHRI considers that the state has historically established policies in this area from a single view, heteronomous in the concept of family. From the INDH point of view, it is essential for the development of the programmes mentioned in the previous paragraph and for any other future programme in the field that the State integrates the decision of the Inter-American Court in the case *Atala Riffo and daughters vs. Chile*. Especially when the Court said to the State of Chile that the concept of a "family normally structured" reflects "a limited and stereotypical perception of the concept of family that has no basis in the Inter-American Convention [of Human Rights] in the absence of a specific family model"²⁴. In this sense, programmes and public policies must consider the plurality of existing forms of family in Chile, moreover considering that the Chilean legislation does not define the concept of family, but recognizes that it is the fundamental unit of the society and that it is the duty of the State to give protection to it²⁵. Thus, the national legislation emphasizes the importance of the protection of the family in general, independent from the form in which they are constituted.

Article 10. Family reunification

18. Referred on article 22 about "family reunification".

Article 17. Media

Children and adolescents and media. The INDH is concerned about the treatment of vulnerable groups such as children and adolescents in the media. The INDH has stated that "with their narrative, media can create stereotypes of the vulnerable groups, creating or reinforcing social prejudice and, thus, propitiate discrimination to them"²⁶. And, therefore, "the media, as informative companies, must respect human rights standards in their activities, and among these, do not help to create stereotypes and discriminatory treatment"²⁷. In this context, it is common to use improper or wrong language by the

²³ SENAME, Official letter N° 2347, p.3.

²⁴ Corte IDH, *Atala Riffo e hijas vs. Chile* Case, February 24th, 2012, par. 145.

²⁵ Article 1 of the Constitution of the Republic, in its second paragraph, states that "the family is the fundamental unit of society" adding the, in the fourth paragraph, that it is the duty of the State "to protect the population and family "

²⁶ INDH, 2012 Annual Report, p. 326.

²⁷ INDH, 2012 Annual Report, p. 328. (An example of this is that on September, 2013 the TV show "En su propia trampa" part of an open TV station, tricked a 17-year-old adolescent with criminal records asking him for help to move some stolen species, for this he was asked to climb in the back of a truck. During the journey, the adolescent was kept in dark and he was hitting the walls of the truck asking to stop because he was dizzy. Along with the above, the production of the programme presented him a person white dressed, like a ghost or spirit, who said him that he shall stop committing crimes. Finally the truck stopped in a warehouse, where the adolescent had to work, so he can be admitted in the gang. The INDH took the corresponding criminal proceedings for the crime of kidnapping, among others, and additionally filed a

media, which often communicates criminal acts against children and adolescents, violating minimum standards of respect for their rights.

In particular, the lack of observance of rules requiring the protection of the identity of children and adolescents on the news media is a reason of concern. About this, various organizations of civil society have raised concerns, and the INDH considers it a problem insufficiently addressed by the state.

Article 18. Parents' joint responsibilities, assistance to parents and child-care services

19. According to the information provided by the Ministry of Social Development, the State has undertaken since 2009 to date the Nobody's Perfect programme, composed of "costless workshops of general education to promote parental skills, from 6 to 8 sessions for parents and legal guardians of children from birth and until five years old"²⁸. From the information provided it can be seen an increase in both the number of annual workshops and the amount of people participating in this instances. Thus, while in 2010 3,510 people participated in 587 workshops, participation in 2013 reached 15,271 people for an offer of 2,496 workshops²⁹. However, it is not possible to make a deeper analysis of these data as the information provided is not disaggregated by sex, and therefore it is not possible to know, for example, the proportion of fathers and mothers that took part in them. The INDH already stated in its Report to the Committee on the Elimination of Discrimination Against Women (CEDAW) that "it is matter of concern [the] particular emphasis on the prime role of women in the family, and that the traditional form is favoured and not a plural notion³⁰." Therefore, it is urgent to have complete information to verify the level of compliance with international obligations of the State in this matter.

Article 19. Protection against maltreatment

20. *Protection against domestic maltreatment.* The INDH is concerned about the levels of physical and psychological abuse in child population in Chile³¹. According to the

request with the National Television Council (CNTV) to sanction the TV station according to the Law 18,838 that regulates this matter in Chile. In its resolution, the CNTV determined that the station "without authority to this effect, and in contravention of existing law, deceived and induced a minor, which is in an obvious state of social and economic vulnerability, to participate in facts that were presented as illicit, and they limited his freedom of movement against his will, and then, under coercion, make him fear for his physical and mental integrity,[...] all in order to chasten and correct the refractory act of the adolescent in question, all the above mentioned disregarded the fundamental rights [...] with the consequent detriment of his personal dignity, protected and covered by Articles 5 and 19 of the American Convention on Human Rights, Article 24 of the International Covenant on Civil and Political Rights, 3, 19 and 36 of the Convention on the Rights of Children, Article 1 of the Constitution of the Republic, 1 of Law 18,838., involving this procedure a complete violation of the principle *proper functioning* of the television services"²⁷. As result of the above mentioned, the CNTV fined the TV station with 200 U.T.M (US\$13.000 approx.).

²⁸ Ministry of Social Development, Official letter No. 3343, July 7th, 2014, p.2.

²⁹ Ministry of Social Development, Official letter No. 3343, July 7th, 2014, p. 3.

³⁰ INDH, Report from CEDAW, 2012, par. 4.

³¹ The data are presented in 2013 Annual Report, and they were obtained from four studies of maltreatment and family relationship from UNICEF (2012), as well as from the National Survey of victimization for

information published on 2012 by UNICEF, 25.9% of children have suffered serious physical violence, 25.6% have suffered minor physical violence, 19.5% have been affected by psychological violence and 29% have not suffered violence³². Independent from the type of violence, in 71% of the violence cases, the violence was executed by the mother or father³³. The study also reveals that 20.9% of children have been beaten to the point of bleeding, presenting bruises or fractures³⁴. In the cases of sexual abuse, it is observed that this crime affects most girls (75%) and the first time it occurs is at an average of the age of 8 and a half years old³⁵. The INDH considers that these data show an extremely serious situation regarding the respect for the rights of children and adolescents. For the INDH "these findings as a whole show that it is necessary to continue urging that homes shall be safe and protective spaces for the rights of children, as well as spaces to avoid that acts of violence remain predominantly as a silenced problem"³⁶. In this regard, Article 234 of the Civil Code recognizes "parents' right to correct children" which although is limited to exclude "all forms of physical and psychological abuse and in any case shall be exercised in accordance with the law and the Convention on the Rights of the Child" (same article 234). It is a faculty that, in practice, protects parents to take certain corrective measures, even though they are presented as "minor" or "harmless" can affect the physical and mental integrity of children and therefore its prohibition should be absolute. This involves not only to limit the ability of correction as the current Article 234 does, but also directly abolish it³⁷. Also, this faculty of correction should be prohibited not only to parents but to any person or institution that is responsible for the care of children and adolescents³⁸.

21. The INDH has also seen an increase in reports of sexual abuse that may occurred in kindergartens. For example, according to information provided by the Integra foundation, in its network of kindergartens, complaints have steadily increased from 290 complaints in 2010, to 466 in 2011 and 683 in 2012.³⁹

Domestic Violence and Sexual Abuse, requested by the Ministry of Internal Affairs and Public Security (2012). See INDH, 2013 Annual Report, p. 94-97.

³² UNICEF, 4° Study of children maltreatment, 2012, p. 6.

³³ Ibid.

³⁴ Ibid. p. 15.

³⁵ Ibid. p. 16.

³⁶ INDH, 2013 Annual Report, p. 95.

³⁷ This limitation to the faculty of correction was introduced by Law 20,286, published on September 15th, 2008. This means that, originally, this faculty was much wider as currently established, as it did not contain the current limitation.

³⁸ In its latest Universal Periodic Review (UPR) before the Human Rights Council, the State of Chile accepted the specific recommendations to explicitly prohibit all corporal punishment of children and adolescents. See Human Rights Council, Report of the Work Group on the Universal Periodic Review: Chile, A/HRC/26/5, 26th session, 2014, paragraphs 121.106, 121.107 and 121.108.

³⁹ INDH, 2013 Annual Report, p. 96. According to the information on the website, Integra Foundation is part of the network of foundations of the Sociocultural Direction of the Presidency of the Republic and it is one of the main providers of preschool education in Chile; having more than 1,000 kindergartens in 316 communes of the country, bringing education to 74,000 children.

22. *Protection against maltreatment in educational institutions.* The INDH has noted that the emergence of bullying as a technical concept and as a representative of social concern has led to the enactment of the law on school violence (20,536)⁴⁰. This law provides the agents of the educational community with training on these issues. But as the INDH said in its 2011 Annual Report it "did not cover the central point: the establishment of the responsibilities of the State as a guarantor of educational spaces free of violence. That, in addition to ensuring technical support (training), implies to allocate resources for the development of the activities specified in the law – promotion of good school life and prevention of all forms of violence - and monitoring the policies of coexistence, as well as the protection of the exercise of other rights that may be affected by punishment processes allowed by this law"⁴¹.

23. The sexual diversity of children and adolescents is in a particularly fragile situation. According to the documented information by the Foundation Todo Mejora "in Chile, 42% of non-heterosexual adolescents acknowledge having suffered from frequent homophobic bullying; according to the organization, this affects the levels of suicide of these adolescents (Health Studies Institute, 2011)"⁴². In order to combat homophobic bullying in schools in the country, in 2014 the INDH, the Foundation Todo Mejora, and the Office of the High Commissioner for Human Rights (OHCHR), carried out the group discussion "My school, the space for everybody: bye-bye homophobic bullying!". In this area, the INDH has highly recommended the need to foster the development of respect policies within educational establishments, as well as public campaigns anti-discrimination appointing to the general population.

Article 20. Right to special protection from the State for children temporarily or permanently deprived of their family environment

24. Article 20 of the CRC positions the state in a situation of guarantor of children and adolescents deprived of freedom either temporarily or permanently. The audit from the SENAME to the residential institutions comprises two complementary functions: monitoring and counselling. Both functions are integrated in the exercise of supervising, allowing a review with the executive team and the organization responsible of the management of the project of partial or intermediate achievements in contrast with the objectives proposed⁴³. On this point, the First National Survey to Residential Institutions of Children and Adolescents carried out by the SENAME (2011) found that, 7.8% of children and adolescents between 7 and 12 years old living in SENAME residential institutions, have been touched in their private parts in the centre. Also, 5.2% said that they have been requested to touch their private parts. The survey adds that 33.4% feel unsafe in the residential institution and 71.6% said that they want to escape from the residence. Meanwhile, among adolescents between 13 and 18 years old who live in the residential institution, 4.1% pointed out that they have been touched in their private parts and a

⁴⁰ INDH, 2011 Annual Report, p. 65.

⁴¹ INDH, 2011 Annual Report, p. 65.

⁴² INDH, 2012 Annual Report, p. 112.

⁴³ SENAME, Official letter No. 2347, p.6.

16.6% said that they feel unsafe on those centres. In the same age range, 35.9% expressed their desire to escape from the residential institution⁴⁴. In any case, but especially as it refers to a public institution, this information demands for a detailed institutional audit and adequate internal and external mechanisms of control, so the comprehensive protection of children and adolescents is guaranteed.

25. One of the mechanisms most used for the supervision of residential centre are the inspection visits carried out by the Family Court and by the CISC (commission for inter-institutions supervision of residential institutions). This visits have confirmed a combination of problems of this residential institutions. There is a deficit on the infrastructure of the residential institutions of the SENAME for the compliance of criminal punishments. The INDH raised in its 2011 Annual Report - based on the reports of the CISC- "the lack of heating in the institutions, as well as difficulties to have hot water, and deterioration in the wet and dry network. These findings are a matter of concern, especially regarding the maintenance of wet and dry network in SENAME residential institutions, considering incendiary incidents that have occurred in the past. Some of the additional problems observed are related to several institutions that do not have enough space for visitors or lawyer or a representative, nor have fixed criteria of age, gender, exposure or procedural situation for the separation of the population within the institutions, but it varies from institution to institution. Also, the lack of medical personnel which is reflected in the absence of doctors, paramedics or the presence of these with a low amount of hours for assistance; as well as the lack of nutritionists, key role to determine the nourishment of the adolescents"⁴⁵.

26. Subsequently, in its 2012 Annual Report, the INDH found that "most institutions do not have the corresponding authorization from Health SEREMI (Regional Secretary of Ministry) for operation⁴⁶. This is relevant given that this authorization is the minimum guarantee that supports that the institution have an adequate infrastructure and equipment to ensure the right to health and hygiene of adolescents deprived of liberty in such institutions. The lack of such conditions is an obstacle to the rehabilitation and integration into society of adolescents and it exposes them to diseases and damages to their health"⁴⁷. It is important to add that for the introduction of changes to the existing government institutions in this area, it is necessary an adequate allocation of resources by the State to achieve the goals, with capacity to cover all the needs that arise during the implementation process.

⁴⁴ SENAME (Human Rights Department), Report on National Results of the First Survey to Children and Adolescents of Residential Institutions: "My right to be listened" (Mi derecho a ser escuchado), within the Strengthening Plan of the Institutional Good Treatment, 2011, p.4 to 8.

⁴⁵ INDH, 2011 Annual Report, p. 230.

⁴⁶ CISC Report, 2012 First semester. This problem was mainly presented in residential institutions of the following regions: Tarapacá, Antofagasta, Atacama, Coquimbo, Biobío y Araucanía.

⁴⁷ INDH, 2012 Annual Report, p. 156.

27. Moreover, at the middle of 2013, the Supreme Court released a report on the residential system in Chile, where after visiting more than 7,000 children and adolescents from July to November 2012, concluded that there is a lack of supply of residential institutions out of the capital city, forcing the transfer of children and adolescents from their place of residence; making impossible to develop an appropriate individualized intervention plan for children and adolescents without an updated diagnosis of their situation; and spending long periods of institutionalization of children and adolescents with educational underachievement. The study also criticized the lack of an active role by judges in the protection of minors and the lack of adequate funding for normal functioning of the institutions⁴⁸.

Regarding children with disabilities, public health and welfare

Article 23. Children with disabilities

28. The Law 20,422, which establishes the rules on equal opportunities and social inclusion of people with disabilities (2010), gives a solid legislation that reflects the principles and standards set out in international human rights law. However, there is no updated public information for the design of public policies regarding people with disabilities, as the sectorial statistics used correspond to the 2004 National Survey on Disabilities⁴⁹. This instrument is relevant for the creation and implementation of public policies in this area as it delivers data about the number of people with disabilities in Chile, the degree of such disability, urban-rural distribution of people with disabilities, socioeconomic status or economic impact of disability in the family, among others⁵⁰.

29. *Education of children with disabilities.* Article 34 of the Law 20,422 provides the guarantee of access for people of school age with special needs to public or private schools receiving state subsidies or contributions, to enable inclusion in the regular educational system or special education, as appropriate. To account for this guarantee, regular education establishments must be equipped with the infrastructure and supporting materials needed to ensure that students with special educational needs have whatever it is necessary to compliance with the principle of equal opportunities for all learners. The situation of those with special educational needs because of physical or mental disability has legislative and budgetary advancements, by increasing subsidies for special schools and projects of school integration. However, the coverage and quality of

⁴⁸ Supreme Court, Bulletin No.2: Residential System in Chile. Case analysis: SOS Children's Villages p. 4 et seq. The study was carried out by the alliance between UNICEF and the Judiciary of Chile, in cooperation with the SENAME.

⁴⁹ For a general forecast of the public policies on people with disabilities, refer to INDH, 2012 Annual Report, p. 183-191.

⁵⁰ It is important to consider that by November 2014 the Judiciary of Chile created the Presidential Advisory Commission on inclusion of people with disabilities. The commission is composed of experts on the subject, organization of the social society and the National Human Rights Institution (INDH). Among its responsibilities there is the collaboration on the execution of the Second National Study of Disabilities and the proposal of a National Plan about social inclusion of People with Disabilities, Mental Health and Care, among others. The final report of the commission shall be presented to the Judiciary of Chile by April 30th, 2015.

the teaching processes is not enough, moreover, if compared with the international guidelines of UNESCO to advance from the insertion to the educational inclusion.

According to estimates by the Ministry of Education, in 2011, about 850,000 students had special educational needs, and of these only 18% received a differentiated education, so the coverage deficit is worrying. In the 2011 Annual Report, the INDH named as problems in this area the violation of the right of access to education and mainly to communication, by the small number of deaf co-educators, among other reasons. Moreover, inclusive education is not assured for the different disabilities (e.g. young deaf and people with mental disabilities)⁵¹.

Article 24. Medical and health services

30. *Sexual education and right of reproductive and sexual health of children and adolescents.* In its 2011 Annual Report, the INDH analysed the seven programmes of sexual education which were made available for the Ministry of Education in accordance with the National Service for Women, and found that "one third of these programmes do not meet international standards, as they limit their reproductive health contents to single answers (without alternatives) with heteronormative character of reaffirming a unique way of affection based on heterosexual relationships. This can endorse situations of discrimination against people with diverse sexual orientation or gender identity. This situation is worrying, even more if considering that the programmes are not costless, they have different costs and schools must compete for funds that partially cover the costs, being precisely those that do not meet the international standards of human rights the cheaper for the educational establishments"⁵².

31. Timely and informed access to contraceptive methods is critical to the effective enjoyment and exercise of the right to sexual and reproductive health. The State must make available to the community economic and technical resources for the exercise of these rights, particularly the access to emergency contraceptive methods for vulnerable adolescents women. The publication of Law 20,533 (2010) amending the Health Code in order to empower obstetricians to prescribe emergency contraceptive methods is an advance. As the INDH noted, the distribution of emergency contraceptive pill (ECP) in community clinics increased from 50.5% in 2009 to 86.3% in 2013⁵³. Also, between 2009 and 2012, the number of consultations for emergency contraception in public health facilities increased from 7,561 consultations on 2009 to 8,868 in 2012⁵⁴. The importance of emergency contraception is that it prevents, in part, the occurrence of unwanted pregnancies and potential abortion. According to the Ministry of Health, in 2011 30,860 abortions were registered, including both spontaneous and induced⁵⁵. However it is not possible to disaggregate this figure due to the illegality of the action. As noted by the INDH

⁵¹ INDH, 2011 Annual Report, p. 187.

⁵² INDH, 2011 Annual Report, p. 64.

⁵³ INDH, 2014 Annual Report, p. 201.

⁵⁴ INDH, 2014 Annual Report, p. 202.

⁵⁵ INDH, 2014 Annual Report, p. 204.

"the reduced numerical dimension of death by means of abortion does not relieve the State on ensuring health for those who undergo unsafe abortions. Adolescents who practice a clandestine abortion without adequate medical care are at significant risk, not only of death"⁵⁶. As for the debate on how to legislate this area, the INDH recommended to the State to carry out a plural and participatory debate, taking into account international standards in this subject⁵⁷.

Article 27. Standard of living

32. *Street children and adolescents.* The State of Chile develops two programmes to assist the situation of street children and adolescents. One of them is carried out by the SENAME, its objective is to terminate the situation of children and adolescents living in the streets through the interruption or reduction of time that they stay on streets; through interventions oriented to the construction of bonds and the re-learning of trust in the adult world; and through the articulation and coordination between different services and sectors according to the particular need of each user of the programme. The INDH considers that this is a worthy initiative, especially considering the increase of attended population (from 273 cases in 2009 to 433 cases in 2012⁵⁸). However, it is a matter of concern that this programme lacks of national coverage, as six of this programmes are developed only in the metropolitan region, and since 2013 one is working in a region of the south of Chile (Región de Los Lagos). The second programme is developed by the Ministry of Social Development (Experimental Programme to Support Street Children and Adolescents). As the previous programme, this lacks of national coverage, but it is developed in 6 out of 15 regions of the country (Arica y Parinacota, Tarapacá, Antofagasta, Valparaíso, Maule y Biobío)⁵⁹.

Regarding education, leisure and cultural activities

Article 28. Right to education

33. The right to education has made significant progress in terms of accessibility, since educational coverage has grown and expanded to preschool level and higher education, allowing the population to have more years of schooling and diminishing the percentage of people not participating in the educational system. However, according to the information collected by the INDH in its 2011 Annual Report, 13% of people living in rural areas states that there is no educational establishment near their homes⁶⁰. Moreover, regulatory frameworks for educational policy at various levels, as well as administrative and financial mechanisms are articulated so that the system segments the population according to their economic capacity, generating a differentiated offer in terms of quality, which reinforces social inequalities presented in the Chilean society⁶¹.

⁵⁶ INDH, 2014 Annual Report, p. 205.

⁵⁷ INDH, 2014 Annual Report, p. 298.

⁵⁸ SENAME, Official letter N° 2347, p. 4.

⁵⁹ Ministry of Social Development, Official letter No. 3343, July 7th, 2014, p. 3.

⁶⁰ INDH, 2011 Annual Report, p. 61.

⁶¹ See INDH, 2011 Annual Report, p. 57.

34. Access to education does not only implies the enrolment on educational establishments, but also to set up all the relevant measures, so factors such as poverty and adolescent pregnancy do not constitute a reason for school desertion⁶². In 2010 the existence of 4,806 cases of adolescent pregnancy in the country was found, and during the same period parents said they knew of 10% of cases of expulsion of pregnant students in municipal schools, 25% in subsidized private schools and 28% in private schools⁶³.

35. *Socio-economic segregation in pre-school and school.* The State has taken steps to mitigate the inequality generated by the system, regulating some aspects of the direct charges of education and subsidizing indirect costs for students from low-income families, but they are still insufficient to counterbalance the discriminatory impact on the access and quality of education⁶⁴. Despite the measures taken, the INDH is "concerned about the limited capacity of supervision on the Ministry of Education regarding the prohibitions and limitations of charges made to the families"⁶⁵. Also, for the INDH "educational policies generated through the National Board of Student Aid and Scholarships to contain the negative effects of the indirect costs of education, such as necessary materials to the educational process, transportation to ensure accessibility to facilities or food, and they fail to cover the entire vulnerable school population. In practice, higher income families may consider principles or academic options to exercise their right to choose the education they want while families with lower incomes restrict their choices to change the variables of economic base (proximity and cost), so few families are able to choose depending on the quality of educational offer"⁶⁶. As noted in the 2011 Annual Report, the reasons for choosing an educational institution vary widely depending on the socioeconomic status of the household. The 70.16% of the population of low socioeconomic status chose the educational establishment based on its proximity to home, while 3.95% does this according to academic excellence and 3.96% according to principles orientation. While in high socioeconomic status, 12.98% chose the educational establishment by the proximity to home, 24.04% according to academic excellence and 33.78% according to principles orientation⁶⁷.

Article 29. Purposes of education

36. During the last 4 years in Chile, the debate of the right to education has been one of the main topics of the public debate. For the INDH "the notion of quality contained in the national normative framework⁶⁸ is limited to the equality of results, which does not

⁶² See INDH, 2010 Annual Report, p. 127.

⁶³ INDH, 2011 Annual Report, p. 62.

⁶⁴ See INDH, 2011 Annual Report, pp. 57-58.

⁶⁵ INDH, 2011 Annual Report, p. 58.

⁶⁶ INDH, 2011 Annual Report, p. 58.

⁶⁷ INDH, 2011 Annual Report, p. 59.

⁶⁸ The Constitutional Organic Law of Education provides a mechanism for measuring the quality of education (Law 18,956 of 1990, art. 19), which originated the Measurement System for Quality of Education. Also, the law that restructures the Ministry of Education states in art. 1 that the Ministry should tend to ensure the quality and fairness of the national education system (Law 18,962 of 1990); in the law for Full Day School

include all dimensions contained in the international framework, and its reservations have a dissimilar inclusion in the compound of regulations that directs the sector and the different educational levels⁶⁹.

37. *System for quality assurance for education in preschool, primary and secondary school*⁷⁰. The law 20,529 creates the National System of Quality Assurance for preschool, primary and secondary school (2012). It reiterates the State's duty of tending to ensure the quality of education. It sets the institutional framework that will ensure compliance and it also sets standards and quality indicators. On the latter, and in particular those approved for primary education⁷¹, the INDH has expressed concern as they "are limited to instrumental and cognitive dimensions and exclude dimensions as principles and behaviour, which are established as minimum requirements in the General Law of Education, such as: equal rights for men and women, the development of empathy, the acceptance of commitments, the valuation of the participation in democratic life and the acquisition of habits for environmental care"⁷². Also, "the definition of some of these indicators, without attention to the diversity of school contexts, can have a negative effects on the right to education of quality for everyone. Thus, the student population that requires more effort to attend educational processes -the people with illness, disability or social marginalization- become a disadvantage for establishments that enrol them. They would negatively affect the weighting of the "other indicators of quality" of the institution, because of their lower attendance, their greater risk of dropping out (indicator of retention) and their graduation rates achieved in longer than the average of the students. This effect would not occur in establishments that select and exclude students with this

states that its function is to improve education, this extension may only be excused from establishments which have and maintain quality (Law 19,532 of 1997, art. 1); Law for a System of Quality Assurance in Higher Education (Law 20,129 of 2006) and the law that creates the National System of Quality Assurance in pre-school and school education (Law 20,529 of 2011) were generated for tending to ensure quality education system; the Law for Preferential School Subsidy states that its purpose is to improve the quality of education for vulnerable students (Law 20,248 of 2008, art. 1); General Education Law introduce quality as a principle (Law 20,370 of 2009, art. 3); Law of Quality and Equity in Education (Law 20,501 of 2011) regulates teachers and directives governing municipal educational facilities.

⁶⁹ INDH, 2013 Annual Report, p. 227.

⁷⁰ Regarding the security and management conditions in national preschool education, in April 2013 a bill was introduced to raise the minimum conditions required for granting operation permits, among other measures. It is of concern that this project does not address an improvement in the relation between teachers and assistants per boy child and girl child, issue that was amended in 2010 and it has generated problems to improve the educational process and care provided in these areas, particularly in the range 2-3 years old, when there is an increase in the number of children per teacher and assistant, affecting negatively the aforementioned aspects.

⁷¹ National Education Council. Agreement No 84/2012 of November 19th, 2012 approves the proposed Learning Standards for 4th and 8th grade corresponding to the subjects of Language and Communication: Reading; Math and Science, presented by the Ministry of Education.

National Education Council. Agreement No 013/2013 of January 23th, 2013. Approves the proposal Learning Standards for 4th and 8th grade corresponding to the subject of History, Geography and Social Sciences, presented by the Ministry of Education.

⁷² INDH, 2013 Annual Report, p. 228.

profile of vulnerability"⁷³. Finally, "the system does not have appropriate tools to ensure the quality of education, because the indicators are not clear and it is not possible to measure the achievement of the purposes of education nor have the ability to direct actions that restore the exercise or enjoyment of the right to an education of quality"⁷⁴.

38. For the INDH it is also "the model that guides the quality assurance, which has emphasized the educational system is worrying, a policies and remedial actions considered are based on improvements that will favour new generations of students, but they ignore people who already have been violated in their right to an education of quality at school level"⁷⁵.

Article 30. Cultural rights of minority and indigenous children

39. In general, with respect to indigenous peoples, the INDH has called to "overcome the unilateral model in decision-making and it is a legal imperative to ensure maximum control of indigenous peoples over their own economic, social and cultural development. This requires, as first condition, to accept that there is a multicultural and multinational reality that demands recognition and respect"⁷⁶.

40. *Violations to fundamental rights of indigenous children and adolescents, in the context of demands from Mapuche peoples.* The excessive use of force in the context of indigenous demonstrations has impacted the fundamental rights of children and adolescents of indigenous communities in conflict. The civil society⁷⁷ documented in a report violations of human rights, including the right to life, to physical and mental integrity and due process of law, providing credible background on police abuses, affecting 130 children and adolescents belonging to the aforementioned minority since 2001. The situation described above has led to the filing of actions for protection of indigenous children and adolescents, which in some cases have been welcomed by the superior courts. An example is the case of the action deducted in favour of a girl and a boy of ten years old -both belonging to the indigenous community Muko Bajo- motivated by interrogations by members of the Investigations Police of Chile to children, fact recognized by the police institution. The Court of Appeals of Temuco found that the police action was arbitrary, that it violated the mental integrity of children and that in the future the authority must refrain itself from performing such actions. The subjection of children to interrogations represents an act "susceptible to cause psychic disorders and affect the

⁷³ INDH, 2013 Annual Report, p. 229.

⁷⁴ INDH, 2013 Annual Report, p. 229.

⁷⁵ INDH, 2013 Annual Report, p. 229.

⁷⁶ INDH, The duty of previous consultation on the proposal for Regulation of the Environmental Assessment System (approved by the Board of NHRIs in extraordinary session No. 152), p. 1.

⁷⁷ See Foundation ANIDE, NGO Network for Children and Youth of Chile, and Latin American and Caribbean Network for the Defence of the Rights of Children and Adolescents, "Report on institutional violence against Mapuche children in Chile", presented to the Inter-American Commission on Human Rights, March 25th, 2011.

integrity of the children interrogated, considering the quality of police of the interrogator and the use of this quality in a criminal investigation"⁷⁸.

In 2012, a video where police officers appeared assaulting two Mapuche women in front of their children caused public outrage. The INDH filed a writ of protection that was accepted by the Court of Appeals of Temuco, which determined that "the police in their actions must proceed in strict compliance with the rights and guarantees of the people [...] obligation becomes more urgent if it is about children - besides Mapuche-, as it happened"⁷⁹. However, the Supreme Court revoked the verdict saying that police "proceeded safeguarding, maintaining and ensuring the disturbed public order"⁸⁰.

41. The violence against Mapuche children and adolescents have had rejection of UNICEF⁸¹ and the Inter-American Commission on Human Rights (IACHR), up to the point that the latter pressed the State of Chile to "investigate the facts and punish those responsible, and take steps to prevent future excessive use of force in these operations"⁸². In addition to the obligations raised by the IACHR, the State must take all measures within its power to ensure the non-repetition of acts of this nature, providing adequate protection to indigenous children and adolescents.

42. The INDH, in a recent study of police violence in the region of La Araucanía, said that "any act of violence or excessive use of force by police must be seriously and impartially investigated to establish the corresponding administrative and/or criminal responsibilities. The International obligations on human rights link the institution to the respect and guarantee of the rights of all people and to the adoption of measures of special diligence on the Mapuche population. This, because of the peculiarities arising from their indigenous status, as well as the exacerbated vulnerable situation in which it develops"⁸³.

43. *Indigenous adolescents under the anti-terrorism law*. Since 2010 the law that defines terrorist acts and establishes related penalties (18,314) excluded its application to children and adolescents. Despite the legal change, and as noted by the INDH in its 2011 Annual Report, after the amendment, the Public Ministry invoked the Law 18,314 at least in 4 cases⁸⁴. In addition, in January 2011 the INDH could verify this assertion in the Provisional Detention Centre of Chol Chol through an observation mission to know the conditions of

⁷⁸ Court of Appeals of Temuco, ID No. 545-2010, May 13th, 2010, recital 6.

⁷⁹ Court of Appeals of Temuco, ID 127-2012, March 12th, recital 3.

⁸⁰ Supreme Court, ID 2587-2012, March 24th, 2012, recital 5. It is significant to consider the dissenting opinion of Judge Sonia Araneda, who said that they "are seen according to the logic and experienced reasons [...] that there was a disturbance or threat to life and physical and mental integrity of children".

⁸¹ UNICEF, Public Statement about Temucucui community, April 24th, 2012.

⁸² IACHR, IACHR condemn the injuries to Mapuche children in police operation in Chile, August 2nd, 2012.

⁸³ INDH, Republic of Chile and Mapuche Peoples: analysis of trends in terms of police violence in the region of La Araucanía, 2014, p. 125.

⁸⁴ INDH, 2011 Annual Report 2011, p. 117. Document delivered by representatives of UNICEF. History of Law 20,519, pp. 24-41. List of adolescents charged under the Law 18,314.

detention of three young Mapuche charged under the law regulating terrorist acts⁸⁵. Once this situation was observed, the State, through the Law 20,519, excluded the application of Law 18,314 to people under 18 years old.

44. *Right to culturally appropriate education to strengthen the identity and language.* The General Law of Education (20,370) recognizes multiculturalism as one of the articulating principles and considers that establishments with high percentages of indigenous students must develop the learnings that allow them to "understand and express simple messages in indigenous language, recognizing history and knowledge of origins" in primary education, and "maintain its dominance of the indigenous language and knowledge of the history and culture of their people" in secondary school. In higher education, there is no similar safeguard. In the 2011 Annual Report, the INDH found that there are Comprehensive Bilingual Education Programmes operating in 320 of the 815 establishments that, by decree, have to implement them. This covers 15,683 indigenous students (9.7% of the indigenous school population) and it is absent in the main cities that present high indigenous concentration: Arica, Iquique, Antofagasta and Temuco. In this sense, the tight budget and its operation depending on a bidding process is a matter of concern. It is worrying that between 2010 and 2011 the budget was reduced by 4%, preventing a proper implementation, expansion and development of consultation processes, in line with the obligations under the Convention 169 of ILO⁸⁶. The INDH appreciates the existence of these programmes, but notes that its coverage is limited, not meeting the goals established by legal mandate, making it necessary to strengthen the coverage of the Comprehensive Bilingual Education Programmes of primary education and spread it to secondary education, with adequate and validated processes of consultation with the communities.

Regarding special measures of protection

Article 22. Migrant and refugee children

45. *Birth, name and nationality.* In practice, organized social society has carefully observed the negotiation of nationality of foreigners children in irregular migratory situations, classifying them as "Children of transient foreigners", which may configure stateless situations⁸⁷⁻⁸⁸. With regard to this, the bill of Immigration (Bulletin No. 8970-06), currently

⁸⁵ INDH, Visit Report to Temuco and Chol Chol, January 2011, p. 7. Available at <http://bibliotecadigital.indh.cl/bitstream/handle/123456789/140/Misi%C3%B3n%20Chol%20Chol?sequence=1>

⁸⁶ INDH, 2011 Annual Report, p. 48.

⁸⁷ Committee on Agreements Monitoring (Foundation Iguales, Corporation Humanas, Observatory for Human Rights and Legislation, Human Rights Centre, CIMUNIDIS and Corporation OPCIÓN), Rights of the Child in Chile (CRC Alternative Report), March 2013, p.24.

⁸⁸ This practice continues, as realized in the sentence ID 300-2013 of April 29th, 2013 in which the Supreme Court accepts the action of claim for nationality (Article 12 Constitution) filed for a boy child of irregular foreigners with a pending expulsion order. The records presented in this case by the Department of Immigration, to deny the nationality for the child, arguing that, in view of their interpretation of related standards, it "cannot be established that foreigners entering the country illegally and who are expelled from the country have become members of Chilean society, [notwithstanding that the child can aim for the Chilean nationality upon reaching 21 years]" is a matter of concern (fourth recital of the judgment).

in Parliament processing, acknowledges that the child of a transient foreigners born in Chile may opt for the Chilean nationality when he or she has no possibility of any other nationality - defining transient as somebody in the country with temporary residence permit or irregular immigration status-. The INDH "is concerned that the bill could establish an unjustified and disproportionate difference between the sons and daughters of foreigners born in Chile because of their migratory status. Indeed, under this project, those who are sons or daughters of parents with irregular legal status, are allowed to aim for Chilean nationality with the condition that they do not have other nationality (art. 166, 2nd paragraph). However, the children of regular immigrants are allowed to aim for the Chilean nationality without having to prove that they can or cannot access to another"⁸⁹. Even though the INDH has observed in certain cases that the Department of Immigration has applied their own criteria of international human rights law favouring the granting of Chilean nationality to children of fathers or mothers with irregular immigration status, the INDH has also noted that in these cases the determination of a national register for a child is purely casuistic, depending on the discretion of the public officer and the Civil Registry and Identification Service attending the application as well as the knowledge that applicants have about requesting the Department of Immigration to review the decision⁹⁰.

46. *Family reunification.* Through the review of the human rights situation of migrants in the observation missions developed⁹¹, the INDH has noted that border officials show "little regard for the rights of children and for the principle of best interests of the child, as well as for the right to family reunification. In many cases preference is given to an administrative difficulty (a consular stamp), although important, cannot prevail over the principles of human rights"⁹²⁻⁹³. However, the INDH positively recognizes certain jurisprudence of the Supreme Court that has decided to give priority, in migration situations, to the duty of the State of protecting the family⁹⁴. Also, the INDH appreciates

⁸⁹ INDH, 2013 Annual Report, p. 159.

⁹⁰ Department of Immigration, Internal Affairs and Public Security, Official letter No. 27601, dated August 14th, 2014, in response to the Civil Registry and Identification Service of the Ministry of Justice. In the document, the Department of Immigration notes that "the regulation under discussion [Article 10 No. 1 of the Constitution, which establishes an exception to the principle of Jus Solis to children of transient foreigners] shall be interpreted restrictively. Therefore, it does not correspond to extend the use of foreigners concept to situations that do not strictly meets the factual context, as it is the eventual migration irregularity of parents which should not affect the right to citizenship of children and adolescents as it is not expressly described within the exceptions", p. 2.

⁹¹ INDH, Observation Mission Report: Situation of migrant population in Iquique and Colchane, carried out between May 29th and 31st. Available at: <http://bibliotecadigital.indh.cl/bitstream/handle/123456789/560/Informe%20Mision?sequence=4>

⁹² INDH, Observation Mission Report: Situation of migrant population in Iquique and Colchane, carried out between May 29th and 31st, 2013, p. 31.

⁹³ In 2013, as exposed in the 2013 Annual Report, the Supreme Court accepted the appeal to expulsion processes in cases that affected people have children with Chilean nationality, in consideration to the dispositions of the Convention of the Rights of the Child. See INDH, 2013 Annual Report, p.156-157.

⁹⁴ Supreme Court, ID 7018-2012, September 14th, 2012. For the Supreme Court, the expulsion of the country just of the mother, and not of her children, brings "inevitable consequences for the [...] children [of the mother], who are just ten and one years old respectively, as the first is formally studying in the territory so

that the bill of Immigration (Bulletin No. 8970-06) explicitly incorporates the rights of migrants, as well as the provisions on family reunification and the recognition of the status of cohabitant when granting visas, among other subjects. However, the bill is still in the first stage of the constitutional process in the Congress, and it is not a priority for the Congress nor the Executive.

47. *Right to education and health for migrant children and adolescents.* The Chilean State ensures to every child and adolescent the enrolment and continuity in preschool, primary and secondary education, regardless of the migratory status of their parents. Although this measure is valuable, there are due dates for the standardization of the documentation of studies which is not always possible to meet. This endangers the continuity and/or accreditation of their studies. For example, if at the end of the school year, students have non-standardized documentation, the grades do not enter to the system of the Ministry of Education and he or she cannot be formally promoted, if the issue of certificates of approved courses is applicable. The data available in the Ministry do not permit to establish the character of the registration (temporary or permanent), nor the range of recognition of studies and promotion of these students. Therefore, it is not possible to establish an informed judgment about the practical integration/exclusion of migrant students in school communities⁹⁵. Regarding the quality of education, it is important that the State takes care of the contents of plans and programmes so they promotes respect for diversity and knowledge of other cultures and history, and ensure that all prejudice, stigmatization and conceptions promoting the superiority of one country over another have been removed.

48. With regard to health services, the existing regulations ensure emergency medical care to illegal immigrants, as well as the access to health care for all pregnant immigrants and children and adolescents regardless their migration status⁹⁶. In this sense, the INDH appreciates the agreement between the National Health Fund (FONASA) and the Undersecretary of the Internal Affairs and Public Security to ensure the access to public network of health to immigrants who are waiting to complete their procedures of immigration⁹⁷. There was no access to information that establishes the degree of compliance with these provisions in all regions of the country. The INDH is concerned about the existence of certain practices in public services denying hospital emergency care

he can stay in the country, and the second presents an evident bond with the mother, because of the age. Thus the decision against which the constitutional action that has been brought becomes illegal by the fact that it affects the provisions of Article 1 of the Constitution of the Republic which states that the family is the fundamental unit of society, it is duty of the State to protect the population and the family, as well as to promote the strengthening of this".

⁹⁵ See INDH, 2011 Annual Report, p. 209.

⁹⁶ The health benefits for foreign children and adolescents under 18 years old, regardless the immigration status of them, their parents, guardians or legal representatives, is governed by a cooperation agreement between the Internal Affairs and the Ministry of Health (2007).

⁹⁷ More information available at

https://www.fonasa.cl/portal_fonasa/site/artic/20141127/pags/20141127131655.html

for foreigners in irregular migration status, as the Court of Appeals of Antofagasta determined⁹⁸.

49. *Refugee condition of children and adolescents.* With the enactment of Law 20,430 on the Protection of Refugees (2010), Chile took a broad concept of the definition of refugee presented on the Convention of 1951, and the one contained in the Cartagena Declaration of 1984. In addition to all the guarantees in the Constitution and international agreements, the law recognizes the right to family reunification for refugees, and equates their right of access to health, education, housing and work to foreigners.

50. In terms of refugee claims, according to information provided by the Undersecretary of Internal Affairs of the Ministry of Internal Affairs and Public Security, these are requested mostly from Colombia. Between 2010 and 2013, the average number of applications from this country was 86.7% (850 out of 983 requests)⁹⁹. Despite the high number of applications, the accepted applications accounted for 17.9% in the same period (152 out of 850 requests). While it is not possible to analyse the reasons that would explain the low percentage of requests accepted, for the INDH it is relevant that the State integrates the no return principle. This is a cornerstone of international law on refugees, established on the Article 33 of the Convention related to the Statute of Refugees. And this ensures the due process for people seeking refuge, considering their vulnerability and the importance of the requested protection.

51. The INDH is also concerned about the situation of people under 20 years old seeking refuge¹⁰⁰. For the age group between 1 and 10 years old 29.1% of refugee claims were accepted (41 out of 141 applications); and for the age group between 11 and 20 years 31% of applications were accepted (48 out of 155)¹⁰¹. The concern expressed above acquires greater force in the case of children and adolescents: the vulnerability of people seeking refuge is deepened in the case of children and adolescents, so that the State must guarantee both the due process in its refugee claim and their no-return right, incorporating the best interests of the child in line with Article 3 of the CRC.

Article 32. Economic exploitation and child labour

52. *Child labour.* After several years since the INDH set out the need to have updated information about child labour, the State in collaboration with the ILO have developed a new study in Chile about this, which reflects the increase of child labour in the Country. In

⁹⁸ See Court of Appeals of Antofagasta, ID 1380-2014, October 17th, 2014. For the Court "the procedure of the Hospital Regional de Antofagasta - by not bringing free health care to Mrs. Flor Dorville Sánchez for her high risk pregnancy- is illegal because the current regulation was not respected, and for the same reason, it was arbitrary" (11th recital).

⁹⁹ Undersecretary of Internal Affairs, Official letter No. 23.509, July 9th, 2014.

¹⁰⁰ The information given by the Undersecretary of Internal Affairs is itemized by every ten years, so it is not possible to show a result for people under 18 years old, according to article 1 of the CRC, but from 1 to 10 years old and from 11 to 20 years old.

¹⁰¹ Undersecretary of Internal Affairs, Official letter No. 23,509, July 9th, 2014.

2003 there were 196,104 children and adolescents developing child labour, currently this number come to 219,624. From that figure, 197,743 are exposed to dangerous work¹⁰². From the total amount of child labour it can be observed that most are boy children (151,894) between 15 and 17 years old (178,612)¹⁰³. Likewise, most of children and adolescents exposed to child labour are part of the poorest two quintiles of the country (45.9% from the quintile I and 23.6% from the quintile II). While 3.9% is part of the richest quintile¹⁰⁴. Finally, in the group of children and adolescents that develop dangerous children labour, 70.6% is dangerous due to the occupation, 53.3% due to heavy load, 40.8% due to the tools, 17.7% due to extended working hours, 11.8% due to heights, and 7.2% due to night time¹⁰⁵.

Article 34. Sexual exploitation and abuse

53. *Sexual exploitation*. One of the ways of sexual exploitation in Chile occurs through human trafficking. As noted by the INDH, "Chile has gradually become a country of origin, transit and destination for trafficking in men, women and children with specific purposes of sexual exploitation and forced labour"¹⁰⁶. Also, in its chapter about Chile on the Global Report on Trafficking in Persons (2010), the State Department of the United States stated that "within the country, many of the victims are women and girls who respond to false job offers and then they are forced into prostitution. In a more limited range, Chilean women and girls are also trafficked for prostitution and forced labour in neighbouring countries such as Argentina, Peru and Bolivia, in addition to Spain"¹⁰⁷.

54. The unique official figure on sexual exploitation of children and adolescents corresponds to a study developed by SENAME and the International Labour Organization in 2003, in which it was estimated that this form of violence was present in Chile and it affected - at that moment- 3,719 children, of which 78.1% were girls¹⁰⁸. However, the conceal characteristic of the phenomenon and the socio-demographic changes experienced by the country in recent years make authorities and civil society organizations working on this to suspect that the magnitude of the problem is much greater. This assumption is based on social tolerance for some of the forms that sexual exploitation takes in our country, the misconception of child consent and the minimization of facts by the involvement of a compensation, all these impede the detection of cases and reduce denunciations. The State of Chile, through the Ministry of Justice, has committed as a goal for 2012-2014 to "update the qualitative and quantitative assessment of the situation of commercial sexual exploitation in Chile of children and adolescents". For the INDH this

¹⁰² ILO, Magnitude and characteristics of child labour in Chile, 2013 Report, p. 86.

¹⁰³ ILO, Magnitude and characteristics of child labour in Chile, 2013 Report, p. 88.

¹⁰⁴ ILO, Magnitude and characteristics of child labour in Chile, 2013 Report, p. 89.

¹⁰⁵ ILO, Magnitude and characteristics of child labour in Chile, 2013 Report, p. 91.

¹⁰⁶ INDH, 2011 Annual Report, p. 217.

¹⁰⁷ State Department of United States, Global report on trafficking in persons. Available at: <http://spanish.chile.usembassy.gov/2010press0617sp-tip-chile.html>. Quoted in INDH, 2011 Annual Report, p. 217.

¹⁰⁸ International Labour Organization, Study of Commercial Sexual Exploitation of Children and Adolescents in Chile, p. 68 and 69.

goal really important to take on measures that respond to the real situation of the country in this matter.

55. Despite the lack of updated information, the State has initiated actions to become the population sensitive and to generate knowledge about this problem, as well as to detect cases and give specialized care to the victims. Regarding this, in 2010 the National Observatory of Commercial Sexual Exploitation of Children¹⁰⁹ was created, which involves public services as well as NGO that develop territorial works¹¹⁰. Besides, currently there are 16 projects specialized on sexual exploitation attending in 10 regions of the country. These were carried out by organisms of the civil society that were authorized and subsidized by the SENAME. In the areas where there are no programmes available, the victims are enrolled in the programmes of comprehensive specialized intervention¹¹¹.

56. *Sexual abuse of girls and adolescents.* As showed in the following table, according to the information provided by the Ministry of Internal Affairs and Public Security, the number of denunciations and detentions for sexual abuse to boys, girls and adolescents between 2007 and 2012 has—in general – increased. For minors under 14 years old, for men and women, denunciations and detentions have increased every year, from a total of 2,475 in 2007 to 4,384 in 2012. In this segment it is specially worrying the increase in cases involving women, whose totals increased from 1,879 in 2007 to 3,207 in 2012. For adolescents, the figures also show an increase on the denunciations and detentions for sexual abuse from 1,248 in 2007 to 1,692 in 2012¹¹². The girls are in a situation of double vulnerability on account of their gender and age. The State is responsible for providing support in the rehabilitation of victims, although it should intervene with prevention plans as campaigns and other graphic or audio-visual resources to inform and alert the population at risk.

¹⁰⁹ Today, this body is in charge of monitoring the Second Framework for Action against the Commercial Sexual Exploitation of Children (CSEC) established for the period 2012-2014, which aims to strengthen prevention strategies and comprehensive care of child and adolescent victims. For this, the public international organizations, and representatives of civil society organizations get involved in the fight against CSEC. See INDH 2013 Annual Report, p. 98

¹¹⁰ Moreover, it stands out the recent development by the SENAME of a protocol in case of detecting CSEC in projects of the network of the State for the protection of rights, contributing to disrupt situations identified and provide protection to victims. This, in addition to the continuity of the "No Excuses" (No Hay Excusas) campaign, and communications strategy "Together let's say NO to child pornography" (Juntos digámosle NO a la pornografía infantil) conducted by Option Corporation (Opción), permits to have a wider vision of these problems and promote awareness about the different ways in which exploitation is presented.

¹¹¹ INDH, 2013 Annual Report, p. 98.

¹¹² Undersecretary of Crime Detention, Internal Affairs and Public Security, Official letter No. 1,633, received on June 12th, 2014.

Table 1: Number of denunciations and detentions for sexual abuse (2007-2012)

	Total	Men	Women
2007			
Under 14 years old	2,475	596	1,879
14-17	1,248	106	1,142
2008			
Under 14 years old	3,059	689	2,370
14-17	1,451	108	1,343
2009			
Under 14 years old	3,098	719	2,379
14-17	1,502	134	1,368
2010			
Under 14 years old	3,110	731	2,379
14-17	1,458	131	1,327
2011			
Under 14 years old	3,873*	929	2,943
14-17	1,694	115	1,579
2012			
Under 14 years old	4,384	1,177	3,207
14-17	1,692	141	1,551

Source: Compiled from information provided by the Undersecretary of Crime Prevention, Ministry of the Internal Affairs and Public Security, Official letter No. 1633 in response to the INDH, received on June 12th, 2014.

* For purposes of total calculation of 2011, it should be considered 1 register with unidentified sex, so it is not considered in the table.

Article 35. Smuggling, trafficking and kidnaping

57. Chile has gradually become a country of origin, transit and destination for trafficking in men, women and children with specific purposes of sexual exploitation and forced labour. An important progress is the enactment of Law 20,507, which defines the crimes of human trafficking and smuggling of migrants and establishes rules for their prevention and more effective criminal prosecution (2011). It is appreciated and highlighted the performance of the Inter-sectorial Committee on Trafficking in Persons and the action plan for 2013-2014¹¹³.

Article 37. Right to prohibition on torture and other cruel, inhuman or degrading treatment or punishment, including corporal punishment

58. *Police brutality in student demonstrations.* Police brutality against children and adolescents has been a subject of public debate in the context of student demonstrations in recent years. The Programme on Human Rights and Police Role of the INDH, after the observations of demonstrations during the second half of 2011, concluded that "the treatment of children under 18 years old and under 14 years old is contrary to the

¹¹³ For critical aspects of this topic, refer to article 34 about sexual exploitation.

regulations¹¹⁴. One of the most unfortunate events in 2011 was the murder of the 16-year-old adolescent, Manuel Gutierrez¹¹⁵. As noted in the 2011 Annual Report, "the teenager had accompanied his brother Gerson, who was in a wheelchair, to take a look on the demonstrations. His brother reported that there were just fires and banging on pots and pans when the police car arrived. Police started shooting, and one of the bullets reached the adolescent, who after being led to the medical centre died. It is particularly serious that in the first instance police denied their involvement, even noting that they would not investigate the situation. It was later found that the bullet was actually shot by a policeman, who was dismissed, leaving the case under the jurisdiction of military courts (it is currently on appeal on the Court-Martial)"¹¹⁶. Additionally, the original response from police was contrary to the obligations of the State in this subject "being their obligation to investigate and sanction the responsible ones for the homicide of the adolescent, which does not only constitute a way of reparation for the family, but also emits a relevant sign for society demonstrating that this acts will not be tolerated or allowed"¹¹⁷.

Article 39. Measures to promote physical and psychological recovery and social reintegration of victim children

59. With regard to programmes for the social reintegration of adolescents, the efforts are directed through SENAME, service that is part of the Victim Assistance Network (VAN) and in its programmatic offer contemplates an Abuse Reparative Programme. These programmes are available for children who are victims of serious physical or psychological abuse constitutive of crime and/or sexual assault, who have made the complaint to the public prosecutor and have been derived by this entity or the courts to obtain a personalized therapy¹¹⁸.

60. *Girls and adolescents victims of sexual abuse.* The State has an institutional network that attends to children who are victims of violent crimes¹¹⁹. The INDH identifies that the

¹¹⁴ INDH, Report on monitoring and record of police abuses programme, 2011, p. 14.

¹¹⁵ There were other cases of police brutality in the analysed period. For example, in the early morning of September 11th, 2012, a 13-year-old boy with his relatives, of the age of 18 and 15 years old were going to the police station –two block away from their home- to report a robbery. The police station was safeguard by Special Forces officers, so the young boys decided to go back home. In the route, they met three police trucks, one officer went out of one of the trucks and started shooting pellets, so the adolescents started to run. The 13-year-old boy was catch by officers, who hit him with truncheon, fists and foot while they put him into the police truck with his relatives. The same situation was repeated to take them down. The victim claims that the verification of injuries was irregular. Currently the case is under investigation by the military prosecutor on duty.

¹¹⁶ INDH, 2011 Annual Report, p. 80.

¹¹⁷ INDH, 2011 Annual Report, p. 81.

¹¹⁸ Additionally, and from a preventive perspective, the Ministry of Education published on March 2013 the document "Guidance for situations of children maltreatment and sexual abuse", that in the framework of the programme Safe School (Escuela Segura) gives recommendations for the generation of action protocols in educational establishments.

¹¹⁹ The network is compose of centres of Comprehensive Assistance for Victims of Violent Crimes that depend on the Judicial Assistance Corporation; the Unit of Assistance of Victims of the Undersecretary of Internal Affairs; and the centres of the Investigations Police for Comprehensive Assistance for Victims of

public offer on the matter is not organized or structured, but it was the result of implementing provisions originated by the institutions to cover the care of victims. An assessment by the Ministry of Internal Affairs and Public Safety identified the need for more human resources and infrastructure, inter-sectorial and online work, and the development of systems of information with common variables, in addition to the establishment of attention and management goals¹²⁰. Meanwhile, the SENAME, in response to a request made by the INDH to its 2012 Annual Report, stated that the main challenge of Serious Abuse Reparative Programme is the gap between the demand for attention and the capability of the service¹²¹.

61. In its 2012 Annual Report, the INDH appreciated the initiatives of the State in response to the increasing number of reported cases of sexual abuse of children in 2012 (creation of the Service for the Protection of Children, register of incompetence for people convicted for sexual crimes against children, greater penalties and victims unique interview). Notwithstanding the foregoing, the Institution said that "it is necessary to strengthen prevention strategies involving the educational sector, as well as to develop public campaigns to raise awareness among the population about the importance of reporting sexual abuse, and that the institutions give adequate attention"¹²².

Article 40. Management of juvenile justice

62. The Law 20,084¹²³, which established a system of responsibility of adolescents for breaches of criminal law, involved the existence of a specific legislation in adolescent area whose focus was the rehabilitation and integration into society of young offenders. However, the abusive use of this tool, especially youth detention in centres with deficient infrastructure, has led to a transversal criticism of this legislation¹²⁴.

63. *Application measure for deprivation of liberty for adolescents.* In its Annual Reports, the INDH has repeatedly raised concerns about the application of Law 20,084. Thus, "although it was designed to reintegrate young people, the practical trend has been the immediate adoption of the strongest punitive measures as deprivation of liberty"¹²⁵. In

Violent Crimes and for Assistance of Victims of Sexual Assaults. Specialized programmes of the SENAME has been added. All these agencies - besides SERNAM, the Ministry of Health and Police- are part of the Network of Assistance to Victims of Violent Crimes which aims to establish ways of coordination and enhance specific actions of each entity in the common purpose of serving victims of violent crimes.

¹²⁰ INDH, 2012 Annual Report, p. 136.

¹²¹ SENAME, Official letter No. 4077, September 5th, 2012.

¹²² INDH, 2012 Annual Report, p. 137.

¹²³ Even though the law was published on December, 2005, this provision came into force -for the disposition of the same law- 18 months later.

¹²⁴ During 2012 the Committee on Constitution, Legislation, Justice and Regulations of the Senate held hearings to evaluate the first 5 years of the application of Law 20,084, in which 23 institutions exposed, both state and non-state institutions, including the INDH. See Senate of Chile, Report of the Committee on Constitution, Legislation, Justice and Regulation: Assessment of the implementation of Law No. 20,084 establishing a system of responsibility of adolescents for breaches of criminal law, in its first five years in force, 2013.

¹²⁵ INDH, 2011 Annual Report, p. 229.

2012, the Senate conducted by its Committee on Constitution, Justice, Legislation and Regulations, special sessions to discuss the matter, where criticism on misapplication of the law came from various state and non-state institutions¹²⁶.

64. In practice, it is not the law the one that sets limits in its application, but it is decision of the competent authority, which may lead to the immediate use of deprivation of liberty, contrary to existing standards in this area. Consequently, "it is noted that the number of convictions has been higher than the alternative exits and other terms of procedures. When analysing the figures of 2012 it shows up that, proportionally, the number of convictions is higher than in 2011. This is a matter of concern as the law sought the enhancement of alternative exits instead of imprisonment"¹²⁷. In this regard, the Committee on Constitution, Legislation, Justice and Regulations of the Senate said that "it is desirable to carefully review the frequency and extension of the application of sentences with deprivation of liberty, in order to move closer to the objectives [...] that seek the re-socialization, according to the system of adolescent criminal responsibility"¹²⁸.

Table 2: Quantity of adolescents assisted by Public Defender under the law 20,084 (2008-September 2012)¹²⁹

	2008	2009	2010	2011	2012
Alternative exits	12,496	12,757	11,834	13,746	10,079
Conviction	15,125	17,361	16,308	15,629	12,464
Others*	8,230	8,790	8,734	9,743	7,554
Total	35,851	38,908	36,876	39,118	30,097

Source: Public Defender, Official letter No.821 in response to the INDH, October 10th, 2012.

*Judgement of acquittal, definitive and temporary stay, derivation, faculties of the Defender, payment procedure (fine), and re-formalized crime, among others.

65. It is also a matter of concern, the application of preventive detention in adolescent criminal matters. As the INDH stated in its 2011 Annual Report, adolescents spend an average of 118 days deprived of liberty waiting for the decision of the a court. From the total of these adolescents, 65% used alternative exits, different to deprivation¹³⁰. On this, the INDH stated that "Although it is positive that the application of alternative sanctions to the deprivation of liberty of minors is considered, it is necessary to revise the precautionary measures that are available in the first stage of the process"¹³¹.

¹²⁶ Participation of the INDH, Public Ministry, Public Defender, Investigations Police, SENAME, UNICEF, Civil Peace Foundation (Paz Ciudadana), among others.

¹²⁷ INDH, 2012 Annual Report, p. 155.

¹²⁸ See Senate of Chile, Report of the Committee on Constitution, Legislation, Justice and Regulations: Assessment of the application of the Law No. 20,084 that established a responsibility system for adolescents in case of infractions to the criminal law, in its first 5 valid years, 2013, p. 253.

¹²⁹ Quoted on INDH, 2012 Annual Report 2012, p. 155.

¹³⁰ INDH, 2011 Annual Report, p. 230.

¹³¹ INDH, 2011 Annual Report, p. 230.

66. *Education of imprisoned adolescents in the sentence compliance system of the SENAME.* The right to education of adolescents who are imprisoned shall not be altered by their criminal situation. On the contrary, it should be specially protected and promoted by the authorities in this population, since their possibilities to be reintegrated in the society mostly depend on this. In 2011, over 70% of whom were in closed systems of detention and did not have complete schooling were studying. However, 4 out of 17 closed centres for temporary detention do not have schools or regular education programmes, implementing in them only educational reintegration programmes, some presenting implementation problems under quality¹³². Meanwhile, for those in semi-closed regimes, that are inserted in regular education establishments, the self-exclusion and non-acceptance of their peers, as well as the lack of incentives for the completion of studies, results in low school participation¹³³.

¹³² Information from the Department of Juvenile Justice of the SENAME. See INDH, 2011 Annual Report, pp. 230-231.

¹³³ INDH, 2011 Annual Report, p. 231.